

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON
STATUTORY REGULATIONS AND ORDERS
Monday, 8 September, 1986

TIME — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. D. Scott (Inkster)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Evans, Harper, Hon. Ms. Hemphill, Hon. Mr. Penner.

Messrs. Ashton, Birt, Ducharme, Maloway, Mercier, Orchard and Scott.

WITNESSES: Bill No. 14

Ms. Wendy Barker - Consumers' Association of Canada (Manitoba)

Bill No. 52

Dr. Arnie Laxdal - Private Citizen

Dr. Henry Krahn - Private Citizen

Dr. Jeremy Gordon - Association of Independent Physicians

Dr. J.B. Sutherland - Manitoba Medical Association

Dr. S.D. Baragar - Manitoba Medical Association

Dr. J.D. Armstrong - Manitoba Medical Association

Dr. L. Bartlett - Manitoba Medical Association

Dr. N. Donen - Manitoba Medical Association

Dr. R. Midwinter - Manitoba Medical Association

Mr. John La Plume - Manitoba Medical Association

Dr. Tom Fisher - Private Citizen
MATTERS UNDER DISCUSSION:

Bill No. 12 - An Act to amend The Legislative Assembly and Executive Council Conflict of Interest Act and The Legislative Assembly Act; Loi modifiant la Loi sur les conflits d'intérêt au sein de l'Assemblée législative et du Conseil exécutif et la Loi sur l'Assemblée législative. (Hon. Mr. Penner)

Bill No. 14 - The Manitoba Energy Foundation Act; Loi sur la Fondation manitobaine de l'énergie. (Hon. Mr. Schroeder)

Bill No. 20 - The Statute Law Amendment Act (1986); Loi de 1986 modifiant le droit statutaire. (Hon. Mr. Penner)

Bill No. 52 - The Manitoba Medical Association Fees Act; Loi sur les droits de l'Association médicale du Manitoba. (Hon. Mr. Desjardins)

Bill No. 55 - An Act to incorporate The Royal Winnipeg Rifles Foundation; Loi constituant en corporation "The Royal Winnipeg Rifles Foundation." (Mr. Johnston)

Bill No. 57 - An Act to amend The Municipal Assessment Act and The City of Winnipeg Act; Loi modifiant la Loi sur l'évaluation municipale et la Loi sur la Ville de Winnipeg. (Hon. Mr. Doer)

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MR. CHAIRMAN: Call the committee to order, please.

This evening, we are going to be dealing with Bills 12, 14, 20, 52, 55 and 57. We have a number of people wishing to make presentations. Could we start with the first bill, please, and follow through in that order?

Mr. Penner.

HON. R. PENNER: We usually see if there's anyone who is from out of town, and generally give them the courtesy of the first hearing. I wonder if we can see if any of the persons listed as those wishing to make the presentation are, in fact, from out of town and wish to get on early.

MR. CHAIRMAN: We could do that, but we've only got three bills with people who plan on making presentations, on 12, 14 and 52. There's only one person down on Bill No. 12. If we could move through that one and into 14, we could move along quite quickly and we'll be into 52. We can then go for the people out of town. We won't take half-an-hour to do that.

Okay, Bill No. 12, Mr. Walter Kucharczyk, is he present?

MR. F. JOHNSTON: From what the Attorney-General is saying, if there are people from out of town right now, I'd certainly agree with the Attorney-General that we should probably consider that situation.

MR. CHAIRMAN: No one has identified themselves to the Clerk of the Committee that they're from out of town. Is there anyone on the list from out of town today who wants to make a presentation? Seeing none, can we proceed? Thank you.

On Bill No. 12, representative for the Manitoba Association of Rights and Liberties. Is there a representative of MARL here who wishes to speak to Bill No. 12?

Seeing none, we'll move on to Bill No. 14.

BILL NO. 14 - THE MANITOBA ENERGY FOUNDATION ACT

MR. CHAIRMAN: Mr. Arne Peltz from the Consumers' Association of Canada, is he present?

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Mr. Peltz, please.

MR. A. PELTZ: Mr. Chairman, I'm registered on behalf of CAC. There is a representative of CAC here and, with your permission, I'll have her speak. I'm just here to help her out if she gets in trouble.

HON. R. PENNER: Nobody ever gets in trouble before this committee.

MR. CHAIRMAN: Is this Wendy Barker?

MS. W. BARKER: Yes.

MR. CHAIRMAN: Good, Ms. Barker, go ahead.

MS. W. BARKER: I'm here representing the Consumers' Association of Canada, the Manitoba Branch.

This act is of some concern to us. I would say that generally the Consumers' Association, as a policy, would say that revenues from Hydro sales should go to Hydro customers; whereas the intention of this act is that some of those revenues be diverted to other uses.

The reason that we would feel this is because Hydro customers have been subject to the risks of increased costs due to hydro generation projects, and we feel that they should benefit from any profits accrued. Even without that philosophical difference of opinion, CAC (Manitoba) has grave concerns regarding the bill as it is proposed.

Of prime concern at the lack of regulatory authority over the Energy Authority and the Energy Foundation, the Consumers' Association passed a resolution in 1985 calling for automatic review of hydro rate increases because we see the present method of regulation as inadequate.

However, presently there is at least some review, if a customer appeals an increase and it is CAC's position that the Public Utilities Board should have the power to review the calculations under Section 3(1) and any assignment under 3(2). Otherwise we feel that the Public Utilities Board's power to review hydro rates would be seriously undermined, considering the large amount of money involved in this act as its proposed.

One of the areas that we feel there could be problems would be the calculation of relevant capital costs. Although there's no method set out in the bill as to how capital costs will be calculated, we understand that it is the position of the authority that the average of all generating facilities will be used rather than the costs associated with new generating stations such as Limestone, and in the future, Conawapa. We perceive this to be a problem because the calculation using average costs will return less revenue to Hydro than the calculation using marginal costs would.

This is one of the areas that we can foresee problems and there may indeed be others. For this reason, we are suggesting that the Public Utilities Board with its technical and specific expertise be given the mandate to review all calculations and methods.

CAC also wishes to express its reservations regarding the inclusion of Section 3(2) in the bill. This section seems to suggest that revenues could be transferred or assigned even if Hydro's costs have not been covered. If this is not the intention of the section, then

we would propose that the wording be changed to ensure that Hydro's costs are covered before any assignment. If it is the intent, then the section contradicts statements which have been made by the government members that Hydro costs will be covered before any revenues are diverted to other uses. We strongly oppose any feature of this act which would act to deny recompense to Hydro for costs incurred.

The Consumers' Association believes that there are problems inherent in this bill which could be overcome with the inclusion of regulatory review by the Public Utilities Board. If there is no such review, then it is possible that the lack of accountability will raise problems in the future, a situation with which the people of Manitoba are not unfamiliar. I would just conclude by saying that we feel it's very important that there be some method of review of the calculations set out in this act.

MR. CHAIRMAN: Thank you, Ms. Barker. Are there any questions for Ms. Barker from members of the committee? Seeing none, thank you very much for your presentation this evening, Ms. Barker.

Next before us is Bill No. 52, The Manitoba Medical Association Fees Act. The first person I have on the list here is Dr. J. Neffgen. Dr. Neffgen are you present? Not seeing Dr. Neffgen, is Dr. Arnie Laxdal present? Come forward please, sir.

BILL 52 - THE MANITOBA MEDICAL ASSOCIATION FEES ACT

DR. A. LAXDAL: Mr. Chairman, Honourable Ministers, I have some concern about the present act before you, being a past president of the Manitoba Medical Association. I was past president as a voluntary association and seem to still deal with it in that fashion.

The association has conducted two referenda on the present problem as to what the position was on this particular bill. The first referendum was negative; the second one was a positive one on the number of votes received; but this was positive only in 600-and-some votes out of 2,000 physicians in Manitoba. This is hardly 50 percent of the numbers that are presently present.

Many non-members paid no attention to the ballad that was distributed because of the fact that it was distributed by the association and they did not wish to respond to mail from the association. I was led to believe at one time that the referendum would be conducted by the College of Physicians and Surgeons which indeed it was not.

The second thing is: this is designed to help defray the cost of negotiations. We have no figure as to how much negotiation process costs - we recognize that there are costs involved - but I do not feel that this is a mechanism by which the association should try to improve its financial position. I think mandatory membership or mandatory dues in the association will lead to the formation of a union of physicians. I do not think that this is in the best interests of the public of Manitoba and I think if the union is to require certain obligations on the part of its membership, that many physicians will have difficulty following the recommendations of the association.

There are many other national associations, all of which many of us belong to. These are all voluntary

to the present time. All the specialties have associations and the family practice unit have associations. These are all voluntary and we all pay dues to such.

There are some provinces in Canada which presently have a bill similar to Bill 52. These were derived at the time when the associations and the College of Physicians and Surgeons were one - and such was the case in Manitoba at one time - but with the requirements of a separation of the economic status and the protection of the public, the formation of a separate college from the association was developed. The present provinces that have an act that reads something like 52 are the smaller provinces that have a few number of physicians and, as such, could not function without all of the physicians presently belonging.

I think the present act will also give the association somewhat of a licensing power over the physicians of Manitoba. We already have a licensing body. If it's necessary to pay dues to the association and if your licence is so attached, this will in effect make two licensing bodies, which we do not need.

I have been in discussion with some physicians who feel they cannot follow Bill 52 and that they would prefer to leave the province rather than come under the requirement of supporting the association on its present stance. I feel that recurrent circulation of the membership in order to get the answer that they want is not the way to go about supporting their financial requirements.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Dr. Laxdal.

Are there any members of the committee with questions for Dr. Laxdal?

Dr. Laxdal, would you entertain a question if anyone has one for you? I'm not sure if any members have a question for you but just in case and for the other members as well, it's not required that you stay to answer questions, but if you don't mind we would certainly appreciate your staying at the microphone in case there are any questions for the purpose of clarification. Are there any questions to Dr. Laxdal?

Mr. Orchard.

MR. D. ORCHARD: Thank you, Mr. Chairman.

Dr. Laxdal, in the opening of your remarks, you indicated you were led to believe that any vote on the compulsory views, if it was held, would be conducted by the College of Surgeons and Physicians. Is that . . .

DR. A. LAXDAL: . . . what I originally understood was the point of the Minister when he originally discussed this with the association, yes.

MR. CHAIRMAN: Anything further, that's all, thank you very much Dr. Laxdal. Oh, wait, Mr. Dolin.

MR. M. DOLIN: If I remember correctly weren't you present for the Medical Association when the proposal of compulsory binding arbitration for the MMA was proposed?

DR. A. LAXDAL: No, that was following my term.

MR. M. DOLIN: It was following your term. Do you have an opinion on that relevant to this issue?

MR. CHAIRMAN: Mr. Dolin, that's not a question but a clarification.

DR. A. LAXDAL: I have an opinion but I don't think it's relevant.

MR. M. DOLIN: Well, I think the matter of negotiations and binding arbitration or non-binding arbitration, negotiating with doctors is one of the reasons for trying to get universal coverage on all members.

DR. A. LAXDAL: I fail to see the connection between these two particular items.

MR. M. DOLIN: Well, I do, but then . . . Thank you. Okay.

MR. CHAIRMAN: I would caution members about questions to the people who come and report to the committee are strictly for clarification of comments that they have made in their presentation.

Next, I will call upon Dr. Henry Krahn.

Dr. Krahn.

DR. H. KRAHN: Mr. Chairman, Members of the Legislature;

I would like to speak in opposition to this bill. I would like to start by mentioning the two referenda that were held. The first one was defeated and it was felt at that time - and I was a member of the board at that time - that maybe if the net had been cast a little bit wider, maybe this thing could have passed; and a group of people that had not been polled in the first referendum were the residents.

Now the residents were not a logical group that one would include in the referendum because they have absolutely nothing to gain in an immediate way from the results of the referendum because they have their own union, which negotiates on their behalf, and it has absolutely nothing to do with the MMA.

So in the second referendum, the residents were also polled and this time the vote count was very low and it was very narrowly passed. So the two referenda are somewhat different, and I think they became different by including a group of people who did not have a vested interest in the outcome of this vote.

It has been said sometimes that the MMA is beginning to act a bit like a union, but they're not a union by any stretch of the imagination because there are so many loopholes, so many people that they are not negotiating for. A group that has already been mentioned are the residents. They do not negotiate for them. They do not negotiate, except in a very small way, for the geographical full-time positions who also make up a very large number of people. A typical GFT contract has only one-third of his income based on fee for service income - which is what the MMA is involved with - but they all have their own individual contracts which are not negotiated by the MMA at all. This is a private contract between that person and the institution that he is working for, so a lot of people are voting here who really have only a fairly minimal interest in the outcome of the vote.

There is also a section of the act - and I was in a bit of a rush and I couldn't look up the exact number

- but there is a section of the act which provides that there can be negotiations outside the MMA. So that is also something that interferes with the kind of negotiations that they claim they're doing on behalf of the profession. So there are many people who are not benefiting at all from the negotiation activities of the MMA, and yet they are supposed to pay for the cost of running the MMA.

Some examples have already been given, but another very good example is the people that are working in industry, people that are working for insurance companies. Not all government doctors are covered by the GED, the Government Employed Doctors; there are some that are not. Yet somebody like George Johnson, who's probably not a member of the GED would be asked now, because there are no exceptions allowed, that he would have to pay the up-front money that the MMA demands. They get no benefits from this.

The MMA is really only just a lobby and as a lobby it seems kind of incongruous that this should be made compulsory for all doctors in the province. The negotiations have been rather unsuccessful in the last five years, so there isn't a record of good solid performance that one can point to as being some reason or some argument why people should support the association. In fact, the best settlement that was made in recent times was when Dr. Laxdal and I were the negotiators on behalf of the association, and at that time a 13 percent increase was arrived at.

They do a fine job of certain things, like lobbying for legislation against drunk driving, for helmet legislation, for seat belts and so forth. That is their proper role. They can be a good lobby for furthering the economic interests of the profession, but as a union it just doesn't wash.

I have asked myself many times in recent weeks why the government would be interested in enacting this kind of legislation. The answer I can come up with - and this is pure speculation - is that the MMA really did their very utmost to get rid of extra billing in this province. They did a very dirty job for the government and, for this, there has to be some kind of a reward. I think this is the reward that the government is giving the MMA, that this will be compulsory for everybody to pay dues and further their economic well-being.

However, the government is not giving away the key to the Treasury or anything like that. They've kept for themselves a clause in this bill that can terminate everything that has been said within 30 days. The Lieutenant-Governor-in-Council can suspend the collection of dues if there is no agreement between the government and the MMA.

Now, Section 99 of the act which covers this agreement says that this agreement can be cancelled on 30 days notice from the government or from the MMA. So if the MMA gets a little cantankerous, maybe even threaten a strike or something like that, the government can say, look, you guys had better be nice to us, come across, or else we're going to pull the economic rug out from under you. There will be no dues collected anymore.

I think if the MMA has accepted this clause, it is a very serious blunder on their part. It has left itself very much at the mercy of the government. As far as the basic rights of us all in a free society are concerned, there ought to be some provision in here where, if one

is a conscientious objector to what the MMA is doing, that one could surely donate to the Salvation Army or some similar charity an equal amount and not be forced to support something to which one might not subscribe to. There is no such provision in this bill.

It seems very strange that an organization that could take you to court for not paying your dues could be the recipient of a fine of \$1,000 that would be levied against that person, this would go not to the Crown, but would go to the MMA. I'm no lawyer, but surely that has to be a most unusual way of penalizing recalcitrant members of the profession.

This bill will interfere with the freedom of practising medicine in this province. Young doctors who come out of their residency will have to pay up front first to the MMA before they can start seeing patients. If this is not so in other provinces, there could be a real disincentive here for them wanting to practise in this province. If somebody wants to do a locum tenens in this province, as far as I can read the bill unless the board specifically exempts that person, they are required to pay the full shot unless it so happens that they might be wanting to do this in the last two weeks of August or something - because the year ends at the end of August - then they can pay the prorated amount for that two weeks until the end of the year; but if they wanted to do it on the 1st of September, as I read the bill, they would pay the full shot.

If some person who is semi-retired or maybe totally retired has practised with a partner for a long time and pitches in for four or five weeks during the summer to cover the practice while the practitioner, his former partner, is on vacation, he would pay this full amount. There is no exemption here, there is no allowance made here for somebody who is practising for only a very short time. It seems unjust that somebody, who's just starting to practise or somebody who's tapering off his practice whose income may be quite low, has to pay exactly the same amount as does the doctor who's running a busy professional practice.

Ladies and gentlemen, I think if this bill had ever been presented to the profession in a forthright manner with all the facts given, this would not have received 5 percent of the vote let alone something like 40 percent. This is a strategy that the MMA has used now for the last several years; that whenever they want to poll the practitioners, the message that goes out is an extremely biased message. There is no attempt made to further discussion or thought on the part of the people who are there, to give a balanced kind of presentation so they can decide in a meaningful way. If we had this in the last federal election, we would have John Turner as our Prime Minister at the present time because his polls were way ahead of Mulroney when the fun began.

So, these referenda are severely tainted by a lack of balanced presentation of the facts to the membership. This is a very, very serious deficiency in the way things are done by the MMA at the present time.

Mr. Chairman, I think this piece of legislation is a very unfair and poor piece of legislation to enact in a province where there is supposed to be freedom. I hope it is perceived that it is not in the interests of the public that such a bill be ever passed in the province; and I cannot see that this bill, as it stands right now, is in the best interests of the profession.

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Thank you.

MR. CHAIRMAN: Thank you, Dr. Krahn. Are there any questions for Dr. Krahn?

Mr. Enns.

MR. H. ENNS: Dr. Krahn, you mentioned at the beginning the fact that there were two referendums held, and the circumstances were changed, one more inclusive than the other one. How was that decision arrived at to broaden the terms of the second referendum? Was that the decision made by the Manitoba Medical Association or . . . ?

DR. H. KRAHN: This was made by the Manitoba Medical Association Board of Directors, yes.

MR. H. ENNS: That decision was an executive decision by the board at that time.

DR. H. KRAHN: The board, yes, the full board. It was discussed by the board.

MR. H. ENNS: Dr. Krahn, I, like you, am also surprised at this legislation. You know, governments from time to time are persuaded to pass legislation of this kind.

I recall a particular piece of legislation that a previous government passed . . .

MR. CHAIRMAN: Question?

MR. H. ENNS: . . . I'm coming to the point, Mr. Chairman.

In this case having to do with the legitimate requests of the Manitoba Cattlemen's Association. We passed a very similar bill for dues to be paid to that association, although it was voluntary, one could withdraw from it. The members opposite at that time thought that was highly undemocratic and within the first year of them assuming office, they threw out the bill. Do you see any parallel in that action for a different reason, in terms of the request that you're making of this committee now? Remember Bill 90?

MR. CHAIRMAN: Not quite legitimate. It might be a good question for debate, but it's not quite a question for clarification.

Are there any other questions for Dr. Krahn? Thank you very much, Dr. Krahn.

Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, could I ask Dr. Krahn - is my memory correct? Were you a past president of the MMA as well?

DR. H. KRAHN: I was president elect, but I had personal problems, a partner who left suddenly and I could not serve the year. I was on the Consultative Committee for two years and I was quite active in the MMA for many years and was a member for about 22 years, but I am not a member now.

MR. CHAIRMAN: Thank you very much, Dr. Krahn. Next is Dr. Jeremy Gordon. Is he present?

DR. J. GORDON: Ladies and gentlemen of the committee. I want you to know that I find it personally very difficult to stand up in public and expose myself in this kind of forum.

I'm a psychiatrist, I'm a psychotherapist and I prefer anonymity in the quietness of my medical office to the tensions of public debate. It is not easy to disagree publicly with one's colleagues whom I respect on a professional level. I am sure I speak for many other physicians who want nothing more than to be left alone to try to achieve the goals of their professional life, that is treating patients who are sick, to the best of their ability. It is only because of the great concern that I have with the direction of government and now union interference with my professional life that I raise my voice and speak out. I will be more than glad to retire to the fastness of my medical practise and be heard of no more if I could be sure that such interference will not come between me and my patients.

In short, I do not want my medical practise, i.e. the contract between the patient and myself to be interfered with by closed shop union bosses' directives. I do not want my own piece of mind to be disturbed by the threat that I have to pay a tax to an organization that I do not want to be associated with at present.

I remind you that I was a loyal member of the MMA from 1969 to 1985. I do not want to be threatened with a fine of \$1,000 if I am one day late for my payment. I'm an individual. Why is the government doing this to me? The fact that the MMA needs and feels entitled to taxing its dues from me should not be paramount. Many times the collector feels it has a right to override the freedoms of the individual. But according to the Charter of Rights, this is when the public interest is affected. I can think of situations like war, or severe health matters, or public safety, but is this committee seriously putting the needs of a private association, not even incorporated, the MMA on the same level? What is the public interest in seeing that a private club has sufficient funds? If the government wants the MMA to have money, why not budget another \$200,000 a year and give it to them?

In the case of a public union, the principle that it can compel fees has become one that is under review. The Levine case has challenged what can be done with the members' dues. However, the unions do have to become licensed by the Labour Board and are subject to The Labour Relations Act, rather a huge one.

What regulations control the MMA? It's not incorporated. Bill 52 states no obligations other than the organization continue to bargain with the government. The MMA will say it is properly constituted but I, for one, have serious doubts about its rules. The organization doesn't elect representative members to the board in a fair way, a proportional way. A relatively few doctors in the country can elect one member of the board and a large hospital like the Health Sciences Centre, with many members, only elect one member.

The new president each year is not voted for on an annual basis by the membership. There is no appeal mechanism for a member who has a disagreement with the board; the board's decision is final. The membership cannot express their will by a majority vote at the annual general meeting. Such resolutions do not bind the board's actions since last year. There will be no representatives for the non-members despite the fact

they are being taxed at the same rate as any other Manitoba doctor. The only difference is that the doctors who are members also have to join the CMA and pay more money to them.

I have no quarrel with any of these rules, if they apply to a private organization. Whatever suits the majority of MMA members is of no concern to me until the government steps in and passes legislation which gives a legal authority to compel membership as in Bill 52. If the MMA wants the public to sanction their actions, then the organization must be made accountable to a public body.

If it wants to become a union, why not go to the labour board and apply? Perhaps the MMA leadership is afraid they wouldn't get the necessary number of physicians to sanction such a move. Despite an intensive campaign to its membership it could only get 700 of the 1,300 votes cast, even though it had claimed 1,500 membership. Over half of its own membership didn't vote for compulsory dues. Almost 600 physicians voted against compulsory dues. As the Association of Independent Physicians has never had more than 90 members, where did these nay votes come from?

I would like to summarize our reasons for saying that we feel this bill should be challenged. This law infringes on the freedom of association, freedom to join or not join, or leave an organization, is basic to a free society. Professor Dale Gibson, amongst others, was quoted in the Levine case and what he argued for was that very point.

What of Dr. Merry, a salaried pathologist and President of the Canadian Physicians for Life? He came to the MMA, has never negotiated on his behalf and he has no interest in fee schedules being salaried. What about his rights to refuse to support an organization with a public pro-abortion stand? This law will create a second-class citizen status for non-members. These physicians have no voting rights and therefore no means of influencing how their money is being spent by the MMA. There is, in this bill, no mention of whether certain monies or a certain proportion of monies would go to pay for negotiations.

Only a minority of physicians have ever voted for compulsory dues. There's been no mandate from a majority of the workers who are registered as physicians in this province. The Rand Formula stated that 50 percent plus one, was the necessary number.

No. 4, a trade union would be bad enough but at least it would be accountable to the provisions of The Labour Relations Act. As I said, the MMA is not accountable to any outside body and there's no provision for protection of minority rights or an appeal mechanism.

No. 5, the fines are punitive and unusual: \$1,000 for being one day late in payment is unknown in any trade union circles or any other circles, for that matter. Failure to receive the billing will not be accepted as a reason for non-payment. The MMA would actually benefit from defaults or late payment, as the \$1,000 fines are payable to them. This must be intimidating to any member of the MMA.

This is a bad law for physicians. It creates an automatic second-class citizen status for a minority with no rights. It's a bad law for the MMA. It's never healthy for an organization or an individual to deal with problems in a tyrannical and dictatorial manner.

Everyone can realize there are difficulties in maintaining a research team to help doctors cope with the complexities of medical, political, and economic issues. But surely there has to be other ways to explore this problem. A scheme to support an independent research team might well be more palatable to the physicians of this province.

This law will bring a sense of shame to us all. Each person who has colluded in its passage, either through their frustrated assertiveness or depressive apathy, should be embarrassed. It reeks of tyranny.

Members of the NDP caucus, hold your noses when you pass this bill. This is a bad law for the public. This law is unconstitutional, in my opinion, but I'm not a lawyer. Money from the public purse will be used to defend it if it's challenged. At a time of austerity, why is the government intending to pass a law that's so likely to be challenged successfully in the courts?

Members of the Conservative and Liberal caucuses, why haven't you asked the Attorney-General to stand behind this law? If the Honourable Mr. Penner believes in this law, why doesn't he publicly defend its validity? Will he resign if the law is easily overturned in the courts? Is he so confident about his judgment on this law?

In this province, the precedents are unclear. The Manitoba Teachers' Society allows teachers to opt out in writing and not pay dues. The Winnipeg Teachers' Association relies on the Rand precedent and charges compulsory dues. This precedent is being challenged in the courts in another province at this time.

The proposed legislation that you mentioned for farmers included an opt-out clause, according to my information. Lawyers pay dues to the Bar Association, but this doubles as a licensing body. Doctors already pay fees to the College of Physicians and Surgeons.

Do you not think that this is a very murky area? Why not wait until the situation is much clearer?

Are the members of this committee aware that the MMA made approaches to the College of Physicians and Surgeons to discuss tying their fee with licensing physicians to practise? This was rejected, of course, but it does show the thinking of the organization that you want to legitimate in this law.

We must have this money; we must have this power, say the MMA. This is a bad law for politicians. It brings into question their commitment to justice and equality for all, made under the law, and the rights of minorities to co-exist with the majority.

Now you've heard all the bad news. Here's the good news. We would suggest two amendments to this law.

The first amendment is: That all physicians who are non-MMA members have the right to opt out of any dues and recover them annually if notice is given in writing by the dissenting physician.

The second amendment is: The rights of the minority of physicians, who are not MMA members, should be protected.

We propose suitable proportional representation of non-members on the Board of the MMA as voting participants, with similar representation on negotiating committees. These representatives should be democratically elected from amongst the non-MMA members.

Thank you.

MR. CHAIRMAN: Mr. Penner.

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HON. R. PENNER: Very briefly, just two comments and a question. Here's the good news, Dr. Gordon. I think you're right, that the area you touched upon with respect to compulsory payment, the fee and the fine that follows is a murky area, given the provisions of Section 7 of the Charter, and bears some closer scrutiny. It's not that it hasn't been scrutinized but that's an area yet unlitigated, I must agree.

The second comment is that there is not a parallel but something quite similar in The Law Society Act, so it's not that the lawyers are unaffected by somewhat the same sort of provision - not quite the same, but somewhat the same - pursuant to which the society has the power to order the barrister, or solicitor, or student to pay a fine and then can decide on the consequences for non-payment of fine, which might be disbarment. This bill doesn't go that far.

My question, not related to those two brief comments, is: You did indicate in your remarks that at one time the association had a membership of, I think, 90 or 91. What is the current membership of the association?

DR. J. GORDON: It's down to 23.

HON. R. PENNER: Thanks very much.

MR. CHAIRMAN: Are there any further questions? Mr. Dolin.

MR. M. DOLIN: Thank you. Maybe I've missed something earlier; in the opening part of your remarks you were talking about this bill interfering with the doctor-patient relationship in your practice and I'm not clear. Maybe you could explain how that comes about.

DR. J. GORDON: Let me give you an example. The last time there was a doctors' withdrawal of services, I was a member of the MMA and I was asked by the people who were organizing this withdrawal of services, to support it. As a person who was opted out, I felt at the time that it was in my interest to support the MMA, although I did have some reservations.

I was given a list of doctors to phone and I can tell you my own experience of phoning these people was that what one was trying to do was to try and persuade them to close their offices.

What I experienced was, phoning a lot of very frightened people who said, I don't want to close my office; it's against my principles. This is very difficult and I felt anyway that I dealt with them in a sympathetic and understanding way and said, well, if that's the way you feel, that's okay.

Now with a closed-shop union, I really am not sure that that's going to be the situation in the future. I feel there is a possibility - I'm not saying that it has to happen - but this certainly is now a lot more power on the side of those who would force doctors to do what they wish, because of union policy. I'm saying I think, in that way, that when a doctor has to make a decision and he has his triple loyalty to his patient and to the government, to whom he is contracted as well, and also to his union, that creates very great difficulties for him. I believe that this extra power that is being conferred on the MMA tilts the balancing, in what I would regard as a dangerous way.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, under the notice provision, you've married that uniquely to me. I was always of concern on the failure that if the association failed to give notice, that that did not relieve the physician yourself, for instance, from paying the due; and when you marry that with the fine provisions, if you're one day late, this legislation provides for the physician who's late to be automatically subject to the fine.

That clearly, if the legislation is to pass, I think it's very clear from what you've indicated tonight in marrying those two situations, that the notice and/or the fine has to be modified by amendment, because the two, as struck in the act, make for an interesting combination.

DR. J. GORDON: One could have the situation if the law is retroactive to the 1st of September, that every member who is not paid, is now liable to \$1,000 fine.

MR. CHAIRMAN: Any further questions for Dr. Gordon?

Seeing none, I thank you, Dr. Gordon, for your presentation. Next is Dr. Sutherland.

Dr. Sutherland.

DR. J. SUTHERLAND: Thank you, Mr. Chairman.

Ladies and Gentlemen, on behalf of the MMA I would like to refer you to my submission of August 14, when the MMA presented its position.

A number of statements have been made this evening which cause me some concern and I would like to try to clarify the position of the MMA on these issues. I will address two or three of the issues. I have other colleagues who will address others.

First of all, it has been suggested that the MMA does not have a mandate to carry out this proposal; and the nature of the referendum has been challenged. I would point out to you and to others who have challenged it that this referendum was carried out by Collins Barrow, Chartered Accountant; it was not carried out by the MMA.

Secondly, the inclusion of interns-in-residence, in the second ballot, has been questioned. Why was that done? Quite frankly, it was done because we had a very angry group of residents and interns on our hands. They said to us, and quite correctly, we are the future in this province, we are the people who are going to be the practising physicians in this province in the future, we think we should have a say and, quite frankly, we couldn't deny them that right and we gave them the right.

The president's letter, which announced the results of that second referendum, also included the breakdown of the vote from the residents and interns. Thirty-five of them voted yes, 34 voted no. They did not sway the vote one way or another - they were split, and so be it - but the fact that they were included did not change the outcome of this vote.

I would also point out that while it's true we do not have a majority of the physicians voting in favour of this change, we do have a very clear majority of those who took the time to vote; and whether we like it or not, that is the nature of democracy. It is those people

who choose to exercise their franchise who influence policy in the future.

It has also been suggested that the MMA does not negotiate on behalf of full-time salaried physicians. There is only a superficial amount of truth in that statement, and let me put on my hat as a university and hospital head to address that question.

I have physicians coming to me, negotiating with me, and I, on their behalf, negotiate with the hospital for their stipends, and it is a very clear reference point, what they could earn on a fee-for-service basis outside of the hospital. That is a comparative basis, which I am forced to honour and recognize. If I did not compete, I couldn't employ. So what a physician can earn outside of the hospital very clearly affects what he can earn inside. We don't negotiate in a vacuum.

Finally, Mr. Chairman, it has been suggested that the MMA is only interested in building a bureaucracy, the staff is already too large and that is why we need the extra funds to operate.

A review of our increase in staff in recent years will show where our efforts have been devoted. We have hired two new people in the last five years and these people have both been in the area of medical economics and government negotiations. They have been analyzing fees and incomes; they have been looking at income disparities; they have been looking at manpower questions; they have been helping us to prepare a brief and to argue our case for the mediation arbitration which we are presently involved in.

The one other person that we have on contract - not an employee but a contract - is a physician who is working part-time with the association, coordinating the committee for physicians-at-risk, a committee which looks at and addresses physicians who have substance abuse problems or psychological problems and whose services are available to all physicians in the province, not just the members. If this is a bureaucracy, so be it.

Mr. Chairman, the Manitoba Medical Association is making great efforts to improve its responsible stance in the community. There are some difficult things we have to do and they're expensive. We feel that the only solution we have in front of us is to ask those physicians who are not presently supporting these activities, to support us and to support us through the compulsory dues.

Thank you.

MR. CHAIRMAN: Thank you very much, Dr. Sutherland. Are there are questions this evening for Dr. Sutherland? Seeing none, I thank you for your presentation, Dr. Sutherland.

Next, Dr. Baragar, please.

DR. S. BARAGAR: Mr. Chairman, and committee members, as a long time member of the MMA, I'm Manitoba born, a Manitoba graduate and I've been a member of the MMA for over 30 years.

I was very active in the MMA for a few years when I was head of the Winnipeg Medical Society. I subsequently got tied up with other concerns - practice concerns, teaching at university concerns - but a little over a year ago there was considerable dissension in the ranks at the Manitoba Medical Association and

there's an attempt for other individuals to render this, by what I felt undemocratic means, an impotent and a divided organization. This brought me back into medical politics. I allowed my name to stand as a representative of the largest district in the MMA.

I resent very much the insinuation that we are not a democratic organization. We are exceptionally democratic. My presence here reflects it. Previous members who were being elected on other bases from other areas were changed. We now have a board which does not represent some minority opinion, but very strongly can represent the views of the profession in the province and perhaps equally important, because we have a mandate to look at the welfare of the population as a whole as far as health, represent the various geographical areas of the province.

Our current areas of election represent coverage of all the major hospitals, all the major hospitals in urban areas, coverage of all the geographical areas in the province, which both you as politicians and we as physicians are concerned with, assuring that their health care is at the best. It's unfair to say that we're allowing people not to become members. Any qualified physician on payment of his dues can become a member. There are no second-class citizens. They can all become members as soon as they pay their dues and, as soon as they pay their dues, they have every right to stand for election and to try to change the policies of the board.

I think the point I would like to make is that we are a democratic organization and we have a democratic responsibility. This bill will allow us the funds to carry out our many necessities to deliver health care, to allow us the funds and the background to continue to provide the kind of cooperative efforts that will make for better health care for all of Manitobans.

I thank you.

MR. CHAIRMAN: Are there any questions for Dr. Baragar?

Seeing none, thank you very much, Doctor. Dr. Armstrong, please.

DR. J. ARMSTRONG: Mr. Chairman, and members of the committee, I might indicate that I am president-elect of the Manitoba Medical Association. I would like to indicate that I firmly believe and would desire to have this association run in a democratic manner, otherwise I would not be participating in the activities to the extent that I am. There have been many points raised this evening. I would like to answer and clarify to the committee just a few points that I think have been raised and do require understanding and correction.

First of all, I would like to indicate that under proposed Bill 52, as I understand it, you would not lose your right to practise medicine in the Province of Manitoba if you did not pay your MMA dues. The licensure to practise medicine in Manitoba is not linked with licensure with the College of Physicians and Surgeons. You can practise medicine in Manitoba even if you have not paid your dues.

I would like to also clarify that although several of the Maritime provinces are not perhaps quite as large as Manitoba, certainly the Province of Nova Scotia has

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a number of members in its medical profession almost equivalent to that of this province.

To expand a little bit further on what I think is the reasonableness of the request of this association and of this bill, I would note in the Provinces of Nova Scotia, New Brunswick and Newfoundland non-payment of dues carries the penalty of the loss of ability to practise. Therefore, I would submit that a fine of \$1,000 for not meeting membership dues seems quite reasonable by comparison.

I would further like to clarify that under the proposed bill, a fine is not automatic in all situations. There is an Article 7, entitled "Application of Act." If you read that, it will indicate to you that some physicians in the province may not be called upon to pay dues at the discretion of the Board of the MMA. If, at the board's discretion, the physician is suffering undue hardship, such dues will be exonerated. If a physician is considered to be retired, but perhaps seeing a few patients, it's quite probable that the board would use its discretion and exonerate such a physician from paying old dues.

I'd also like to indicate that our board continues to look at, along with our finance committee, means of making the dues as feasible as possible; i.e. by breaking down dues payments to quarterly or monthly installments.

I would also like to indicate that under the terms of Bill 52, there's a pro rata assessment of annual dues. So if somebody starts late in an annual year to practise, he is not required to pay the full dues.

Now, I'm not sure where we are at tonight in terms of talking about unions, closed shops, etc. I will only indicate what I see the present bill to mean and what the present Board of the MMA feels it should mean. It means that we are not a closed union shop.

First of all, we are not in an employer-employee relationship in that sense. Dues are not collected at source. They are not taken from a physician's MHSC cheque. Under the terms of Bill 52, a physician could continue to practise, as I have said, even if he had not paid his dues and this would seem to me to be a preferable approach.

Thank you very much, Mr. Chairman.

MR. CHAIRMAN: Are there any questions for Dr. Armstrong?

Mrs. Mitchelson, please.

MRS. B. MITCHELSON: Thank you, Mr. Chairman.

Has it been clarified yet whether part-time physicians are going to have to pay full dues?

DR. J. ARMSTRONG: Subject to any correction from our secretary, my understanding is that present part-time physicians, i.e. those who are practising less than 30 hours in a period of time, will not have to pay full dues. It would be subject to dues, but not the full dues that a full-time practitioner would.

MRS. B. MITCHELSON: Less than 30 hours in what period of time?

DR. J. ARMSTRONG: It would be 30 hours per week. Do I stand corrected on that? Those are the figures - 30 hours per week.

MRS. B. MITCHELSON: It would be prorated then according to how much they want.

DR. J. ARMSTRONG: That is correct.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: How much are the dues, Doctor?

DR. J. ARMSTRONG: Currently \$595 for the MMA portion, the Manitoba Medical Association portion.

MRS. B. MITCHELSON: And what's the other portion?

DR. J. ARMSTRONG: Well, if you are a full member and a member, there's additional dues to the Canadian Medical Association, but that is to the Canadian Medical Association, not to the MMA. It's in the order of \$130, I believe.

MR. D. ORCHARD: Mr. Chairman, under Section 3(1) of the bill, and possibly Doctor, I should be maybe asking others in the association, but I brought this up during debate on Second Reading. The payment of the dues does not in itself constitute membership in the MMA and I'm wondering if there is a circumstance wherein membership in the MMA would be denied to a physician or to any number of physicians.

In other words, what I've pointed out in the potential concern in Section 3(1) is that all physicians now will be required to pay their MMA fees, but that section is specific in that it says: ". . . it does not of itself entitle the medical practitioner to or confer upon the medical practitioner membership in the association."

Liberal interpretation that, you could have a situation where physicians are paying the dues and may not be able to join the MMA, become part of the executive to, for instance, modify the method by which dues are collected or any other scenario. Is that a valid concern?

DR. J. ARMSTRONG: That is not my understanding of the bill. My understanding is that if you pay, you want to pay your membership dues in the MMA, you're a member. Now to indicate you want full membership then the CMA dues are required and the payment also. If you do not pay your CMA dues, then you have so indicated that you do not wish to be considered a member of the medical association. But I do not see any circumstances where the association would refuse membership to somebody on payment of their dues.

HON. L. DESJARDINS: If they're licensed by the college?

DR. J. ARMSTRONG: That is correct.

MR. CHAIRMAN: If I could ask a question on clarification. You had mentioned about a payment of dues to the College of Physicians and Surgeons. I was wondering if that was being confused with the payment of fees to the MMA. Can a doctor practise in Manitoba without paying the licensing fees prescribed by the College of Physicians and Surgeons as well?

DR. J. ARMSTRONG: No he cannot.

MR. CHAIRMAN: He cannot.

DR. J. ARMSTRONG: As I understand it, I'm sure I'm correct.

MR. CHAIRMAN: Okay. I thought I'd heard you say that you didn't have to pay the College of Physicians and Surgeons fees as well.

DR. J. ARMSTRONG: No.

MR. CHAIRMAN: Very good. Thank you very much. Mrs. Mitchelson with a question.

MRS. B. MITCHELSON: Yes, can I ask one more question, Mr. Chairman?

Right now, physicians have to pay to the College of Physicians and Surgeons to be able to practise, but they can practise without paying MMA dues. With this legislation, are they going to have to pay their MMA dues to practise in Manitoba?

DR. J. ARMSTRONG: . . . saying that the licensure volume, perhaps the Minister of Health would like to answer that for you, but the . . .

MR. CHAIRMAN: His turn comes later.

HON. L. DESJARDINS: Well, I think it was fairly well explained that there is no necessity, even if they don't pay the dues for the MMA they can practise and it is not associated with payment of dues.

MRS. B. MITCHELSON: They can practise but they are still going to be fined \$1,000 if they don't pay on time.

HON. L. DESJARDINS: Your question was: Can they practise? And yes, they can.

MRS. B. MITCHELSON: They can practise.

MR. CHAIRMAN: Okay. Let's slow down the chatter back and forth so that they can hear some other comments.

MRS. B. MITCHELSON: So you're telling them that if they pay the \$1,000 fine, which ultimately goes to the MMA, that they don't have to pay their MMA dues and they can practise?

HON. L. DESJARDINS: No. I am saying that neither the fines nor the dues have anything to do with the question of practising medicine. If they don't pay their fines, it's fine. They might have to go court and so on, but that has nothing to do with them practising medicine.

MRS. B. MITCHELSON: They can continue to practise, okay.

MR. CHAIRMAN: Any further questions? Dr. Armstrong, thank you very much for your presentations. Dr. Bartlett.

DR. L. BARTLETT: Mr. Chairman, and honourable members, there's no question that all physicians who service patients receive some benefits from the efforts of the MMA. These benefits are of two kinds.

First, there are the benefits from pre-negotiations with the Manitoba Health Services Commission. Secondly, there are the benefits from MMA public activities and I give you four examples:

One is our research and our push for seat belt legislation which you're all very familiar with;

Two, is our research and our push for a revision of the laws on drinking and driving;

Third is our cooperation with Manitoba Health, in establishing a phone-in tape information service, which is going extremely well;

And fourth is our cooperation with Manitoba Health in securing better value for our money in Medicare by promoting less expensive methods, such as more out-patient services. These are just a few examples.

Now all of the MMA policies are based on decisions which are debated and decided at board meetings. Some physicians feel that when they differ with these policies they should withdraw from MMA and cease paying the MMA dues, even though they continue to enjoy the benefits of MMA work. We agree with the need for a forum for differences of opinion, but we submit that withdrawal is not the proper forum. If one disagrees with government policies, one does not stop paying one's taxes.

The MMA, as has been pointed out already, is established on democratic principles. Board members are elected every two years by a democratic process. As in any democratic society, the forum for disagreement is to express one's disagreement and to campaign for and to elect a representative who is sympathetic to one's views. This process is the very base of democracy and that's the only point I want to make.

Ladies and gentlemen, I thank you for your attention.

MR. CHAIRMAN: Thank you, Dr. Bartlett. Are there any questions for Dr. Bartlett? Seeing none, I thank you for your presentation.

Dr. Donen.

DR. N. DONEN: Mr. Chairman, honourable members. I intend to be brief because I think already a lot has been said and time is getting on. However, I want to touch on really two points, and really just clarify and put things into perspective.

The first thing I want to deal with is the question of the referendum. As you know, there were about 2,200 registered physicians, residents and interns in this province; 1,300 returned their ballots, approximately 55-56 percent. Of those who returned their votes, over half - a very clear majority - voted in favour of compulsory dues. I think, and I don't mean to be demeaning in any way, the argument has been made by a number of the previous speakers that in fact the 700-odd votes doesn't represent a majority of the registered physicians. As you are quite aware, in the Province of Manitoba for at least the last two or three provincial elections, the percentage of voters voting for the returning government were less than 50 percent, that is the democratic process. If you're entitled to

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vote, you vote; if you don't, you have lost your voice. So just to make the point again that, of those who returned their votes, there was a clear majority.

The second point I wish to correct or to put in perspective is the question of the GFT positions, and to maybe deal with it slightly differently from what Dr. Sutherland said. The GFT system entitles the physician, in terms of its arrangement, to a minimum guaranteed income. However, that doesn't mean that's the upper limit of that physician's income. Above that minimum income, if the physician generates enough income, he or she will get a certain percentage of that. So there is incentive, if you wish, for the physician to generate more income. The bargaining body who sets the fee schedule is the MMA. Those are the only two points I want to make.

The last point, I guess I should say the third point, is a question that Dr. Krahn raised of prorating the locum tenens. I think that's probably a fairly reasonable suggestion and I think that one could possibly look at that. Those are the only three points I wish to make.

MR. CHAIRMAN: Thank you very much, Dr. Donen. Mrs. Mitchelson.

MRS. B. MITCHELSON: Yes, Mr. Chairman, could I ask Dr. Donen how much time lapsed between the first referendum that was held and the second?

DR. N. DONEN: I'm afraid that I can't answer, but I suspect Mr. La Plume, our secretary, will be able to answer that. He'll be coming up later on.

MR. B. MITCHELSON: Good enough.

MR. CHAIRMAN: Any further questions for Dr. Donen?

Dr. Donen, thank you very much for your presentation, sir.

Dr. Midwinter.

DR. R. MIDWINTER: Mr. Chairman, ladies and gentlemen, I'm obviously here as a member of a very visible minority of the MMA, although we're becoming a very large minority these days. I am also a member of the board.

Just a clarification to say in my own words, Mr. Orchard, to you, the way the compulsory dues work, and to the rest of the committee who may have found it confusing, we've frequently gone over this argument for our members to explain how this is to work.

Dues are compulsory but membership is not. In order to signify that you are a member of the MMA, you must pay the CMA portion of your membership as you have always had to do. You cannot be a member of the MMA without paying a membership to the CMA as well. That signifies their intention to be noted as a member of the MMA.

There is absolutely no difference among MMA members once they become a member, except for the fact of their number of hours worked affecting the quality of the dues that they pay.

All members, once they are members, are entitled to a vote in any referendum or vote that is held and they are entitled to run for the board, no matter what their views may be. Any person who has paid

compulsory dues may elect at any time to pay the CMA membership portion of their MMA invoice and thence they will become automatically an MMA member. There is no other qualification for membership other than that they be a practising physician registered with the college.

Thank you.

MR. CHAIRMAN: Questions for Dr. Midwinter? Seeing none, thank you, Dr. Midwinter.

Dr. John La Plume or Mr. John La Plume; sorry.

MR. J. LA PLUME: It's Mr. La Plume; I'm Executive Director of the MMA.

We've all been here quite a long time and I'll try not to repeat anything that's been said but just touch upon a few points that I think require some clarification.

There appears to be a tremendous amount of misunderstanding about what this bill does and how it operates and how it will affect people and I'd like to touch upon these things just very quickly.

First of all, there's a question of prorating fee. If you look at the words very carefully, it says: . . . "where a medical practitioner becomes licensed under The Medical Act on a day subsequent to September 1 of any year but before August 31 of the immediately ensuing year, the medical practitioner shall pay the fee required to be paid under subsection 1 not later than 30 days after becoming so licensed. The amount of the fee shall be prorated in accordance with the pro rata membership fees of the association."

One of the very reasons why that paragraph was written the way it was, was to take into consideration doctors, who do as we call, locum tenens. Surely after being in the province for 30 days, a doctor has some idea as to whether or not he or she is here on a temporary basis or on a long-term basis. So we submit that this takes care of that quite adequately and it's really designed to make sure that someone is not billed inappropriately or too much for being here, say a portion of the year, as other than a full year.

There's been some discussion and I think some misunderstanding about payment of fee by a non-member. Section 3(1) really states that once a doctor has paid fees on a compulsory basis to the MMA that, in and of itself, does not make him or her a member. What has to happen next is that individual must pay dues to the Canadian Medical Association on a voluntary optional basis and by so doing, then membership is automatic. Never in the association's history, certainly that I have been able to determine, has any medical practitioner ever been refused membership in the association unless his or her credentials as a doctor had been taken away by the college or unless of course they refused to pay their dues.

It's not the intent of this legislation at all to preclude someone from joining the MMA. On the contrary, we sent out another letter today, as a matter of fact, to all non-members of the profession suggesting they do join the MMA. We intend very clearly to continue those recruitment efforts as much as we can.

It's been referred or reference has been made to the possibility that if the government were to invoke some provision here to nullify the bill temporarily, somehow

that puts pressure on the MMA, somehow that changes the status of the MMA and that of course is erroneous. The MMA's status as a voluntary professional organization today does not change with the passes of this legislation whatsoever.

If the government, in three or four years' time, decided to nullify the bill temporarily, the MMA is still a voluntary organization. The MMA today has 1,500 members, by that time, who knows, maybe 1,700 members. Nothing really changes except that those people who are paying dues on a compulsory basis and who are not members, the MMA loses its right to be able to recoup that fee.

It's been suggested that this legislation somehow is a closed shop. Again, that's erroneous for many, many reasons but probably the most important reason is because this legislation would not give the MMA the ability to stop somebody's livelihood, influence that livelihood in any way, shape or form.

It's been suggested that this legislation may be contrary to the Charter of Rights. Well I'm certainly not a lawyer and I don't know if it's contrary to the Charter of Rights, but I suspect that if someone feels that it is, then they will exercise their ability as they have in society and do something about it.

We believe this legislation is not contrary to the Charter of Rights. We have legal opinions to that effect. Indeed the fact that legislation such as this exists in New Brunswick, Newfoundland and Nova Scotia I think should indicate something to us. Legislation compelling doctors to pay dues in New Brunswick has lasted for about 113 years and yet no one seems to be challenging that. It's been suggested that doctors will have a mass exodus, perhaps, from the province if this legislation is passed.

I'm reminded of legislation very similar to this, almost identical to this, which was passed in Nova Scotia two years ago and there hasn't been any reports of doctors leaving Nova Scotia, no doctors have left New Brunswick, no doctors have left Newfoundland. Indeed you may be aware that the Province of Saskatchewan and the Saskatchewan Medical Association are about to finalize an arrangement exactly like this within the next few months, no difference whatsoever, except they're going to tie it to The Medical Act; ours is tied to a specific piece of legislation.

You may have heard; you'll be interested to know that the B.C. Medical Association is having similar discussions with the B.C. Government. So there's nothing new about the notion of those who are benefiting from work in a voluntary association paying their share of the burden of the cost of operating that organization.

You have heard today that the MMA has a pro-abortion stand which really floored me for a moment because as someone who has some very strong views about that, it really sort of hit me hard. The MMA's position on abortion, if you care to know, is that it supports the law of Canada under the Criminal Code and there is no other position. MMA does not have a position for or pro abortion. It recommends to its members that they follow the law and it well understands that medical opinion, if you will, is divided on questions such as abortion, as opinion is in society.

It's been suggested that the fine and the legislation is somehow automatic. I think individuals better read the legislation very carefully. No fines are automatic

under this legislation. The onus is on the MMA, clearly, to bring on an issue of non-compliance before the courts, and it's up to the MMA, clearly, to prove that there has been non-compliance and it's up to a court of competent jurisdiction to rule on the matter. So, nothing happens on an automatic basis.

As a matter of fact, in the last couple of weeks we've had a few calls from individual doctors asking about this very point, and we immediately set their mind at ease and we said to them, should the legislation pass, we will indeed be writing to them giving them the full provisions of the legislation and asking them for their dues. Nothing at all is going to happen sort of instantaneously. Legislation is not designed that way and couldn't be interpreted or used that way; it's not possible.

These are just a mixture of comments I had, except the last one I'd like to make, and that is that I think the question had been posed: what was the period of interval between that first referendum and the second, and I believe it's about 10 months in total. It might be almost 12, but certainly at least 10 months between the first referendum and the second referendum. I want to point out on the question of referendi that, if anything, the MMA took a significant risk with the second referendum.

The first referendum asked really two questions, the first question was:

1. Do you support the statement of intent between the Province of Manitoba and the Manitoba Medical Association which contains a whole list of commitments on both sides? Do you support the concept of compulsory binding arbitration to settle fee disputes? Do you support the concept of the association establishing standing committees on fee disparities, high technology, manpower, and so on, to analyze difficult, thorny questions in health care and so on? Separately the second question was:

2. Do you support compulsory legislation for payment of dues?

What the MMA did about 10 months later - and I think it was a little bit more than that - was ask the question on compulsory dues all by itself, not tied to any other considerations, no other convolutions or fuzziness whatsoever, we sent out 2,258 ballots - almost 200 of those were residents and interns - conducted no lobbying campaign of any kind to influence people, although inevitably there was media attention and so on.

And what I think the strength of this is that despite the fact that really had the profession wanted to defeat this referendum, they could have done so quite easily, but they chose not to. Many of them chose not to vote. I'm not clairvoyant. I don't know why they didn't choose to vote. I don't know why the people of Manitoba don't vote in larger numbers in the provincial election or the federal election, but under the system that we're governed by, it's only those who vote who eventually cast the deciding decision.

I can touch on many other aspects I think that have been raised, but I think that really sort of brings together some of the points that I thought I'd like to elaborate on.

MR. CHAIRMAN: Thank you very much, Mr. La Plume.

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Are there any questions for Mr. La Plume?
Mrs. Mitchelson.

MRS. B. MITCHELSON: Yes, Mr. Chairman, can I ask Mr. La Plume, going back to the first referendum then - it was 10 months previously - can you tell me the results? How many people chose to answer that referendum and what the results were as far as for and against mandatory dues?

MR. J. LA PLUME: If you wait one moment, I'll give you the specific numbers.

The first referendum was conducted in January, 1985, and as I pointed out before, it had two questions. I just think I'll read you the two questions that were posed in 1985.

The first on the official ballot was: I accept/reject a global fee increase of 1.76 percent plus approximately \$500,000 to increase some inappropriately low fees for the period April 1, 1985 to March 31, 1986, together with a three-year trial period of binding arbitration to settle fee and other contract disputes, yes or no.

The second part was: I accept/reject compulsory payment of MMA dues by all physicians fully licensed by the College of Physicians and Surgeons of Manitoba; payment of CMA dues and thus full membership to remain voluntary.

That was really the first referenda that was conducted. Again, it was conducted by - not Collins Barrow - but it was conducted by and I'm trying to think of the name now - in any event, another independent auditing firm and the results were as follows:

There were, at that time, 1,948 eligible ballots. You'll note that the interns and residents didn't vote on this particular ballot, which we were maligned for thereafter. In any event of the 1,948, there were 1,385 ballots returned or 71 percent. Of those returned, 60 percent or 828 voted yes to question No. 1, which was the fee increase and so on; and to question No. 2 about compulsory dues, 649 voted yes, 721 voted no; a margin of 57 percent no, 47 percent no - I'm getting myself all confused - 53 percent no, versus 47 percent yes, so it was a relatively close margin. That was on the first ballot in February '85.

The next one was as I say conducted approximately 10 months later. Indeed, it was conducted late November, 1985, and the results of that ballot came out towards mid-December.

HON. L. DESJARDINS: What was the question?

MR. J. LA PLUME: The question was identical to the last one that I told you before, that you accept or deny or reject the compulsory payment of MMA dues by all licensed physicians.

MRS. B. MITCHELSON: Can I ask Mr. La Plume what the rationale then was? It was a fairly close margin at that time. You said it was what?

MR. J. LA PLUME: 47 percent voted yes and 53 percent voted no.

MRS. B. MITCHELSON: 53 percent . . .

MR. J. LA PLUME: . . . 53 percent voted no to compulsory dues at that time; 47 percent voted yes to compulsory dues at that time of those voting.

MRS. B. MITCHELSON: Okay. So what was your rationale then for having another referendum 10 months later?

MR. J. LA PLUME: Probably there are a number of reasons why another referendum was conducted. If I can recollect, I suppose the first reason was that many of our own members said to us that it was unfortunate that the ballot had not been passed, that they felt there was confusion in the minds of individuals previously linking two questions together.

Indeed, when we had sent out the first ballot, we included the full Statement of Intent between the Province of Manitoba and the MMA, a document which required considerable reading, and the feeling was really if you're going to expect people to vote on an issue like this, give them one question; let them focus on the question all by itself; don't muddy the waters; let them know clearly what it is they're voting for.

MR. CHAIRMAN: Mrs. Mitchelson, do you have another question?

MRS. B. MITCHELSON: Mr. Chairman, I'm just trying to add some figures here together and it looks like 649 voted for compulsory dues in the first referendum, and then if you add - okay, what was the total that voted for compulsory dues then in the second referendum?

MR. J. LA PLUME: 699.

MRS. B. MITCHELSON: 699, so that's a difference of 50 votes, and 35 of them came apparently from interns or residents - 35 of those extra votes - because somebody back a little way told us that the interns and residents voted 35 for and 34 against.

MR. J. LA PLUME: In the second ballot that was conducted later in '85, of the 699 yes, 664 were fully licensed physicians, 35 were interns and residents.

MRS. B. MITCHELSON: Okay, so fully licensed doctors, then there's a difference of 15 doctors more that voted for compulsory MMA dues in the second referendum. Okay.

Can you also tell me, Mr. La Plume, how many members have chosen to opt out of MMA over the last year or so?

MR. J. LA PLUME: In any given year, we lose, if you will, I would say on average somewhere around 80 members. We lose some of them who go out of the province, we lose some unproportionately who pass away, some who retire and so on. How many we lose for any specific reason would be impossible to pin down, but in any given year it probably runs at about 80.

In the last fiscal year we've offset that by at least double. In other words, for the 80 we've lost, we've gained 160. Our membership this year is at the highest point it's ever been in the history of the association, even on a proportional basis, if you compare it to the numbers of doctors registered in the province.

MR. CHAIRMAN: Thank you very much. Any further questions?

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Mr. Orchard.

MR. D. ORCHARD: Mr. La Plume, this is all part of the original package in terms of binding arbitration. Was there any indication in the initial stages - and you've been with the association throughout all of it as Executive Director - was there indication that a clear majority of all doctors was required before either the binding arbitration would be attempted or the compulsory dues check-off would be implemented by legislation?

MR. J. LA PLUME: No, as a matter of fact, as someone who has been a party to really all of these discussions since Day One, it was always the position of the MMA to discuss with the Minister of Health that if and when a ballot were to be conducted, a clear majority of those voting should prevail. This was a consistent point that the MMA raised with the Minister. There was never any serious discussion that it could be anything but that because clearly, if one were to go in a different route, it would be inconsistent with what normally happens in elections or referendums of any kind.

MR. D. ORCHARD: Mr. Chairman, I guess maybe I'm somewhat puzzled by one clause in a June 4, 1984 letter from Mr. Desjardins to Dr. Derek Fewer, as President of the MMA. Condition No. 8 on page 2 of the letter indicates approval by 51 percent of all physicians except government-employed doctors if the government agrees to binding arbitration and mandatory MMA dues. That would seem to indicate 51 percent of all physicians, not simply those who have voted.

MR. J. LA PLUME: Can you give me the actual date please?

MR. D. ORCHARD: June 4, 1984. That's a letter to Dr. Derek Fewer when he was President at the time.

MR. J. LA PLUME: Does this refer to binding arbitrations specifically? Does it refer to the Statement of Intent generally? Does it refer to negotiations that the MMA had that the government sort of semi-attached with our negotiations? It really depends.

My recollection is that at one time when the MMA and the province were having a severe disagreement, it was the government's position that ultimately there would have to be a vote and that vote would have to have support of, I believe, more than 50 percent of those eligible; a position that we didn't agree with. We told them that and there wasn't any serious disagreement from that point forward. But it isn't a concept that was discussed really fully or to any great extent from thereon.

MR. D. ORCHARD: Mr. La Plume, you posed the question in what context was the statement made. I guess I just say following are some of the issues we want to discuss with you and hopefully resolve and condition No. 8, to me was relatively clear, approval by 51 percent of all physicians except government-employed doctors, if government agrees to binding arbitration and mandatory MMA dues. It's got both of them in there.

MR. J. LA PLUME: Of all physicians; is that all it says?

MR. D. ORCHARD: Of all physicians except government-employed doctors.

MR. J. LA PLUME: Well it depends in what context. All physicians of what? Of all physicians voting, of all physicians in the province?

MR. D. ORCHARD: Well, wouldn't we be assuming that you would be talking about all physicians from whom you're going to collect dues? Why else would you put that in there?

MR. J. LA PLUME: We'd never assume that.

MR. D. ORCHARD: So in other words then, this may have been the Minister's position and you persuaded him to accept simply a clear majority of those responding to a vote.

MR. J. LA PLUME: It really didn't require any persuasion whatsoever. We simply stated what we felt would be appropriate and fair and it didn't require any persuasion.

MR. D. ORCHARD: Mr. La Plume, you indicated that you've been assuring physicians that there is no automatic fine for failure to pay dues and that the only way the fine - and correct me if I misunderstood what you said - the only way the fine would be collected would be through court process?

MR. J. LA PLUME: That's correct.

MR. D. ORCHARD: Mr. La Plume, I guess I've got some difficulty with Section 5(1) of the act. "Any medical practitioner who fails to pay the fee required to be paid under Section 2 on or before the due date thereof becomes automatically subject to a fine of \$1,000 in addition to the fee and shall pay the fine to the association forthwith upon receiving written notice from the association demanding payment thereof."

It would seem to me that Section 5(1) has nothing to do with the courts, that the MMA, after the 1st of September, if dues aren't paid by a physician so billed, that this legislation, would give you the right to demand, in addition to the fee, a \$1,000 fine and you would simply have to provide written notice to the dissident physician in order to collect that \$1,000.00.

MR. J. LA PLUME: Well, my reading of that same clause and our interpretation of legal counsel is, that indeed it would give the MMA the right to demand that fee and that fine. It wouldn't give the MMA the right to receive that fine and fee. There's a difference.

MR. CHAIRMAN: That covers in 5(2) does it not?

MR. J. LA PLUME: We would have to request that fine from a physician and if a physician objected, there is nothing that the MMA could do to compel that individual to pay unless the MMA were prepared to raise this in court. So the MMA doesn't have the power in this legislation to take the fee or take the fine. It has to

wait for a doctor to comply and if the doctor won't comply, it has to take its options at law.

MR. D. ORCHARD: That is the next step that you would take but certainly this legislation would confer on you the right to demand payment of not only the fees, but also payment of fine if you so desire. That right is conferred upon you. The right of the individual of course is to refuse and then you make the decision and the MMA as to whether you're going to take him to court to collect the then \$1,600.00.

MR. J. LA PLUME: Ultimately a judge makes the decision as to whether or not the MMA has acted properly.

For example, today is I suppose September 8, 1986; the legislation is written in such a way to make it retroactive. If the legislation passed at the end of this week and received Royal Assent and was proclaimed and the MMA, for sake of discussion, decided it was now going to rush out and fine doctors immediately, the MMA would have to account for its actions before a court. I don't have any doubt, and I'm sure nobody in this room has any doubt, that a court would say to the MMA you haven't acted in a responsible fashion. So there's direct accountability to the judiciary at this point.

MR. D. ORCHARD: Mr. La Plume, is the section on notice a little bit too lenient on the association, wherein there is a requirement that the association shall give the medical practitioner written notice of the requirement to pay the fee and the amount thereof? But failure by the association to give the notice or a failure by the medical practitioner to receive the notice does not relieve the medical practitioner from the requirement and then hence presumably, I suppose, on into the fine and possibly even the court recovery.

What's the reason for the failure of the association to give notice being included in there?

MR. J. LA PLUME: The reason, it's my understanding, and this is wording of legislative draftsmen and certainly not ours; what it says in effect in a lay interpretation and that's all I can give you, is that ignorance of the law is not going to be an excuse which is going to be acceptable to the courts. A doctor isn't going to be able to say before a court, well, I didn't get a notice from the MMA; they never sent one to me. We've heard that excuse many, many times.

This law, if passed and if proclaimed, will be a law like any other. We're going to make every effort we can to advise doctors what the law is. We're going to go out of our way; we're going to bend over backwards to advise them what the law is. But if somebody doesn't want to know and someone keeps saying they don't know, there's no way we can prove that they didn't know. There's no way that we can prove unless we keep on sending registered mail after registered mail, but even if the party refuses that registered mail, then there's still problems.

So really, all it seeks to do is call on the MMA to give proper notice but someone can't use that as an excuse in a court of law for not having complied.

MR. D. ORCHARD: Mr. Chairman, maybe Mr. Penner, although he's not here - he could probably help me

out because I'm not a lawyer either - but I think the scenario that you just discussed with us is covered by a failure by the medical practitioner to receive the notice, does not relieve the medical practitioner, but I'm talking specifically about the failure by the association to give notice. That's the part I'm concerned about.

I recognize that even though we do it in provincial law, we often require, for instance, registered mail to inform you that your driver's licence will be removed if you don't pay a speeding ticket or something like that. There is no requirement for registered mail here. All you have to do is you "shall give written notice" but yet you have a clause in here, "but a failure by the association to give the notice" still doesn't put any different onus on you; you can still go out and collect presumably not only fee, but fine.

The second part of that answer is what you really answered, but I don't think you've answered whether the association should have the saving clause, whereby a failure by the association to give notice, doesn't preclude it.

MR. J. LA PLUME: Unfortunately, I disagree with your interpretation. The clause says: "that the association is to give notice to medical practitioners." I would suspect the first thing that would come in a court of law is the association's agent or lawyer would be asked, did you, the association, or did you not give notice? And if the association did not give notice of any kind, I would think that would be quite an extensive mitigating factor in respect of the court's decision.

However, a physician, if the association said yes, indeed we have given clear notice and here are three letters that we've given; in fact, we've given registered mail but we never get any feedback back from the doctor. The doctor then could not turn around and say, well, the MMA hasn't made a legitimate attempt. That's my best reading of that clause the way I see it.

It doesn't relieve the association of any responsibility whatsoever. The association still has to do what it should do rightly. It has to justify what it did before a court. But at the same time, a doctor can't simply say, well, I didn't know there was such a law; no ONBC told me and there hasn't been a communication from the MMA. It's only there as an administrative situation and nothing else.

MR. D. ORCHARD: Then, taking from your answer, you would have given that if you went to court and the first question was, did you send out notice, and you said no, your case presumably would not proceed then. I would take it that you probably wouldn't, and the association probably wouldn't have a great deal of difficulty if we amended Section 4 under Notice by deleting, "but a failure by the association to give the notice". That wouldn't really harm your case then, would it Mr. La Plume?

MR. J. LA PLUME: I'd have to seriously consider that specific wording, not just on the spur of the moment, because just offhand I don't think that wording would really cover the problem. There would be some difficulty there in proving whether or not letters had actually gone out. It's one thing and fairly simple for the MMA to prove that letters have gone out. It's very difficult,

if not impossible, for the MMA to prove that letters have been received and letters have been read and that's what this clause is intended to take care of.

It relieves that sort of responsibility for the MMA to somehow prove that someone received something and someone read something. There's no way that we can possibly know that for a fact. Even if you go registered mail, the mail could have been obtained by a secretary, could have been obtained by a family member. It still doesn't prove that the doctor in question received the communication.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Yes, I think if I can be of some help then, I'll just take a moment. I think there can be no doubt whatsoever in the state of the law that before the MMA could, in fact, even go to court it would have to give notice as such that they could prove actual personal notice. Then, of course, in order to go to court, notice of the court action has to be served on the doctor and would have to set out that the doctor having been given notice failed to respond, etc. So I think there's sort of two thresholds that the association would have to cross before they were able to get a court order for payment of the \$1,000.00.

MR. D. ORCHARD: Following on Mr. Penner's clarification on that, that would be my understanding too. That does probably make redundant "but a failure by the association to give the notice," that isn't really needed because if they fail to give notice, as you said, Mr. Penner, they would hardly be able to go to court. If you remove that portion "but a failure by the association to give the notice or," and simply have that clause read "thereof, and a failure by the medical practitioner to receive" would remain. I see no useful purpose for protecting the association from a failure to give notice. It wouldn't stand up in a court of law. I think that's a useless piece of verbiage in there.

MR. CHAIRMAN: Mr. Desjardins.

HON. L. DESJARDINS: Mr. Chairman, I'd like to suggest that maybe Mr. La Plume and the President of the Association could get together with Mr. Silver to see if we can clarify this without changing anything. I think it's worth it to make sure, and I think we want the same thing here so we can maybe do it by Report Stage if it's acceptable to the Opposition.

MR. J. LA PLUME: On this page, Mr. Chairman, I have no problems with that. I'm just saying that right off the spur of the moment . . .

HON. L. DESJARDINS: After this presentation, we can get together with Mr. Silver for a few minutes so see if we can arrive at something.

MR. J. LA PLUME: It's quite acceptable.

HON. L. DESJARDINS: Thank you.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very much Mr. La Plume for your presentation.

The final presentation is from Dr. Tom Fisher. Come forward, please.

DR. T. FISHER: Mr. Chairman, ladies and gentlemen. I'm a physician. I used to be an MMA member. I'm one of the people who withdrew from MMA without retiring, or leaving the province, or dying.

I withdrew from MMA because despite their assertion that they act in such a way as to be of service to all physicians, I felt that they weren't particularly doing me a service but more a disservice. I felt in fact that my views were better represented by another organization, the Association of Independent Physicians that I belong to, and whose President, Dr. Gordon, spoke here earlier. Because of that, I feel that this law constrains my ability to express my views and to follow my conscience and in that I think it infringes on my freedoms to join or not to join the association that I think would best represent me.

I don't think I want to continue the dialogue with respect to the MMA and what the association is like and what this law does or doesn't do for it. I'm more concerned about the law in a general sense with respect to the principles that seem to be embodied in it. As a citizen, not as a physician, the law frightens me because I am worried that it can serve as a model or a template for other similar laws giving similar powers to other groups to, in a self-righteous way, declare themselves to be acting on the best interest of the constituency which they claim to represent.

With as little as 35 percent of those individuals supporting them, they might be given similar power to collect dues, to collect fines without being subject to any regulations with respect to their own conduct, with respect to the kind of democratic principles that they actually follow in terms of how they run their organization.

For example, I wonder if any other group, whether a union, whether incorporated, whether representing a profession, whether representing an association, could feel that they could hold a referendum asking their constituency whether they want compulsory dues to be assessed or not. If such a referendum is defeated, nine months later hold another referendum and nine months later hold another referendum until on one occasion at some point down the road they get a majority of those members who cast their ballot to vote in favour, at that time they could ask the Legislature to pass a law which would act, not for nine months, but I suppose in perpetuity or until another law is passed to strike it down.

It further troubles me that this is a law which takes my individual freedoms and puts them second to a global issue, an issue which affects the group as a whole, and it's in a nontraditional area. Traditionally, governments and the law have placed the good of the whole, the good of the group, before that of the individual in issues relating to safety, issues relating to health, to order, and to the rights of other individuals. In this particular instance, it's clear that MMA needs money. My rights as an individual are being put secondary to MMA's need for money.

There are other laws that MMA has lobbied for such as helmet and seat-belt legislation. I'm wholeheartedly in favour of wearing helmets and seat belts, and I think

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that as a profession, it is our professional and moral responsibility to advise our patients individually, to advise the public as a whole, to do that which we consider to be in their best interests with respect to their health and their safety and their lives.

I'm wholeheartedly in favour of compulsory immunization, reporting of sexually transmitted contagious diseases, etc., because if an individual is allowed to go without immunization and contracts illness and then can pass it on to the rest of us, our health, our safety is endangered. If an individual does not wear a helmet and sustains a more serious head injury than he otherwise would, my health, my safety, the order in the land, my individual freedom and your safety, your freedoms, your health, are not endangered.

The only way that we as a group are impacted by somebody not wearing a helmet or not wearing seat belts is that it costs us money. They become a burden to our health care system which we all now collectively pay for. So we choose, in these pieces of legislation, to take away the freedom of the individual to make the choice with respect to his own health and safety in favour of being able to, in this case, save money for society as a whole.

I think this particular law does the same thing to my freedom in favour of channelling some money into MMA, which I believe badly needs it because of the tasks that it has to perform; but I suppose one could even make an argument to say that the viability and the good health of the Medical Association indirectly benefits the health of society as a whole.

But if we're really trying to benefit society as a whole, then why are we just trampling on the freedom of individual physicians who don't feel that the association represents their best interests? Why don't we then say that we're going to sacrifice the individual freedoms of society as a whole in the service of their better health? In fact, we do that with the seat belt and helmet legislations because they do apply to society as a whole rather than just to a few people, although people who ride motorcycles might say, well, it doesn't apply to those people who don't ride motorcycles.

That's really all I have to say about the general principles involved in the law and that's what troubles me most about it.

There's one specific point that I'd like to address which I'm unclear about after listening to the comments here tonight - I was more clear about them before coming here - and that is, how one becomes a member of MMA. I used to think that in order to be a member of MMA, in order to have the right to vote or to stand for election to the MMA board, one had to pay the MMA dues and, in addition, one had to pay the CMA dues. Now, I've heard said tonight that by paying MMA dues, one would be considered a member.

My understanding of this law as it stands is that if I just paid my dues to MMA, as is compelled by the law, I would not be considered to be an MMA member, I would not have the right to vote, I would not have the right to stand for election as a board member; that, in addition, although this law doesn't say so, that in order to give me the rights to be represented in a democratic way, this law also indirectly compels me to become a CMA member.

I think that if the law really intends to do that just as a favour to people who find it difficult to understand,

perhaps it could be included in a footnote. I have no further comments.

Thank you.

MR. CHAIRMAN: Thank you very much, Dr. Fisher. We don't usually put too many footnotes in legislation.

DR. T. FISHER: Maybe we can make an amendment . . .

MR. CHAIRMAN: Okay, are there any questions for Dr. Fisher?

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, this isn't a question, but I believe the circumstance that Dr. Fisher described is correct, is it not? Simply, this act requires him as a physician in Manitoba to pay MMA dues.

HON. L. DESJARDINS: But it does now, without the act. That's how they are members of the MMA.

MR. CHAIRMAN: Section 3(1), Mr. Orchard, provides for payment of the association fees. Section 3 puts out the requirement for CMA fees paid as well so that one becomes a duly bona fide member of the MMA as well, from my understanding. Is that not correct? Looking for one of the doctors from the . . .

MR. D. ORCHARD: Maybe I've got to ask Dr. Fisher a question then.

Before this legislation - this legislation is not in place. If you want to become a member of the MMA what fees did you have to pay? Did you have to pay both CMA and MMA?

MR. CHAIRMAN: Excuse me, could you speak up please, Mr. Orchard. We can't hear him at all.

MR. D. ORCHARD: The question I was posing, that without the legislation, if you paid your MMA dues, was that sufficient for you to become a member of MMA?

HON. L. DESJARDINS: No, that's what I say. That doesn't change at all. To be a member of the MMA, you must pay your full dues, including the dues to the Canadian.

DR. T. FISHER: So then, if I understand correctly, if I just pay the compulsory portion of my dues, then I will not have, along with it, the right to vote or the right to stand for office.

HON. L. DESJARDINS: Exactly the same as it is now.

MR. CHAIRMAN: The situation has not changed, but that's something you'll straighten out with the association executive director and others within the association, Dr. Fisher.

Are there any further questions for Dr. Fisher? Seeing none, thank you very much.

That completes our list of people wishing to make presentations. Is there anyone else in the committee

room this evening who would like to make a presentation on any of the bills before us?

Seeing none, members of the committee, can we move into consideration of legislation? I would propose and wonder if you wouldn't mind disrupting the order somewhat in starting with Bill No. 52, the one we've just finished dealing with, so that we would be able to have that dealt with in the committee while the people who have been making presentations are here to be able to hear the discussion of that part of it as well, so I can see the final portion, at least, of the Second Reading on that proposed bill. So, in other words, we would deal with Bill No. 52 first, then go back and deal with Bills 12, 14, 20, 55 and 57, in that order. Is that agreeable? (Agreed)

Call Bill 52. How would you like to deal with the bill? Do you want to go page by page or bill as a whole or are there any particular items?

Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, are there going to be any amendments?

HON. L. DESJARDINS: The only amendment that we might consider is the one that they're working on now and if they're not ready, we would bring that at report stage, just to make sure that we have a proper clarification.

MR. D. ORCHARD: Well then, Mr. Chairman, before we deal with the bill as a whole, maybe I could ask the Minister some questions that sprung out of the presentations tonight.

Now, in terms of part-time practice, like where there's less than 30 hours a week, there's going to be a prorated fee schedule, apparently, for the MMA. Who establishes that and is that established by regulation or is that internal within MMA?

HON. L. DESJARDINS: This is internal to the MMA. The MMA has a clause that they can do that for not only on a question of hours my understanding is if for some reason or other they feel that they should reduce the fees, well then they can do that. It's not imposed by the legislation.

MR. D. ORCHARD: Yes okay, so the regulations that we refer to in Section 9, those would not include the fees for part-time doctors? That's what you're saying Mr. Desjardins?

HON. L. DESJARDINS: Yes, they would have to bring regulation re the part-time doctors. They don't intend, the information that I have, to levy the same fees on part-time doctors.

MR. D. ORCHARD: Okay. So, it isn't simply an internal matter with the MMA. They are going to determine, the MMA will determine internally what their fee schedule will be for part-time doctors and then they're going to come to you as Minister and have regulations passed expressing that? -(Interjection)- Run that by me again please.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: It is my understanding the regulation would carry the definition of full-time and part-time, but the MMA would set the fee.

MR. D. ORCHARD: Okay, so then the MMA, it is strictly internal. It's not that the MMA will then present the government the fee schedule for part-time doctors which will be passed by regulation?

HON. L. DESJARDINS: That's correct.

MR. D. ORCHARD: You're working on that notice provision. I think that's about it, Mr. Chairman.

MR. CHAIRMAN: Just one second. We're checking on the progress of the amendment here.
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, in the meanwhile, I have a question for the Attorney-General. During his Estimates, Mr. Chairman, when we were in discussion of Charter of Rights matters, I asked the Attorney-General if he would undertake to review or have this act reviewed as to whether or not it complied with the Charter of Rights. I would ask the Attorney-General if he has had that review done and whether he can confirm his or legislative counsel's opinion for the record?

HON. R. PENNER: No, I regret that I have not done that as yet. My understanding is that legislative counsel has not had a chance to look at that as yet as well. We'll try to have a look at it, albeit it would be sort of a short notice review of it before the next couple of days, but I'm not optimistic that we could get a reasoned opinion within that period of time.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, for the past number of years since the Charter of Rights was brought in, we have been told that all legislation generally would be reviewed with respect to whether or not it complied with the Charter of Rights. I made a specific request with respect to this matter which would be about two weeks ago, I guess. Surely this committee should be able to have an opinion from the Legislative Counsel now before it deals with the bill as to whether or not it is Legislative Counsel's opinion that it does or does not comply with the Charter of Rights.

HON. R. PENNER: Yes, we do in fact require, when legislation is submitted, that any potential Charter problems be identified. This particular bill came up very late in the legislative process and did not go through the Legislative Review Committee; however, on the 1st of August, the Legislative Counsel - I now have his note - advised that having reviewed it, in his opinion it did not contravene the Charter of Rights.

I would concur in that opinion but I don't want to present it as the opinion of the Constitutional Law Branch because of the requirement that before the \$1,000 can be recovered, it must go to court and all of the due process features that one finds in a court of law would have to be observed.

MR. G. MERCIER: Mr. Chairman, I would ask the Attorney-General when we could expect to have a

review done by his Constitutional Law Branch of the whole act, not just this particular provision, and have that available for the House on Wednesday afternoon, at least the advice as to whether or not it does or does not contravene the Charter of Rights.

HON. R. PENNER: I'll ask Legislative Counsel to discuss that with the head of the Constitutional Law Branch. Again, I must say I'm not optimistic but we'll give it a good try.

HON. L. DESJARDINS: Mr. Chairman, on 4 - what we're doing now is unusual but to make sure that we understand and that we've got what we wanted - on 4, it is felt that this is not really necessary but if it's clearer, we could stop after "thereof" in the seventh line and delete all the remainder of paragraph 4 in the notice.

MR. CHAIRMAN: If I could, I thought the request was to delete the part about the failure of the association to give notice, not dealing with the part of the individual practitioner not to receive notice. They are two very distinct things. One is of the failure of the association to send notice out and to be exempt from the provisions; the other one is if the message was sent out but perhaps a person has moved and they did not receive notice of it, on the second portion.

MR. D. ORCHARD: Mr. Chairman, I think the committee would concur with the Minister's recommendation if it would get by you, Mr. Chairman.

MR. CHAIRMAN: All I'm saying is that I think the Minister has gone beyond what the request was at the initial stages and if the committee decides to wipe out the whole latter part of that section, I'm certainly not going to object to it. But my interpretation is different than what the Minister's was. Is there someone to move?

HON. L. DESJARDINS: Delete all the words after "thereof" in the seventh line.

HON. R. PENNER: And after "cependant" in the French version.

MR. CHAIRMAN: En français, s'il vous plait?

HON. L. DESJARDINS: Après le mot "cependant."

HON. R. PENNER: With that amendment, bill as a whole.

MR. CHAIRMAN: Do you want to pass the bill in whole? (Agreed) As amended on page 3? (Agreed) Bill as a whole? Title? Bill be reported?

MR. D. ORCHARD: Mr. Chairman, just before we pass the bill, I think we have heard arguments tonight from the MMA Executive, which have supported the premise of the bill and it's supported on the basis that on a second referendum, the majority of those replying agreed to the compulsory dues check-off legislation. I don't know what the Minister's intention was in his letter of June 4, 1984 to Dr. Derek Fewer, but

nevertheless we're at the stage - with a second referendum and a 50 percent majority in favour - we have gotten legislation.

Basically the argument that we've heard from a number of those supporting the legislation is that it is just to collect the dues from all members who are physicians practising in the province, because presumably anything the MMA does in terms of negotiation or other promotions benefits all members whether they belong or not to the MMA. Mr. Chairman, that argument does have a very familiar ring. I think you can hear almost any union leader in the province or in the country using the argument that that is why all people employed in work by the union should be paying union dues. I think we'd even have a number of people across the table that probably made speeches like that from time to time.

We heard tonight some individuals object to having the compulsive aspect of membership dues to an association which they at one time belonged to and felt were not receiving sufficient benefit to continue their membership in that organization. I guess what we've seen tonight, or what we have and are about to pass tonight, is another piece of legislation that to a group of Manitobans is removing their freedom to choose. I think that's the basic bottom line of what we're doing tonight and that is an objection we've made when this legislation came up in the House and it's an objection that I'd like to register on the record again tonight.

MR. CHAIRMAN: Preamble—pass; Title—pass.
Bill be Reported.
Next we'll move back to Bill No. 12.

BILL 12 - THE LEGISLATIVE ASSEMBLY AND EXECUTIVE COUNCIL CONFLICT OF INTEREST ACT AND THE THE LEGISLATIVE ASSEMBLY ACT

HON. R. PENNER: Mr. Chairman, there are a number of proposed amendments and I would ask that they be circulated and in order that we can deal with those amendments in an orderly way, we go page-by-page. The amendments will be found to Section 8 on page 3, and to Section 9 on page 4, and to section 16 on page 9.

MR. CHAIRMAN: Page 1—pass; Page 2—pass.
Page 3, we have an amendment.
Mr. Penner.

HON. R. PENNER: Yes, it's an amendment to Section 8. I should say, just by way of a brief explanation, this amendment comes about as a result of discussions between myself and Mr. Mercier.

Mr. Mercier drew to my attention certain problems that would arise as a result of the proposed amendment. The amendment in the bill was originally intended to cover what was thought to be a gap in the existing legislation. On further analysis, it was seen that in fact it would create problems then that we really didn't need Section 17 of the original bill at all.

So I move
THAT Section 8 of Bill 12 be struck out and the following section be substituted therefor:

Sec. 17 rep.

8 Section 17 of the act is repealed.

MR. CHAIRMAN: That's it - pass en français?

HON. R. PENNER: En français aussi.

MR. CHAIRMAN: D'accord?

HON. R. PENNER: D'accord.

MR. CHAIRMAN: Page 3, as amended—pass.
Page 4 - Mr. Penner.

HON. R. PENNER: I would move
THAT Section 9 of Bill 12 be amended

- (a) by renumbering the proposed new Section 23.2 of The Legislative Assembly and Executive Council Conflict of Interest Act as Section 23.3; and
- (b) by adding the following section as Section 23.2 of The Legislative Assembly and Executive Council Conflict of Interest Act:

Report to Speaker.

23.2 Forthwith after the delivery of any court judgment

- (a) determining whether or not a member or Minister has violated this act; or
- (b) disposing of an application for a stay of a judgment referred to in clause (a) or an appeal from a judgment referred to in clause (a);

the registrar of the court which delivers the judgment shall, in writing, certify to the Speaker of the Assembly the decision of the court, including any penalty imposed on the member or Minister by the court.

I'm moving that amendment, and just by way of explanation, it was brought to my attention by the Speaker and the Clerk that if we were to follow, as we ought to, the example of provisions in The Controverted Elections Act, we should still leave the authority of the Speaker to report the judgment of the court to the House, and I concurred for both consistency and historical reasons.

MR. CHAIRMAN: Pass en français aussi?

HON. R. PENNER: Aussi en français.

MR. CHAIRMAN: Page 4, as amended—pass. Pages 5 to 8, inclusive, were each read and passed.
Page 9 - Mr. Penner.

HON. R. PENNER: Page 9 - this is an amendment consequential upon the one we made that I mentioned with respect to the Speaker.

I move

THAT Section 16 of Bill 12 be struck out and the following section be substituted therefor:

Sub-clis. 60(4)(e)(iv) and (v) rep. and sub.

16 Sub-clauses 60(4)(e)(iv) and (v) of the act are repealed and the following sub-clauses are substituted therefor:

- (iv) where the member's seat is vacated under Section 19.1 or 21, other than by reason of disqualification from office under The

Legislative Assembly and Executive Council Conflict of Interest Act, on the day that the Speaker determines as the day on which the seat becomes vacant,

- (v) where the member's election is declared void under The Controverted Elections Act, on the day the judgment that sets out the declaration is delivered, and

- (vi) where the member is disqualified from office under The Legislative Assembly and Executive Council Conflict of Interest Act,

(A) if the disqualification results from a judgment of the Court of Queen's Bench, on the day the judgment is delivered,

(B) if the disqualification does not result from a court judgment on the day prescribed by that act for the disqualification to occur;

It blends the provisions of The Controverted Elections Act and The Legislative Assembly Act and this act.

MR. CHAIRMAN: Pass en français?

HON. R. PENNER: Aussi.

MR. CHAIRMAN: Page 9, as amended—pass; Page 10—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL 14 - THE MANITOBA ENERGY FOUNDATION ACT

MR. CHAIRMAN: Next is Bill No. 14.
Mr. Parasiuk.

HON. W. PARASIUK: There are two amendments that I'd like to propose and I'd like to explain them. Apparently, the French version of these clauses did not convey the meaning of the English clauses. Therefore, the amendments are being brought forward. They are technical amendments relating to a translation.

I would like to therefore move, seconded by the Minister of Urban Affairs, that the French version - (Interjection)- Pardon? Oh, yes. Could I please have them distributed?

MR. CHAIRMAN: Yes, just hold your horses for a second here. It seems the amendments have been misplaced and we're trying to find the amendments.
Mr. Desjardins.

HON. L. DESJARDINS: I would move

THAT the the French version of clause 3(1)(a) of Bill 14 be amended by striking out the words "convenu entre Hydro et la Régie," in the first and second lines thereof and substituting the following:

"proposé par Hydro et approuvé par le lieutenant-gouverneur en conseil,"

MR. CHAIRMAN: Pass.

HON. L. DESJARDINS: Instead of agreed, it is proposed by Hydro. It changes the word "agreed." If you believe that, I'll give you another one; I'll tell you that.

MR. CHAIRMAN: Okay, the next amendment is on Page 6, the bottom of Page 6.

HON. L. DESJARDINS: I move

THAT subsection 7(1) of the French version of Bill 14 be amended by striking out the following words in lines one to three:

“Jusqu’à ce que des dépenses et des investissements soient effectués en application de”

and substituting the following therefor:

“Par dérogation à.”

Because the English version wouldn’t go along with this, it’s presented with this section in the French.

MR. CHAIRMAN: Pass. En français, le deux en français. D’accord?

Page 6 as amended—pass; Bill as a Whole—pass; Preamble—pass; - Mr. Enns.

MR. H. ENNS: Mr. Chairman, notwithstanding the amendments, this bill, of course, fundamentally alters The Manitoba Hydro Act. That has been basically the reason why the Opposition has taken exception to the act, why we have opposed it in the House at Second Reading and why we continue to oppose it. We believe that government has not shown sufficient reason or cause why that act that has, by and large, served Manitobans well for many, many years - certainly since the incorporation of Manitoba Hydro in the mid-Fifties - which was essentially designed to produce power at cost for Manitobans for Manitobans use, certainly always allowed the flexibility to that corporation to export and earn additional dollars for the province and for the ratepayers of Manitoba Hydro through export sales.

We believe that the motivation behind Bill 14 is largely political and illusory. If indeed the corporation finds itself in a position in the year 2003 or 2008 where substantial additional revenues are being generated by the corporation that could be diverted, as this bill purports to divert, that would have been an appropriate time to introduce an act of this nature. Those few comments we simply put on the record are continuing opposition to this bill. We would ask for yeas and nays on the division.

MR. CHAIRMAN: On division? Pass on division?

Okay. Preamble—pass; Title—pass; Bill Be Reported, recognizing it’s on division—pass.

Bill No. 20.

BILL NO. 20 - THE STATUTE LAW AMENDMENT ACT (1986)

HON. R. PENNER: Yes, Mr. Chairman, there is one amendment proposed to Bill 20, The Statute Law Amendment. That’s found on Page 28 which contains a proposed amendment to rivers and streams. The solicitors for the City of Winnipeg brought to our attention that there would have to be a consequential amendment, technical in nature, to give effect to the intent of Section 34. So, I’ll move now the amendment to Section 34 of the bill found on Page 28, the proposed amendment now circulated is:

THAT section 34 of Bill 20 be struck out and the following section be substituted therefor:

34(1) Subsection 22(2) of The Rivers and Streams Act being chapter R160 of the Continuing Consolidation of the Statutes of Manitoba (in this section referred to as “the Act”) is amended by striking out the words “and its decision thereon is final and conclusive” immediately after the word “matter” in the 6th line thereof.

Subsection 26(1) am.

34(2) Subsection 26(1) of the Act is amended by adding thereto immediately after the word “order” on the 1st line thereof the words “or decision.”

MR. CHAIRMAN: Amendment—pass; en français—pass; Bill as Amended—pass; Preamble—pass; Title—pass.

Bill be Reported.

HON. R. PENNER: Bill 55 . . .

BILL NO. 55 - THE ROYAL WINNIPEG RIFLES FOUNDATION

MR. CHAIRMAN: Just one second, please. I want to get this in order.

Bill No. 55, An Act to Incorporate the Winnipeg Rifles. The Clerk has just passed out an explanatory note from an officer of the House, given a private bill. Are there any comments to call it a bill or how would one like to proceed? Pass?

Preamble—pass; Title—pass.

Bill be Reported.

HON. L. DESJARDINS: Any amendments to 57?

BILL NO. 57 - THE MUNICIPAL ASSESSMENT ACT AND THE CITY OF WINNIPEG ACT

MR. CHAIRMAN: Bill No. 57.

HON. L. DESJARDINS: Is that an amendment again?

HON. G. DOER: Yes, Mr. Chairman, there’s an amendment to Bill 57. It’s being distributed.

HON. L. DESJARDINS: Just the one?

HON. G. DOER: Just the one amendment, yes.

MR. CHAIRMAN: Mr. Doer, would you move it please?

HON. G. DOER: I would move, seconded by the Member for Elmwood that the following amendment take place. Shall I read it, Mr. Chairman?

THAT proposed subsection 152(7) of The City of Winnipeg Act as set out in section 3 of Bill 57, An Act to amend the Municipal Assessment Act and the City of Winnipeg Act be repealed and the following substituted therefor:
Differential rates of taxation.

Monday, 8 September, 1986

152(7) Notwithstanding any other provision of this Act or of any other Act, the Council may, by by-law, establish differential rates of taxation for classes of property defined by regulations made pursuant to section 31.2 of The Municipal Assessment Act.

Bill as Amended—pass; Preamble—pass; Title—pass.

Bill be Reported.

That completes the work of the committee.

Committee rise.

MR. CHAIRMAN: Pass? En français.

COMMITTEE ROSE AT: 10:40 p.m.

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