



**First Session — Thirty-Third Legislature**  
of the  
**Legislative Assembly of Manitoba**

**STANDING COMMITTEE**

on

**INDUSTRIAL RELATIONS**

---

35 Elizabeth II

---

*Chairman*  
*Mr. H. Smith*  
*Constituency of Ellice*



MG-8048

**VOL. XXXIV No. 1 - 10:00 a.m., TUESDAY, 19 AUGUST, 1986.**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Third Legislature**

**Members, Constituencies and Political Affiliation**

NAME	CONSTITUENCY	PARTY
<b>ASHTON, Steve</b>	Thompson	NDP
<b>BAKER, Clarence</b>	Lac du Bonnet	NDP
<b>BIRT, Charles T.</b>	Fort Garry	PC
<b>BLAKE, David R. (Dave)</b>	Minnedosa	PC
<b>BROWN, Arnold</b>	Rhineland	PC
<b>BUCKLASCHUK, Hon. John M.</b>	Gimli	NDP
<b>CARSTAIRS, Sharon</b>	River Heights	LIBERAL
<b>CONNERY, Edward J.</b>	Portage la Prairie	PC
<b>COWAN, Hon. Jay</b>	Churchill	NDP
<b>CUMMINGS, J. Glen</b>	Ste. Rose	PC
<b>DERKACH, Len</b>	Roblin-Russell	PC
<b>DESJARDINS, Hon. Laurent L.</b>	St. Boniface	NDP
<b>DOER, Hon. Gary</b>	Concordia	NDP
<b>DOLIN, Marty</b>	Kildonan	NDP
<b>DOWNEY, James E.</b>	Arthur	PC
<b>DRIEDGER, Albert</b>	Emerson	PC
<b>DUCHARME, Gerry</b>	Riel	PC
<b>ENNS, Harry J.</b>	Lakeside	PC
<b>ERNST, Jim</b>	Charleswood	PC
<b>EVANS, Hon. Leonard S.</b>	Brandon East	NDP
<b>FILMON, Gary</b>	Tuxedo	PC
<b>FINDLAY, Glen M.</b>	Virten	PC
<b>HAMMOND, Gerrie</b>	Kirkfield Park	PC
<b>HARAPIAK, Hon. Harry M.</b>	The Pas	NDP
<b>HARAPIAK, Hon. Leonard E.</b>	Swan River	NDP
<b>HARPER, Hon. Elijah</b>	Rupertsland	NDP
<b>HEMPHILL, Hon. Maureen</b>	Logan	NDP
<b>JOHNSTON, J. Frank</b>	Sturgeon Creek	PC
<b>KOSTYRA, Hon. Eugene</b>	Seven Oaks	NDP
<b>KOVNATS, Abe</b>	Niakwa	PC
<b>LECUYER, Hon. Gérard</b>	Radisson	NDP
<b>MACKLING, Q.C., Hon. Al</b>	St. James	NDP
<b>MALOWAY, Jim</b>	Elmwood	NDP
<b>MANNES, Clayton</b>	Morris	PC
<b>MCCRAE, James C.</b>	Brandon West	PC
<b>MERCIER, Q.C., G.M.J. (Gerry)</b>	St. Norbert	PC
<b>MITCHELSON, Bonnie</b>	River East	PC
<b>NORDMAN, Rurik (Ric)</b>	Assiniboia	PC
<b>OLESON, Charlotte L.</b>	Gladstone	PC
<b>ORCHARD, Donald W.</b>	Pembina	PC
<b>PANKRATZ, Helmut</b>	La Verendrye	PC
<b>PARASIUK, Wilson</b>	Transcona	NDP
<b>PAWLEY, Q.C., Hon. Howard R.</b>	Selkirk	NDP
<b>PENNER, Q.C., Hon. Roland</b>	Fort Rouge	NDP
<b>PHILLIPS, Hon. Myrna A.</b>	Wolseley	NDP
<b>PLOHMAN, Hon. John</b>	Dauphin	NDP
<b>ROCAN, C. Denis</b>	Turtle Mountain	PC
<b>ROCH, Gilles (Gil)</b>	Springfield	PC
<b>SANTOS, Conrad</b>	Burrows	NDP
<b>SCHROEDER, Q.C., Hon. Victor</b>	Rossmere	NDP
<b>SCOTT, Don</b>	Inkster	NDP
<b>SMITH, Harvey</b>	Ellice	NDP
<b>SMITH, Hon. Muriel</b>	Osborne	NDP
<b>STORIE, Hon. Jerry T.</b>	Flin Flon	NDP
<b>URUSKI, Hon. Bill</b>	Interlake	NDP
<b>WALDING, D. James</b>	St. Vital	NDP
<b>WASYLYCIA-LEIS, Hon. Judy</b>	St. Johns	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

**Tuesday, 19 August, 1986**

**TIME — 10:00 a.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRMAN — Mr. H. Smith (Elice)**

**ATTENDANCE — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Cowan, Doer, Kostyra, Lecuyer,  
Hon. Ms. Wasylcia-Leis

Messrs. Ashton, Birt, McCrae, Mrs.  
Mitchelson, Mr. Smith (Elice)

**WITNESSES:** Presentations were made to the  
Committee as follows:

Bill No. 32

Mr. John Corp, Private Citizen

Mr. Jim Giesinger, William M. Mercer Ltd.

Bill No. 43

Mr. Cordell Barker, Manitoba Teachers'  
Society

**WRITTEN SUBMISSION:**

Bill No. 32 - An Act to amend The Pension  
Benefits Act,

Towers, Perrin, Forster and Crosby

**MATTERS UNDER DISCUSSION:**

Bill No. 29 - An Act to amend The Workers  
Compensation Act; Loi modifiant la Loi sur les  
accidents du travail. (Hon. Mr. Lecuyer)

Bill No. 32 - An Act to amend The Pension  
Benefits Act; Loi modifiant la Loi sur les  
prestations de pension. (Hon. Mr. Mackling)

Bill No. 41 - An Act to amend The Private  
Trade Schools Act; Loi modifiant la Loi sur les  
écoles de métiers privées. (Hon. Mr. Storie)

Bill No. 43 - An Act to amend The Teachers'  
Society Act; Loi modifiant la Loi sur l'Association  
des enseignants du Manitoba. (Hon. Mr. Storie)

Bill No. 45 - An Act to amend The Civil Service  
Superannuation Act; Loi modifiant la Loi sur la  
pension de la fonction publique. (Hon. Mr.  
Kostyra)

\* \* \* \*

**CLERK OF COMMITTEES, Ms. T. Manikel:** Excuse  
me, are you ready to start the committee meeting?  
Before we start this committee meeting, we must  
proceed to elect a Chairman. Are there any  
nominations?

Mr. Kostyra.

**HON. E. KOSTYRA:** I would like to nominate Mr. Smith.

**MADAM CLERK:** Mr. Smith has been nominated as  
Chairman. Are there any further nominations?

Seeing none, Mr. Smith, will you please take the  
Chair?

**BILL NO. 32 - THE PENSION BENEFITS  
ACT**

**MR. CHAIRMAN:** Mr. Andy Dawson.  
Mr. John Corp.

**MR. J. CORP:** Mr. Chairman, members of the  
committee, I welcome the opportunity to appear before  
you this morning, even with the accompaniment of the  
band.

By way of introduction, I'm a practising consulting  
actuary in the City of Winnipeg and was chairman of  
the Pension Commission from 1979 till 1983.

In my view this bill is unnecessary and even if I were  
to agree that it was necessary, I would say it was badly  
drafted. It's not necessary for three reasons.

First, I don't think there's a major problem. The  
Minister, when he introduced the bill, indicated that in  
the last six years, \$17 million had been refunded to  
plan sponsors. That may seem like a lot of money, but  
I would submit it's a very small percentage of the  
contributions made by plan sponsors in the same period  
of time. Moreover, if my memory serves me correctly,  
at least one-half of that amount was involved in one  
transaction where a major Manitoba employer, in some  
financial difficulty, restructured its pension plan with  
the full knowledge of its employees and the government.

The second reason I think it's unnecessary is because  
there already exists in the legislation some protection  
for employees. No surplus can be paid out if there is  
less surplus than two years worth of employer  
contributions and the employees must be guaranteed  
a reasonable rate of return on their contributions.

The third reason that I think it's unnecessary is carried  
on the front page of the "Globe and Mail" this morning.  
There already is protection for plan members through  
the regular judicial system. Striking evidence was  
provided by the Ontario Supreme Court decision  
yesterday regarding Dominion Stores. But that is only  
the latest in a line in a series of similar judgments. I  
believe the bill is badly drafted for the following reasons:  
The first is the role of the Commission. Since its  
inception in 1975, the Commission has encouraged,  
even pressured, plan sponsors and actuaries to be very  
cautious in the funding of their pension plans. This was  
initiated by my predecessor as chairman, who was an  
actuary, and supported by myself when I was chairman  
of the Commission. Now the Commission is to be  
charged with determining whether the surpluses, which  
have arisen in part because of the Commission's past  
practices, should be refunded or not. This is the case  
of the gamekeeper turned poacher. And I submit it will  
seriously hinder the role of the Commission in  
maintaining well-funded pension plans.

Tuesday, 19 August, 1986

I believe the bill is badly drafted because the wording is so nebulous. The wording is: "Unless the Commission believes it to be equitable to do so," i.e., to pay money out of the plan, it will affect every pension plan in the province, i.e., it will hit not only the bad actors which it's intended to hit, but the good actors too. If you must have this bill, for goodness sake, make it more precise.

The third reason I believe it's badly drafted is because the Commission is being asked to do something which I don't believe it's qualified to do, i.e. to adjudicate whether something is equitable or not. Under The Human Rights Act, a similar process involves the appointment of a knowledgeable and independent adjudicator. If you must do this, wouldn't it be better to go and have an independent and knowledgeable adjudicator?

And the fourth point is that the enabling legislation with regard to the regulations goes a whole lot further than simply the treatment of refunds of surplus to the employer. It envisages regulating, and I quote: "Regulating and governing the disposition of surplus in a pension plan." Now, disposition doesn't only mean refunding it to the employer, it means improving benefits, whatever. It would seem to me that whenever a plan sponsor has a surplus in his pension plan he could potentially have to apply to the Commission to approve what he wants to do with that money. That is unnecessarily intrusive.

In summary, if you must pass legislation along these lines, and I believe it's unnecessary to do so, you should make the legislation narrow and precise, rather than the broad brush approach which you have adopted. If Bill 32 is enacted as it is, it will lead to much weaker funding standards for pension plans in Manitoba, which I believe will be detrimental to the members of those plans.

Thank you.

**MR. CHAIRMAN:** Are there any questions? Thank you, Mr. Corp.

Mr. Giesinger.

**MR. J. GIESINGER:** Good morning, ladies and gentlemen.

My name is Jim Giesinger and I'm a consulting actuary with William M. Mercer here in Winnipeg. The position taken by our consultants, in general, on the issue of surplus refunds is that outright restrictions are unnecessary and ultimately damaging. Reasonable restrictions regarding surplus margins can be justified on the basis of protecting plan members from loss of benefits. However, restrictions beyond this will serve only to introduce rigidity into an already highly regulated system.

Ownership of surplus in a defined benefit pension plan has been a thorny legal question in recent years primarily because the legalities have never been clearly established. Cases seem to be judged on the particular wording in planned documents. It is our opinion that in settling this question the courts should recognize other factors besides language such as how a plan is funded, the purposes for which it is funded, and the allocation of risk in defined benefit plans.

Defined benefit plans provide employees with a guaranteed level of deferred compensation either in

dollar terms or in terms of a percentage of earnings. In Manitoba, legislation already requires a secondary guarantee of a return of employee contributions with reasonable interest, a requirement that employee contributions exceeding one-half the value of any benefit received be returned to the employee, a two-year vesting requirement after 1990, and payment of the value of the benefit on death.

These provisions leave very little room for surplus generation except through funding conservatism or high return investing. It does not seem to make sense to penalize an employer for either of these activities because all that will happen is that they will be discouraged. It is certainly a fact that most surplus is not refunded. It is probably true that most surplus is used at least partially for benefit improvements. Is there any real reason to discourage surplus generation?

I'm speaking as if Bill 32 outlaws surplus refunds. I realize that technically it does not; however, the wording of the bill is extremely vague and does not really tell the plan's sponsor what the rules are. The rules, it appears, will be subject to an appointed body's view of equity. This will certainly be changeable and probably unpredictable no matter how well-meaning and unbiased the body tries to be. Equity will change as the appointees change. This is not an appropriate way to approach the funding of a large long-term liability. Consistency of regulation should be a primary objective.

This leads me into another significant problem with the bill, and that is the question of uniformity. Manitoba passed Bill 95 in 1983 and managed to anticipate fairly well the shape of the consensus in pension reform. Any changes to achieve uniformity should be relatively easy.

It is possible that the intent of this bill, Bill 32, is to move in the same direction as other jurisdictions. We don't really know. Based on promulgations of the Ontario Pension Commission and the recently released draft regulations for The Federal Pension Benefits Standards Act, it appears that there may be a developing consensus on the surplus refund issue. We don't know whether Manitoba is intending the bill to move in that direction or not. If not, there could be a great deal of problems presented where surplus has to be notionally attributed by province and benefits varied by province.

If the bill remains as vague as it currently stands, requiring a surplus refund to meet an undefined definition of equity, then uniformity is impossible unless other jurisdictions are equally as vague and only if the appointed bodies have a common view of equity.

To summarize, given the fact that consensus is probably emerging on this issue country-wide, it seems reasonable to wait and join that consensus rather than attempting to anticipate. This is hardly the same as generalized pension reform where Manitoba moved in 1983 prior to consensus. The surplus refund debate is a relatively recent phenomena, it hasn't been settled by the courts, whereas the great pension debate had been going on in the country for six to eight years.

From anything I have seen, there is no flood of money being removed from pension plans in Manitoba. In isolated cases, there have been some large numbers; however, the circumstances of these cases have been unique. Why move on this important issue now?

Thank you.

**MR. CHAIRMAN:** Are there any questions of Mr. Giesinger? Thank you.

Tuesday, 19 August, 1986

Mr. Mackling.

**HON. A. MACKLING:** Mr. Chairperson, I understand there is one written submission and I have received a copy of that and will certainly note that. I crave indulgence from the committee. I have bills before another committee - I have explained this to my Opposition critic - and I'll be back to deal with Bill 32 as quickly as I can complete my work in the other committee.

Thank you.

**MR. CHAIRMAN:** Would the committee like to have the written submission included in the transcript? Yes, okay, a "Written submission to the Industrial Relations Committee of the Manitoba Legislature concerning Bill 32, An Act to amend The Pension Benefit Act, by Towers, Perrin, Forster and Crosby." (Shown at end of transcript)

Is there anyone else on Bill 32? Anyone else wanting to make presentation on Bill 32? Is there anyone who would like to speak on any of the other bills?

### **BILL NO. 43 - THE TEACHERS' SOCIETY ACT**

**MR. CHAIRMAN:** Mr. Cordell Barker, please, Bill No. 43.

**MR. C. BARKER:** Thank you, Mr. Smith.

I have a written submission I'd like to have circulated so when I'm making some comments, perhaps, it would be easier to understand exactly what I'm getting at. I'd like to thank you and the committee for giving me the opportunity to appear here this morning on behalf of the 12,950 teachers in Manitoba.

The Manitoba Teachers' Society was incorporated, was given statutory recognition by the Legislature in 1920. In 1942, there were major changes made to The Manitoba Teachers' Society Act and we are asking for some changes now. The changes are the outcome of a three-year review of the internal structure and operating procedures, governance and objectives of the Manitoba Teachers' Society to bring the society's structure more in line with modern-day structures to increase the flexibility.

The changes in the bill are internal, they strictly relate as to how the society functions, and we are pleased that this bill is before us today. We do have a couple of concerns. There are some outstanding issues that we would like to have resolved, if at all possible, so I am going to ask that the bill be amended by making four amendments.

The first amendment is on Page 2. It's a very minor change. Within the Manitoba Teachers' Society we have about 1,100 teachers who teach in French. They teach Mathematics, History, Social Studies, whatever, in the French language. Now, they have needs that are particular to them and as a result we have created within our organization a sub-organization, an organization of French-speaking teachers.

We have proposed to give them a constitutional mandate, representation at our annual general meeting and, after we discussed this at our annual general meeting and approved it, this group changed their name

to conform with non-sexist language. The name of the group was Les Educateurs Franco-Manitobains; it has been changed to Les Educatrices et Educateurs Francophones du Manitoba. That change occurs three places in the bill and it's just a change in name, so that it's not sexist.

At the bottom of Page 2, I am seeking an amendment to delete part of our current constitution. At the very bottom, there is a section which is 10(3) in our constitution. That section requires the general secretary to forward to the Minister of Education a copy of any proposed change, deletion, addition in our by-laws. Those proposed changes do not become effective until they have been approved by the Lieutenant-Governor-in-Council, the Cabinet. We have had difficulty with that because sometimes it takes a while to get those approvals. We don't think it's necessary. By-laws cannot be in conflict with the constitution. By-laws cannot expand the powers that an organization has. All that by-laws really are, are special policies, special procedures that you want to give more permanence to. So rather than a general policy that can be changed by a 50 percent vote, you put something, some basic belief, some basic procedure in a by-law which requires two-thirds of the vote. That permanence is important sometimes.

For example, we have a reserve fund. Controlling that reserve fund you don't want to be changing it every year by a close vote. So we have a by-law that sets out how the reserve fund is managed, what its purpose is and so on, and that can be changed by a two-thirds vote of the delegates of teachers at the annual general meeting.

On the other hand, for example, we have a policy, I believe, that the drinking age should be raised to 21. That's just a policy, it's debatable every year depending upon changes in society and views within the society. If we want to discuss that every year and look at it, that's fine, but certain procedures, certain policies, there should be a permanence to them. We require two-thirds vote. When we discuss them and say they are approved, we would like them to become effective immediately.

I'd like to point out that this practice of, in a sense, having control over your own by-laws is standard procedure. The Manitoba Association of School Trustees, the organization with which we do a lot of work, the Manitoba Association of Registered Nurses and, I believe, most other groups have that control over their by-laws. And again, it's because by-laws cannot be in conflict with the constitution and by-laws cannot give you powers that your constitution doesn't give you.

On Page 3, there's a requested amendment that I'm asking that the present Section 17 be deleted and replaced by another Section 17. This concern has been with the society for two years now. Back in the early 1980's we were concerned with whether our procedures for investigating complaints against member teachers really was in line with the Charter of Rights and Freedoms and natural justice. We found out that it really wasn't.

On Page 3, is the current section which is in our constitution. The very first part of that gives the Provincial Executive of the Teachers' Society the right to investigate complaints. We do investigate complaints because we are concerned, we are interested in maintaining the professional code of practice.

The last section, Section 4, entitles the executive to make recommendations as it may see fit, to the Minister, for the Minister's consideration. After reviewing this, we made some fundamental changes and we have asked for them.

If you look at Page 4, perhaps I'll just point out a couple of the major changes. Again, the first section would give us the right to investigate the conduct.

The second part really specifies if there is a complaint against the teacher, you don't just automatically go into a hearing. There is an investigation undertaken to see if there's enough evidence to suggest that the teacher has been guilty of unprofessional conduct.

Part 3 really establishes a committee to hear charges. It's a committee where, if after an investigation, if there was enough evidence to come to the opinion that a member has likely been unprofessional, then that case would go to the judicial committee.

Point 4, what the judicial committee can do is listen to the evidence, listen to both sides and both sides are entitled to have a lawyer present to protect their rights, and to determine whether those charges have been proven; in other words, if the member is guilty, or whether they have not been proven. If they have been proven, the only rights granted to the Teachers' Society, the only rights that we want are the (a), (b) and (c) in the middle of Page 4 there, the right to admonish or to censure teachers, or to recommend to the Minister of Education that the member's certificate be suspended or revoked.

Just perhaps looking at those three for a minute, I'm quite often asked what's the difference between admonishment and censure and the standard response is that admonishment is the slap across the wrist that no, no, you shouldn't have done that; whereas a censure might be considered a slap across the face but, of course, the Teachers' Society does not support any physical punishment so we won't use those terms.

Part (c), I would like to point out, is that the Teachers' Society, through this judicial committee, would make recommendations to the Minister. This does not give the Teachers' Society the right to suspend a certificate, to expel a member from the society, or to revoke certificates. That is a responsibility of the Minister. The Minister would retain that responsibility. We would just make a recommendation and then the Minister could pursue that as he or she wishes.

Part 5: The judicial committee would consist of nine teachers. They would not be provincial executive members. They would not be on the certificate review committee. The intent is to have an impartial body of one's peers.

On Page 5, there is an appeal mechanism outlined. As part of any process we believe strongly that people should have a right to an appeal mechanism. The appeal mechanism is set out and the appeal would go to the judge of the Court of Queen's Bench, and That's what Page 5 deals with, how the appeals could go; what the appeals could do; and that that would be final.

With respect to this, I just want to emphasize that teachers are concerned with enforcing our professional code of practice. We do want to prevent unprofessional conduct, but it is very important that anything we do is done within the natural justice, within the Charter of Rights and Freedoms.

On Page 6, we have a last request for an amendment. This request comes from 1983 and it deals with self-

insurance. Basically, we're looking at a long-term disability insurance plan. Teachers have a long-term disability insurance plan so that if they are unable to work, they receive a benefit.

Teachers, with one exception, pay that premium totally on their own. There are no contributions from the school boards. The reason for that is that if the school boards contributed, then any benefits would be taxable. So by trying to reduce your premiums by getting school boards to contribute towards long-term disability really isn't positive for teachers in the long run because then it makes the benefits taxable.

That long-term disability plan is primarily a teacher plan aimed at teachers, although in some divisions, some office people are included, superintendents, assistant superintendents, people working in the superintendent's department, in the secretary-treasurer's department.

What this request would do is enable the Teachers' Society to look at self-insuring for long-term disability. It doesn't mean that we automatically would as well. Any proposal would have to go to an annual general meeting, would have to be discussed by all the teacher delegates at that annual general meeting, and would have to be approved by a two-thirds vote. We haven't done that because we haven't had the right to proceed with that.

There has been some concern about just who would be in this plan and who would not be in this plan. On Page 8, after a number of re-writes trying to clarify who this plan would cover, we believe we finally have the wording that is quite adequate. When it talks about "member" and under section (a) talks about active members, associate members, life members, honorary members, employees of the society, and any employees of teacher associations, those people would be in the plan. That is the purpose of the plan.

However, as I mentioned earlier, there are presently some people who are not teachers, in the superintendent's department, in the secretary-treasurer's department, who are in the plan by choice. We have no intention and we have no desire to force those people out of the plan.

Similarly, we do have no intention and no desire to force people in divisions into the plan, so that if in one school division, the people in the superintendent's department, in the secretary-treasurer's office, aren't in the plan, we don't want to force them in the plan.

So we separated it to section (b), which gives these other groups the option. The choice is theirs.

So it's primarily a teacher's plan. It's to protect teachers. Teachers pay the premiums. We have included others, at their request. We have no desire to force those others out and we have no desire to force others into our plan.

I think I'll stop there and if there are any questions on this, I'll take them.

**MR. CHAIRMAN:** Mr. Birt.

**MR. C. BIRT:** Thank you, Mr. Chairman. A couple of areas of concern, Mr. Barker, and I've discussed them with you.

Two of your amendments and two of the proposed amendments that we're looking at - two of the

Tuesday, 19 August, 1986

suggested amendments that you're making - are really dealing with the professional status of the teachers and being able to regulate and operate their own particular affairs and discipline their members.

The first one is the doing away of the approval of the by-laws of your organization and the more important area is the suggested amendments, being Section 17 being rewritten to investigate, to inquire, and to everything else.

My concern: I have no quarrel with the teachers trying to deal with their own investigations and disciplines of their own profession. Most professional people, and acts, give this right to the people, to the organizations, and I support that.

The only concern I have, and I guess the quarrel I have is with the method by which this particular approach is being made. In particular, I refer to that section where, after an investigation is made, a review committee is struck and that review committee has all the powers of a commissioner under Part V of The Manitoba Evidence Act.

Now in my quick reviewing of The Medical Act, The Law Society Act, and I believe The Nurses Act, none of those powers are there. So initially, what they would do is request the people appear and tender their documents. But there is, however, provision for the particular discipline body to apply to the court, ex parte, to get permission to subpoena these sort of things.

It may be one extra step, but the idea it's a voluntary mechanism, people voluntarily come forward and they deal with the issue. If the committee feels strongly enough they can then pursue it by getting the extra authority from the court to subpoena the people and the documents.

I guess my concern is, that to give a committee the power under The Manitoba Evidence Act is to give too much authority to a group of individuals. I'm not worried that they may abuse it, it's just that no other - from what I've been able to find - professional group or professionally-regulated body has this authority.

I was wondering if you would have any concerns if this was amended to adopt a method of inquiry and review and the powers that perhaps are now established in most professional acts. It may mean a little bit of changing of some of the layout that you have, but I think the principles are there. and in fact, you would have your investigation and review, then you would refer it to a complaints committee, and they would then proceed to hold the hearings, etc. Then if they needed the authority, they could go to court and get it and then a decision is made and they can act on it. Then, of course, the appeal mechanism is there to go to the Queen's Bench.

Now I would just like your comments because I have that one concern that there's too much power going into the committee and it may be exercised, perhaps, when it shouldn't be.

**MR. C. BARKER:** In response, that's exactly what that would give this committee, the right to subpoena witnesses and documents. When we were preparing this, we were working with a lawyer and looking at all possible things that may or could happen in the future.

One of the things that the lawyer suggested was what would you do if people were uncooperative, if people

didn't want to appear, if they didn't want to tender documents, letters, etc.? It's theoretical in a way because in the number of investigations and complaints and hearings that the Teachers' Society has had, we have not had a problem with that; so, in a sense, this is not to solve a problem that has been occurring but it is to resolve a problem that may happen in the future.

With response to that, then, there is an option of leaving that one section out, that one line out and, basically, the rest would fall within natural justice, and if we see that we are running into a problem in the future with refusals and there's a difficulty because if teachers particularly refuse to testify, refuse to appear, they could be charged with unprofessional conduct, so that's something we have kind of in the wings.

**MR. C. BIRT:** Mr. Chairman, I wouldn't want to delay or impede the review and the upgrading of the procedures that you have because I really think they are a little antiquated. I'm making an assumption that the other, shall we call them "disciplinary investigative procedures" in the other professional acts, in fact, comply with the Charter. That's an assumption and, of course, only testing over time will either prove or disprove that fact.

I would prefer that clause that we find in other professional acts where you voluntarily ask and if they come forward, then and only then, if they refuse, would you then exert the extra power by going to court to get the support of the court to do it. I think this meets all your criteria. It doesn't start off being a court. I think people are deemed to be innocent and you remove all of that impression that perhaps this is a kangaroo court or an investigative court. I don't think that's what your intention is.

So if this was amended to accomplish it, would you have any objections to that?

**MR. C. BARKER:** No, that would be quite satisfactory.

**MR. C. BIRT:** Thank you. Mr. Chairman, the one other area of concern on the removal of the by-laws being approved by the Minister, again, I have no quarrel with that and I think most professional acts though require it — (Interjection) — no, they don't? If Mr. Balkaran advises then, okay, I have no concern. I thought they had required it. I know the Law Society and Medical didn't require it.

The only other area I would have of concern, Mr. Barker, is the area dealing with insurance. The amendments introduced or proposed by you are fairly wide in the sense that you deal with life, accident, health. It would appear it covers the whole gambit of services being offered by the life insurance industry. I'm looking at your definition when it says "insurance means," and the preamble says that there is a province-wide accident and sickness insurance plan and you want to go to self-insured.

But my reading of the proposed amendments would indicate two things. One is that you want to get into the general insurance industry or provide the services that are available in the insurance industry to your members, and I've got no quarrel with that, but the concern I have is a lot of school divisions, I believe, through collective agreements provide - I know in some

instances - fairly comprehensive compensation packages, whether they be for accident disability, loss of life, this sort of thing, my concern would be that if you got into this wide range of services, it might force them, or just at the bargaining table, say, well, we'll opt out of these. In an attempt to give coverage to the whole province, you may end up losing more than you're gaining, and I'm wondering.

Have you investigated that?

**MR. C. BARKER:** Yes, in response, the main purpose behind this is to deal with the long-term disability insurance program which is a program that covers teachers that are unable to teach for a variety of reasons.

When we were drafting the changes, we wanted to provide the enabling clause that if in the future, five years from now or ten years from now, we want to look at something else, that there are changes taking place, that that would be there so that we could do that if necessary.

The reason that it mainly related to long-term disability is because teachers, and teachers alone, pay the premium, and for the very point you made, that the school boards are involved with things such as the life insurance plan. We have no intention at this time of getting involved in that area, but depending upon taxation changes and so on, there may be a time when we would want to do that.

**MR. C. BIRT:** I think in your comments, Mr. Barker, you indicated that this was to be a voluntary plan, but my reading of the legislation says that this will be mandatory.

For example, the Manitoba Bar Association offers these group plans as you're referring to here, or you're contemplating in the future, over and above that disability stuff, but it's on a voluntary basis. My reading, when you read "Membership Fee," it says, "Shall pay annually on or before October 1st in each year such membership fee as may from time to time be fixed or prescribed by by-law and premium for insurance payable by the member payment under which has, by by-law, been a condition of the membership."

Now my concern would be that you might say that the by-law would be passed, and assuming it's an appropriately passed by-law, that all teachers shall belong to the following one plan or five plans, this makes it mandatory.

Is it the intention to be mandatory or is it to be an optional service that people can acquire additional services over and above what they have perhaps with their existing own personal plans or with their school board through the collective agreement? And if it is compulsory, again, what impact might it have on especially the negotiated collective agreement coverage that is available?

**MR. C. BARKER:** It is intended to be a mandatory plan if we go that direction and develop a plan and teachers approve that after a two-thirds vote. We have to recognize though that all plans that are presently in place are mandatory.

For example, in division "X" where there's 197 teachers, if those teachers, through their local

association, want to get involved into the long-term disability plan or if they approach their board and they want to get into the group life plan, once that decision is made and the teachers in that area vote at a general meeting and discuss it - I think it's usually 70 percent - if 70 percent of the teachers in those divisions want a plan, then the plan becomes mandatory for that entire body of teachers. That's the way it's been in the area for a long time because you can't have particular people opting out; for example, people opting out of a dental plan because I have a set of false teeth and I know I'm not going to need another set and so on.

**MR. C. BIRT:** The concern I have is there are a number of plans in place now and for a variety of reasons the small grouping, or perhaps performance of that group, there are good rates and perhaps additional coverage is given. That same type of - I'll call it a rich program - may not be available perhaps on a province-wide basis, and if it's adopted and accepted, you may be watering down the type of coverage that the teachers have in Manitoba.

So what I'm saying is, would you consider this type of plan that you're offering to the association be an additional type of coverage? They can opt into it rather than making it mandatory because my concern is, those who have good coverage now might lose it or it might be watered down because an employer might say well, you can get this on your own and I'm going to bargain it away as part of the bargaining process.

**MR. C. BARKER:** I don't think that teachers are worried that teachers are going to have less benefits or plans that aren't as good as the present plans. Part of the problem is that if there is a provincial plan, if there is a plan that's the same for teachers throughout Manitoba, that all teachers, or a large percentage of teachers say this is the plan that we need, then it becomes mandatory for those few that don't want it because of the whole idea of group insurance.

Perhaps though, I could respond. I have our expert here in all kinds of benefit plans from the Teachers' Society, George Strang, who would be quite prepared to go into that in further detail if you wish.

**MR. C. BIRT:** Okay, just before you leave, Mr. Chairman, he may want to make some comments and he may address some of the concerns I've expressed.

If the amendment just dealt with - I think you want the accident disability plan - if we just went with that for now and not include the other life programs, in other words, to give it a chance, I'm concerned that you may end up losing some. You may not, but I would rather that you have the maximum benefits rather than maybe to lose them. It's the concern of the compulsory program of life, sickness, accident, health, loss, you know, for medical coverage, all of that sort of thing. Would you consider just then dealing with the one area of coverage that you're concerned about?

**MR. C. BARKER:** With relation to the objective, that is the most important area and, if the others have to be eliminated in order to get that so that the teachers can move forward in this direction, yes.

**MR. C. BIRT:** Thank you, Mr. Chairman.

Tuesday, 19 August, 1986

**MR. CHAIRMAN:** Mr. Storie.

**HON. J. STORIE:** Just a couple of questions or comments, I guess.

In terms of the investigation of complaints, the amendments that you are suggesting - I appreciate that really what you're doing is, I think, making some significant improvements to that process and providing a much more obvious guarantee of impartiality and that you've now separated the two functions and that what you're calling a judicial committee would be responsible for the initial review independent of the appeal body within the society. I think that's commendable.

I have a similar concern as the one raised by the Member for Fort Garry in that staff, in reviewing some other acts have found that while there are provisions similar to the ones that you're requesting, they're somewhat limited that the Boxing and Wrestling Commission has power similar to the ones that you are proposing. But a number of other acts have provisions more like the ones that were enunciated by the Member for Fort Garry.

I'm wondering if, for the purposes of proposing amendments, if amendments are to be proposed at the committee stage, that if we eliminated that reference to the powers of the Commission under part 5 of The Manitoba Evidence Act, if that would substantially alter your intention, or if that particular section of your amendment were deleted, would that maintain the integrity of the intent of this amendment?

**MR. C. BARKER:** That is there upon the recommendation of our lawyer and as I said earlier, it hasn't been any problem in the past. So in that sense, if it were deleted, we do have a certain amount of influence because teachers - and usually when we're dealing with members, we're talking about teachers and teacher conflicts and teacher conduct - it would be an onus on teachers to cooperate, to appear before the committee to submit evidence. With that in mind, if they didn't, they would be opening themselves to unprofessional conduct charges. I think perhaps we could delete that and go that direction. If we find that there is a problem five, six, ten years down the road, then we would have to look at it again.

**HON. J. STORIE:** Okay. I think that there is a general consensus here that the intent of the amendment, I think, is commendable and that perhaps if we could make that small change in the amendment, perhaps we could have someone present it to the committee later on.

Generally, I thank you for your presentation. I appreciate that it has been some time since the MTS has had an opportunity to present these amendments and I know that they're looking forward to these changes. So I thank you for your presentation and hopefully the committee will see its way clear to adopt some of the amendments that you're recommending.

**MR. CHAIRMAN:** Are there any further questions?  
Thank you, Mr. Barker.

**MR. C. BARKER:** Thank you very much.

## BILL NO. 41 - THE PRIVATE TRADE SCHOOLS ACT

**MR. CHAIRMAN:** Okay, we'll start with Bill 41, unless there's any objections. How do you wish to proceed? Page by page? First page?

**HON. G. LECUYER:** Mr. Chairman, what bill are we dealing with?

**MR. CHAIRMAN:** Bill 41.

**HON. E. KOSTYRA:** I would move that the amendment to Page 2

THAT proposed new clause 2(d) to The Private Trade Schools Act as set out in section 5 of Bill 41 be struck out and the following clause be substituted therefor:

(d) "vocation" means any industrial or commercial occupation or calling of a person;

**MR. CHAIRMAN:** 2(d)—pass.

**MR. C. BIRT:** Mr. Chairman, I'm just wondering if we could have a brief explanation. I thought I had my act and I can't find it. What's the change that's being suggested?

**HON. J. STORIE:** Yes, Mr. Chairman, it's a technical amendment to remove some of the ambiguity, I guess, in the previous clause.

**MR. C. BIRT:** "Skill and knowledge required" has gone to meaning "any industrial or commercial occupation or calling of a person." Is that correct?

**HON. J. STORIE:** That's right.

**MR. CHAIRMAN:** Pages 3 to 7 were each read and passed.

Page 8 - Mr. Kostyra.

**HON. E. KOSTYRA:** I move

THAT proposed new clause 13(i) to The Private Trade Schools Act as set out in section 14 of Bill 41 be amended by striking out the words "calling or vocation" in the 2nd and 3rd lines thereof and substituting therefor the words "or calling".

**MR. CHAIRMAN:** Page 8, as amended—pass.  
Page 9 - Mr. Kostyra.

**HON. E. KOSTYRA:** I move

THAT proposed new section 13.1 to The Private Trade Schools Act, as set out in section 15 of Bill No. 41, be amended by adding thereto immediately after the word "Governor" in the 5th line thereof the words "in Council".

**MR. CHAIRMAN:** Page 9, as amended—pass.

**HON. E. KOSTYRA:** I move

THAT with respect to the amendments to Bill 41 that the French equivalents be also amended in the bill.

**MR. CHAIRMAN:** Page 9, as amended in French—pass; Page 10—pass; Preamble—pass; Bill No. 41, An Act to amend The Private Trade Schools Act, as amended—pass.

Bill be reported.

Tuesday, 19 August, 1986

**BILL NO. 43 -  
THE TEACHERS' SOCIETY ACT (Cont'd.)**

**MR. CHAIRMAN:** On Bill No. 43, we'll have to pass out the amendments. It'll take a minute or so.

Mr. Birt.

**MR. C. BIRT:** Before we get to the act there are a fair number of amendments. I believe the Minister will be just deleting that one section dealing with the inquiry, 14.1 or 14.2, whatever it was. I am in support of that; I just can't find the appropriate wording. That is dealing with the insurance scheme.

Is it the Minister's intention just to narrow it down to the, I think it was the disability plan, or is it his intention to leave in the whole ambit of insurance coverage that is referred to in the identification process?

**HON. J. STORIE:** Mr. Chairperson, I think the explanation provided by Mr. Barker where I think he gave me the assurance that the direction they're going was consistent with the philosophy and the operation of MTS.

I point out that in terms of assurance, essentially, MAST and MTS are the vehicles for most of the insurance programs in total, and that one or the other body, in that there is concurrence from MAST, I believe, that this is an acceptable route for MTS to take. So, with acknowledging your concern, I think that the members in the association and in the society will make that choice in a democratic way and I think that's their right.

**MR. C. BIRT:** Mr. Chairman, I would agree with the Minister. It was just that concern that they might end up losing something they've got now. But if the Minister is assured and the staff is, then I'm prepared to support the amendments as indicated.

Mr. Chairman, I'm wondering if, because there's a lengthy set of amendments, we can do it all at one time rather than go clause by clause.

**MR. CHAIRMAN:** That's what I'm suggesting.

**MR. C. BIRT:** Oh, okay, I'm sorry.

**HON. J. STORIE:** Mr. Chairperson, I believe, if there's agreement amongst the committee members, we may be able to adopt these amendments as distributed in both official languages and that would preclude the necessity of reading the somewhat lengthy amendments into the record.

**MR. CHAIRMAN:** Mr. Ashton is going to proceed with that.

The Member for River Heights.

**MRS. S. CARSTAIRS:** I just have a question. With regard to 17(4), Page 5, in which we have removed the powers of the commissioner under The Manitoba Evidence Act, through the discussion, wasn't there the provision that should in fact there not be the presentation of the required documentation, then in fact the Judicial Committee could apply to the courts in order to have evidence given under The Manitoba

Evidence Act? That has now been taken out completely so there is no means by which the Judicial Committee can apply to the court.

**HON. J. STORIE:** I understand that they always have the right to do that; that it's not necessary in this case to put that into the bill. However, that amendment obviously could be considered at some later date, as Mr. Barker indicated, should the Society feel that it's necessary or warranted.

**MR. CHAIRMAN:** Mr. Ashton.

**MR. S. ASHTON:** I would then move THAT the amendments to Bill No. 43, as outlined in the . . .

**MR. CHAIRMAN:** In both English and French?

**MR. S. ASHTON:** Both English and French, yes.

**MR. CHAIRMAN:** The amendments, as amended, in both English and French—pass; Bill No. 43, as amended—pass; In its entirety—pass; Preamble—pass; Title - An Act to amend The Teachers' Society Act—pass.

Bill be reported.

We can't proceed on 32. Let's do 29.

**BILL NO. 29 -  
THE WORKERS COMPENSATION ACT**

**MR. CHAIRMAN:** Bill No. 29 - Mr. Lecuyer, how do you wish to proceed?

**HON. G. LECUYER:** Page by page.

**MR. CHAIRMAN:** Page by page.

**HON. G. LECUYER:** For entirety.

**MR. CHAIRMAN:** Okay. Do you have any comments, Mr. Lecuyer?

**HON. G. LECUYER:** No, it's very straightforward. It's a technical amendment to facilitate access to the Review Committee to the policies, procedures and documents held by the board.

**MR. CHAIRMAN:** Page 1—pass; Page 2—pass; Page 3—pass; Preamble—pass; Title—pass.

Bill be reported.

**BILL NO. 45 - THE CIVIL SERVICE  
SUPERANNUATION ACT**

**MR. CHAIRMAN:** Bill No. 45 - Mr. Kostyra.  
Mr. Doer.

**HON. G. DOER:** Mr. Chairman, as a member of the fund, I would like to exclude myself from the meeting. I'm in a conflict of interest.

**MR. CHAIRMAN:** Okay.

Tuesday, 19 August, 1986

Page by page. Page 1—pass; Page 2—pass; Page 3—pass.

Page 4 - Mr. Ashton.

**MR. S. ASHTON:** Page 4, Section 8 of Bill 45 be struck out and the following section be substituted therefor: subsection 33(12), as amended; and subsection 31(2) of the act is amended by adding thereto at the end thereof the words and figures, "and the person's salary shall not include more than two years' vacation accrued up to a maximum of 50 vacation days."

**MR. CHAIRMAN:** And the French equivalent.  
Mr. Lecuyer.

**MR. E. LECUYER:** Mr. Chairman, I'm not sure but I may be a member of the fund, so I will exclude myself from the discussion.

**MR. CHAIRMAN:** Do we have a quorum still? Okay.  
Mrs. Mitchelson.

**MRS. B. MITCHELSON:** Can I ask a question now on the amendment? Is this amendment the result of discussions or negotiations with the employee groups affected?

**HON. E. KOSTYRA:** Yes, the amendment is agreed to by what is referred to as the liaison committee, which is a representative body of all the employee groups that are part of the Superannuation Board, which includes direct government employees, employees of the various Crown corporations and government agencies. It also has the approval of what's referred to as the Task Force on the Superannuation. The task force is the representative group of all the employers, including, obviously, representatives of the Civil Service Commission and the various Crown corporations such as Manitoba Hydro, Manitoba Telephone, that is, the employing authorities.

**MRS. B. MITCHELSON:** Thank you.

**MR. CHAIRMAN:** Page 6—pass; Page 7—pass; Page 8—pass; Bill as amended—pass; Preamble—pass; Title—pass.

Bill be reported—pass.

Why don't we recess for five minutes?

(Recess)

### BILL NO. 32 - THE PENSION BENEFITS ACT (Cont'd.)

**MR. CHAIRMAN:** Committee, come to order.  
The Honourable Minister.

**HON. A. MACKLING:** Mr. Chairman, I, first of all, would indicate my regret at my not being here through the entirety of the committee sitting. I was obliged to be in the other committee to explain or provide support for the passage of other legislation there.

In respect to the bill, Bill 32, we heard representations from Mr. Corp and Mr. Giesinger, and a written brief by the Industrial Relations Committee, or pardon me,

by the Towers, Perrin, Forster and Crosby firm, again actuarial consultants.

Their concern about retroactivity is generally a legitimate one. I say that I think retroactive provisions of any legislation is to be avoided. However in this instance, the retroactive period is to January 1, 1986, and we deem it necessary in order to protect the pension funds from being diverted by employers during the period.

Once we have indicated that legislation is about to occur, then it is possible - not absolutely likely - but certainly possible that applications could be made for which then there would be no remedy. Because if they are made before the legislation takes effect, it's like putting a lock on the barn after the horse is gone. So it's a very limited retroactive period. It's limited to the period in which legislation is contemplated, and therefore will become common knowledge in the industry.

In respect to the concerns about other aspects of the legislation, as I indicated in the House we are of the view, as government, that pensions really take the form - the money that has been paid into pensions - takes the form of deferred wages, a deferred salary. In many cases, if not in all cases, they are the subject of negotiation and agreement between employers and employees. It's part of a pay package. It's something that is not just a voluntary act on the part of an employer just out of good will. It's part of the benefits that employees have obtained, as part of their employment package, and as such, any withdrawal from any pension fund should not take place unless there is worker approval to that.

Now at the present time, the Pension Commission is clothed by virtue of regulation with the right to demand that no, and does demand that there can be no withdrawal of funds from a pension fund without Commission approval. However, council had pointed out that the regulation is not provided for, or the strength of that regulation is not provided for in the existing act. So it is quite likely that if the Pension Commission had insisted on the company securing its approval before it could withdraw funds, if an employer challenged that in the courts, the probability is that they would be successful. So this legislation will now clothe with the Commission, by statute, with the power that it now has by regulation.

It's my intention, as Minister, to consult with both industry and workers, through workers' organizations including the trade union movement, to determine the views of both workers and employers in respect to this area. Certainly I will endeavour to provide some leadership and I hope to get support from sister or brother provinces and other jurisdictions, because I think it is necessary that we, as a society, work as closely as we can with all jurisdictions to ensure protection of workers' benefits.

So the legislation will clothe the Commission with the capacity it believed it had, but legally did not have, and we will be pursuing consultation with other jurisdictions and with the parties most affected, workers and employers, before making any further recommendations to change the legislation.

**MR. CHAIRMAN:** Mr. McCrae.

**MR. J. McCRAE:** Mr. Chairman, I don't have so much concern about the general principle involved in the bill, as much as I do about where we're heading in the future in respect to pension legislation and pension reform in this province.

This bill gives the Commission powers, as I see it, that it already has by regulation, to make decisions. Those decisions, I suppose, could be changeable and unpredictable and therefore not necessarily consistent over the years. But where are we headed from beginnings in this bill? Are we going to ban all refunds of surplus, in subsequent legislation, in subsequent Sessions?

**HON. A. MACKLING:** The honourable member is quite right in guessing or wondering about what the options are for government to include in specific legislation that could follow this. Clearly, there is a concern in society that pension funds ought not to be the subject of withdrawal by an employer.

On the other hand, I know that there can be arguments made and we will listen to those arguments, and there's been no formal decision made as to what finally the legislative amendments may be in future. I know there have been instances where employers who are hard-pressed because of difficult times have sought the approval of workers and obtained approval to withdraw deemed surplus funds in order to ensure the continuation of that industry. There are arguments that can be made for the flexibility that now will be provided by this pension legislation, flexibility in the hands of the Pension Commission to make that kind of decision.

But I have indicated to the honourable member, and I believe that it's well known, we have a concern that pension funds generally ought not to be the subject of any withdrawal for the purpose of an employer. The pension funds are deferred wages and ought to be utilized in a manner that's consistent with what the workers deem necessary - enlargement of worker benefits may be a good example of that - but certainly we will be considering what future amendments may be necessary to this legislation.

**MR. J. McCRAE:** Mr. Chairman, the Minister says that there have been withdrawals with approval from employees, and that generally these withdrawals don't happen. They're a fairly isolated type of thing that happens. But you know if in the future we legislate against any withdrawal of surplus refunds, it could be that there will be times of severe economic hardship where employees would, if it weren't for restrictive legislation, agree to the removal of certain surplus funds and that very act might very well save their jobs and their pensions completely and their futures. So I would warn the Minister against proceeding too hastily in that direction, certainly not without extensive consultation with people in the industry and also those people affected.

I also encourage the Minister to get on with this business of consultation with other jurisdictions. Sometimes moving ahead before everybody else does can be called leadership but it could also be interpreted as one government in this country out of step with the rest of the country.

I just put those concerns and fears on the record. I agree with the principle of the bill that pension funds

are there for the enhancement of pensions. But the actuaries are there to review pension plans every three years and I think that their advice should be listened to pretty closely by the Pension Commission, too.

I do have one other concern and that has to do with consistency of the regulation provided by the Pension Commission. I hope the Minister will keep copies of the presentations we heard this morning from the gentleman who came forward and the one that was filed, and keep those concerns in mind, especially in his consultations in the future.

**MR. CHAIRMAN:** Page 1—pass; Page 2—pass; Preamble—pass; Title—pass.

Bill be reported—pass.

Committee rise.

**COMMITTEE ROSE AT:** 11:40 a.m.

### WRITTEN SUBMISSION PRESENTED BUT NOT READ

Submission respecting Bill No. 32 by: Towers, Perrin, Forster and Crosby.

Introduction:

Towers, Perrin, Forster and Crosby is an international consulting organization specializing in actuarial, human resource and general management consulting services. Further information about TPF and C is appended to this submission.

We have provided assistance to numerous clients in Canada in the design, funding and management of pension plans since 1938. We are the second largest actuarial and employee benefit consulting firm in Canada. We currently employ about 45 fully qualified actuaries in Canada who are all Fellows of the Canadian Institute of Actuaries.

We have been an active participant in the pension reform process, having advised and made submissions to various government bodies, including the Pension Commission of Manitoba in 1983, the National Pension Conference, the Ontario Royal Commission on Pensions, the Federal Parliamentary Task Force on Pension Reform and more recently to the Federal Legislative Committee, the Pension Commission of Ontario and the Department of Labour in New Brunswick.

Our concerns:

We are deeply concerned about the detrimental impact of Bill 32 on private pension plans. We believe that in the long term the bill will have the following effects:

It will reduce the security of earned benefits.

It may lead to curtailment of benefits under existing plans covering Manitoba employees as employers, faced with the unfairness of the bill, are compelled to make prudent business decisions about the optimum utilization of their shareholders' money.

It may discourage employers from setting up new defined benefit plans and thus assuming the risk of providing income protection to their employees.

We, therefore, believe that the bill is contrary to the expressed desire of all Canadian governments regarding increased coverage of private pensions. Its

effects will militate against the social need for improved protection of income in retirement.

We are also concerned about the retroactive impact of the bill.

We have provided an elaboration of our comments below. As further background, we have also attached a copy of the section entitled "Basic Issues" from our recent submissions to the various governments (Attachment 1).

#### Funding of Defined Benefits:

By far the largest proportion of private pension plan members belong to plans of the 'defined benefit' type, quite often requiring employees to share the cost of the plan through specified contributions.

The sponsor of the defined benefit plan has, as a primary objective, the replacement of the income of retiring employees, at a certain level and within certain cost parameters. This undertaking entails considerable risk to the sponsor, who is required to make up all the costs of the plan in excess of employee contributions. In such plans, the sponsor assumes the risk not only for investment returns on the pension fund, but also for the level of benefits at retirement as these are often related to compensation near retirement. The sponsor also assumes the risk associated with the incidence of retirement as many plans provide subsidized benefits on early retirement.

If the plan sponsor could forecast all these elements exactly, the sponsor would fund the precise amounts that are required. However, since these amounts are not predictable with any degree of certainty, the plan sponsor usually adopts a prudent stance and includes margins in the funding levels. These margins are especially important because:

The security of the members' earned benefits is affected by the funding level. (One of the most fundamental purposes of advance funding is to provide security of earned benefits.)

In the event of deficits, the sponsor is required under the law to fund them over a short period. For example, in the mid-Seventies, pension plan sponsors had to contribute millions of dollars to pension funds because of experience deficiencies created by poor investment results.

The sponsor may wish to prefund benefit improvements that are planned to be implemented in future. For example, a preponderance of large employers have a policy of updating pensions in payment depending on their initial level and the impact of increases in the cost-of-living. Oftentimes, these are financed from the surpluses deliberately planned for through conservative funding.

Moreover, the funding of a plan must be conducted within actuarial and regulatory guidelines. Both of these inevitably include margins.

Hitherto, this conservative funding has not caused problems for plan sponsors because they felt secure in the understanding that they retained the ownership of the excess funds. Bill 32, however, would effectively, unilaterally and retroactively remove this ownership from employers, since employers would retain rights to a refund only in exceptional circumstances.

Faced with the changed situation, at best, plan sponsors may act to adopt "lean and mean" funding, thus reducing the security of earned benefits. Also, surplus generation for financing any post-retirement

pension benefit adjustments or other improvements would be reduced significantly.

At worst, employers may curtail future benefits because of this "no-win" situation. Employers without plans may be discouraged from establishing new ones.

This effect is completely contrary to the desire "to promote the establishment, extension and improvement of pension plans throughout Manitoba" implied by the Minister of Labour in his introduction to the second reading of the bill.

#### Retroactivity:

Most plan sponsors established pension plans within given benefit and cost constraints and quite often on a contractually negotiated basis. Any retroactive legislation would alter the nature of their contracts without remedy. Therefore, provisions of the legislation must not be retroactive - a principle espoused by most democratic jurisdictions.

The retroactive nature of Bill 32 is, therefore, most pernicious.

The bill is retroactive in two respects:

Its effect is to be retroactive to January 1, 1986.

It will apply to any surplus generated because of overcontributions in the past when a different regime was in place.

At the least, this retroactivity must be removed.

#### Vagueness:

We also find the wording of the proposed section 22(1.1) to be vague and subject to varying interpretation by successive Pension Commissions. A law based entirely on what the Commission "believes" - a variable concept by itself - to be "equitable" is imprecise and nebulous. The interpretation of "equity" can be particularly uneven.

#### Consequential Matters:

If Bill 32 becomes law in one form or another, two items of consequence must be accommodated:

Plan sponsors must be allowed to fund using their best estimates without any margins for conservation.

In the event of future deficits, plan sponsors must be provided the option of either reducing benefits or requiring employees to share the deficits as negotiated.

We believe this is a logical extension of the premise underlying Bill 32 - that pension plans are deferred compensation rather than income protection plans.

#### In Conclusion:

We thank the Committee for providing us with this opportunity to make our views known. If there are any matters in which we can assist the Committee, we shall be only too pleased to respond.

Attachment 1

## BASIC ISSUES

**Voluntary:** Pension plans in Canada are voluntary undertakings by employers or negotiated between employers and unions.

#### Employment Benefit:

Pension benefits, where provided, are in respect of employment. Pensions are an employment benefit and as such are matters limited to employers and their employees.

#### Defined Benefit Plans:

By far the largest proportion of private pension plan members belong to plans of the 'defined benefit' type, quite often requiring employees to share the cost of the plan through specified contributions.

The sponsor of a defined benefit plan has, as a primary objective, the replacement of the income of retiring employees at a certain level and within certain cost parameters. This undertaking entails considerable risk to the sponsor, who is required to make up all the costs of the plan in excess of employee contributions. In such plans, the sponsor assumes the risk not only for investment returns on the pension fund, but also for benefits at retirement where they are related to compensation near retirement. The sponsor also assumes the risk of the incidence of retirement as many plans provide subsidized benefits on early retirement.

Depending upon the objectives of the sponsor and members, the nature of the employer's work force, and the available resources, the plan may also provide specified benefits upon the member becoming disabled or dying prior to or after retirement. Also, additional pensions are often granted after retirement depending upon the initial level of pension and subsequent increases in the cost-of-living.

Thus, under a defined benefit plan, the primary driving force is the objective of providing protection of income within given cost parameters and the risk lies with the plan sponsor. The plan should not be viewed as deferred wages or compensation. The compensation element is the value of the protection provided, not the amount of the sponsor's contributions.

#### Money Purchase Plans (Defined Contributions):

Money purchase plans, although becoming more prevalent, have not been popular in the past, because:

Typically, all the risks, for investment returns as well as benefit levels and the annuity rates at the time of settlement, are taken by the employees.

The design does not readily lend itself to the provision of ancillary benefits to spouses, disabled employees or employees retiring early.

There is no satisfactory method for post-retirement updates.

Because the risk is passed to the employees who have less capacity for risk than the typical plan sponsor, the funds of money purchase plans are generally invested more conservatively. A massive shift of pension plans to the money purchase format would therefore have a significant impact on Canadian capital markets - especially the equity market.

#### Retroactivity:

Most plan sponsors established pension plans within given benefit and cost constraints. Any retroactive legislative changes would alter the nature of their contracts without remedy.

Therefore, the provisions of the legislation must not be retroactive.

#### Expansion of Private Plans:

In order to nurture the growth and expansion of private pension plans - an objective espoused by most

governments - it is extremely important that the pension standards legislation establish only minimum standards, be simple to administer and be uniform across the nation.

#### Summary:

To summarize, therefore, pension standards legislation should:

Take account of the voluntary and employment-related nature of private pension plans.

Take account of the income protection nature of a defined benefit plan and the risk assumed by the plan sponsor. Thus, the law should not be based on the deferred wage concept.

Not be retroactive.

Be simple to administer.

Establish only minimum standards.

Maintain uniformity with other jurisdictions in Canada.

### ABOUT TPF and C

Towers, Perrin, Forster and Crosby is an international consulting organization specializing in actuarial, human resource and general management consulting services. We have 48 offices located in Canada, the United States, Latin America, Europe and the Far East.

TPF and C has operated in Canada since 1938. Since that time we have assisted numerous clients in the design and funding of retirement plans.

We opened our first office in Canada in 1956. We now have fully staffed offices in Montreal, Toronto, Calgary and Vancouver. These offices provide services to more than 1,200 clients, including over 125 of Canada's top 200 companies. A vast majority of our clients consult us on pension and actuarial matters.

In Canada, we have a consulting and specialized support staff of 175 and a total staff of 225. Our consulting staff includes about 45 fully qualified actuaries, all of whom are Fellows of the Canadian Institute of Actuaries, and more than 55 other professionals.

We maintain an extensive research function, which is conducted through our Canadian Information Services unit. We monitor all available sources of information on a national basis for new developments and trends in legislation and employee practices as they apply to pension plans. We also maintain extensive information bases, including a continually updated employee benefit data bank which currently includes data on employee benefit plans sponsored by over 265 employers across Canada.

Respectfully submitted,  
TPF and C LIMITED