

**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS**

Monday, March 12, 1990

TIME — 3 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Findlay
Messrs. Ashton, Burrell, Ms. Gray, Messrs.
Mandrake, Minenko, Pankratz, Patterson,
Plohman, Praznik

WITNESSES:

Ms. Lee Frame, City of Winnipeg

APPEARING:

Mr. Gordon McKinnon, Counsel, Workers
Compensation Board

MATTERS UNDER DISCUSSION:

Bill No. 56—The Workers Compensation
Amendment Act

* * * *

Mr. Chairman: Good afternoon, I call the Standing Committee on Law Amendments to order. This afternoon, the committee will be considering the following Bills: Bill No. 56, The Workers Compensation Amendment Act; Bill No. 72, The Securities Amendment Act; Bill No. 75, The Insurance Amendment Act; Bill No. 78, The Prearranged Funeral Services Amendment Act.

* (1505)

Committee had previously heard public presentations on Bills 56 and 78, and there are still three names of presenters to be called on Bill No. 78. No presenters had requested to speak on Bills 72 and 75. I will now read the names of the remaining presenters for Bill No. 78—Mr. Donald Gordon, Mr. Richard Rue, Mrs. Bev Fenwick.

If there are any other members of the public who would like to speak to the Bills this afternoon, please advise the Committee Clerk and your name will be added to the list.

At this time, I would ask the committee, is it the will of the committee to hear these people making their presentation that are here at the present time first, before we go on to Bills clause by clause?

Some Honourable Members: Agreed.

Mr. Chairman: Agreed. Did the committee wish to set a time of adjournment for committee meeting this afternoon?

Mr. Darren Praznik (Lac du Bonnet): I would suggest 5:30.

Mr. Steve Ashton (Thompson): Well, Mr. Chairperson, it was the agreement between House Leaders to adjourn the House at five o'clock, caucus to caucus, one hour earlier, so I would suggest we also use the five o'clock -(interjection)- The intention was to adjourn at five in the House, so I suggest we adjourn at five.

Mr. Chairman: Mr. Ashton suggests we adjourn at five. Is that the will of the committee.

Some Honourable Members: Agreed.

Mr. Chairman: Agreed. I would just like to inform committee Members that a written presentation was received from Mrs. Bev Fenwick, Private Citizen, and that the written brief will now be handed out to committee Members.

So I understand that it is the will of the committee to hear the presenters first. I will read them out. Mr. Donald Gordon, Rosewood Memorial Chapel Ltd., is he here to make presentation? Is Mr. Richard Rue here, Trust Companies Association, Manitoba Section? Mrs. Bev Fenwick, private citizen? We have received her written presentation. So is there anybody else that is not on the list that would like to make presentation to any of the Bills? Anybody that would like to make presentation to any of these Bills that has not been called out previous times or would like to make presentation today, feel free to step up to the mike and identify yourself. If you have a written presentation, I will ask for it. You would like to make a presentation?

**BILL NO. 56—THE WORKERS
COMPENSATION AMENDMENT ACT (2)**

Ms. Lee Frame (City of Winnipeg): Mr. Chairman, I am here representing the City of Winnipeg on Bill 56.

Mr. Chairman: On Bill 56, you would like to make presentation?

Ms. Frame: Yes, sir.

Mr. Chairman: Would you please identify yourself—and I would like to ask you whether you have written presentation.

Ms. Frame: I have brought copies of a written presentation as well. Mr. Irvine will bring it. My name is Lee Frame. I am Director of Personnel for the city.

Mr. Chairman: Well, just wait a minute until your presentation has been circulated. Ms. Frame, you may proceed with your presentation on Bill 56.

Monday, March 12, 1990

* (1510)

Ms. Frame: Mr. Chairman, committee Members, I stand here on behalf of the City of Winnipeg. I bring apologies from the mayor who would like to have been here to make this presentation today, but on short notice was unable to attend.

I come today to express, on behalf of the city, concern with the proposed amendment to Bill 56, which is a Bill to amend The Workers Compensation Act. The amendment in question proposes that professional firefighters be given special status when applying for workers compensation benefits. With me, incidentally, I have Mr. Ian Irvine, who is the workers compensation co-ordinator for the City of Winnipeg, and Garth Whyte, who is the Chair of the Employers' Task Force, who I believe made representations before this committee last Wednesday evening and who supports the city in the position before you today.

The city is concerned that this amendment, which will have a very serious and far-reaching impact on the workers compensation system, has been introduced without consultation, without an analysis of the cost implications, and without an analysis of the long-term impact upon policy development, especially those involving pre-existing conditions and occupational disease. It is important to note that this amendment has implications, not only for the City of Winnipeg, but for all employers within the Province of Manitoba.

In recent years, the Workers Compensation Board has worked to develop an effective consultation process. The city has a special management task force, of which I am Chair, and we have had considerable dialogue with the board on compensation-related matters over those last couple of years. Such a process allows all stakeholders an opportunity to express their views prior to the implementation of new policy. Acceptance of the amendment before you without consultation would certainly undermine this process.

We are informed that the Workers Compensation Board is currently researching this very issue and will be in a position to make recommendations concerning it in the very near future. To date, the city has not been made a party to this research, nor has the consultation process commenced. For these reasons, the city would strongly urge you to delay the process of approving the amendment and allow the process of researching, costing, and consultation to continue.

Given the significant policy and financial implications of this amendment, the city believes it should be ruled out of order as such significant changes to the legislation should be introduced after first reading, not after second reading has occurred in this case.

In addition, when considering the necessity for the proposed amendment, it is important to be aware of the following. This type of legislation, that being the firefighters regulation, does not exist in any other Canadian jurisdiction. This matter has been reviewed extensively in other jurisdictions, notably Saskatchewan in 1986, Ontario in 1979, and the Weiler Commission, and it has consistently been found that legislation such as the firefighter regulation which is proposed, is not medically defensible or statistically supportable.

Thirdly, firefighters can now make application to the Workers Compensation Board for conditions which they believe are related to their employment. Those claims which have merit will be approved. As an aside, I would like to emphasize, the city is not against the approval of claims for firefighters. It is the presumption of an approved claim without an onus on the employee to demonstrate a work-related connection that the city takes exception to.

Fourthly, since 1986, which is the last full year that Manitoba regulation 24/77, the prior firefighter regulation, was in operation, the city has experienced a decrease in costs equal to \$2 million annually in Workers Compensation claims related to our civic fire department. Now, we arrive at this figure by purely subtracting the first full year without the regulation from the last full year with the regulation, and that is where the \$2 million difference comes from. There will be some slight amount of that attributable to inflation, but it is still a \$2 million difference. In the absence of prior consultation we were not able to refine the figure any further than that. That is a substantial amount of money, the majority of which would be attributable to the absence of the regulation.

The introduction of the proposed amendment we see as a regressive step which will complicate the issue of fair treatment for all workers concerning the compensability of occupational disease. Also, acceptance of the amendment would signal the abandonment of a principal tenet of the workers compensation system, that is that employers should only be held responsible for those conditions which are a consequence of the workplace.

Given these circumstances, the city strongly urges that a resolution to this issue be delayed until such time as the matter is properly researched and the process of consultation has been completed. In this manner the city and other interested parties will be provided opportunity for fair representation.

Mr. Chairman: Thank you for your presentation, Ms. Frame. Are there any questions to Ms. Frame? Mr. Ashton?

Mr. Ashton: I just wanted to ask a couple of questions. First of all, I want to indicate that one of the reasons we are proposing this amendment is the fact this has been raised with the Minister. If the Minister has not chosen to consult with the city on this up to this point in time, that was the Minister's decision. This has been raised extensively with the Government and relates to a regulation that was struck down, that had been in place for over 20 years and is not a new item per se. It has been in place and has been rejected.

I just want to ask, in my discussions with the firefighters, they had indicated they had met with the city and requested some information in terms of the impact of the regulation. Has the information been provided to the firefighters themselves in terms of the impact of the removal of the regulation by the Court of Appeal?

* (1515)

Ms. Frame: If the firefighters have requested specific information on the impact, I am not directly aware of that. It may have been requested through some other source such as myself. I was at a meeting, which I believe it was last November, where the firefighters raised this issue, asked about the city position on this issue, and I provided subsequently to that copies of documents showing the city position on it as it had been approved by City Council. City Council is on record as in opposition to the regulation, and we informed the firefighters of that. I am not aware that they asked for cost implications.

Mr. Ashton: In fact they did ask in terms of their own position to attempt to determine that. That has been indicated to me by the firefighters. I just want to indicate too that the amendment that we are going to be introducing makes it quite clear that the amendment deals with the presumption and in fact states very clearly that if the contrary is shown, that it is not assumed to be related to a workplace situation in the case of heart attacks and the other items that we list. That is important because I recognize the concerns. Really what we are talking about is the onus. Incidentally, that is an onus that has been in place, or at least was in place until the regulation was struck down, for well over 20 years in Manitoba.

(Mr. Parker Burrell, Acting Chairman, in the Chair)

We are not attempting to, in any way, shape or form, provide a mechanism for a workers compensation claim where there is not a work-related situation. We feel the regulation that was in there before and was struck down on a technicality should be put back into legislation. That is why it has been introduced.

Ms. Frame: If I could, it is not the city's interpretation that the regulation was struck down on a technicality. It was struck down in the courts because it was shown that the information before the Workers Compensation Board at the time they approved a particular claim, showed that there was no demonstrable connection to the workplace. It was there that the regulation became ultra vires.

I am aware of the history of the regulation. There is some change in the environment that perhaps should be examined in the course of looking into the merits of reinstating this regulation. For example, safety equipment to firefighters is a much higher quality than it was 20 years ago when the regulation was put in. The standards of safety provision for firefighters is considerably better. We as an employer take that very seriously and are very concerned about the safety of our firefighters.

The onus of responsibility to the city to demonstrate no possible connection to the workplace did not result in the denial of claims that in our view had no merit prior under the regulation and that is one of the reasons that we bring this forward as an area of concern.

Mr. Allan Patterson (Radisson): Ms. Frame, do you have some hard data with which to support several of your statements here? You refer of course in item 2 on page 2 to review in other jurisdictions and find that

there is no statistical or medical grounds, but just where is the evidence for that, just how is it stated in the particular publications or studies that you refer to?

* (1520)

Ms. Frame: We do not have that with us, Mr. Acting Chairman. Perhaps, if more time were allowed we could provide that to you. We are aware that this information exists, but without advance notice that this amendment was coming forward, we did not have the time to compile that kind of information to bring to the committee. We certainly agree that it should be examined; in fact, would be very pleased to provide it, but it requires some time for that kind of research to be gathered and the information that is provided to be examined to see which side of the issue it supports.

(Mr. Chairman in the Chair)

Mr. Patterson: Then on item 4 just the more or less sweeping statement of this \$2 million a year in cost, and I fully understand the way you arrived at it with taking the last full year with it and subtract the first full year without it, but nevertheless in computations such as that, you are only considering one variable, that is the absence of the regulation and everything or the majority is not necessarily attributed to that variable. There could be one or two or many more other variables affecting it. What specific costs are there, how is this \$2 million a year, or the portion of it that you would attribute to not having the regulation, what is it made up of?

Ms. Frame: Once again, Mr. Chairman, in the absence of adequate time for consultation, I did not bring specific data with me. However, I can tell you that the number of claims within the fire department that are filed and approved, that go into making up the dollar value, have also decreased somewhat, but our overall experience in the city, while the number of claims are down, the costs have increased.

If the experience through the balance of the city were attributed to the fire department we would have expected the costs to increase unless some other factor is at work. In the absence of that increase, we believe the fire fighter regulation is the prevailing reason why our costs have gone down. Given adequate time we would be more than pleased to do as much of a statistical analysis and a cost analysis as is available to us and provide that information to committee to consider in determining whether the regulation should be proceeded with or not.

If I could as well, Mr. Irvine has provided me with a letter from the University of Manitoba, from a Mr. Warren, who is an expert in respiratory disease. If I might just read it, I could leave copies with the committee as well, if you like. It says, Dear Mr. Irvine, dated January 18, 1989. Thank you for your letter of January 6. I am not qualified to comment on the efficiency and effectiveness of modern fire fighting equipment in stopping fumes, smoke and gases entering the lungs. You will need an industrial hygienist for this. The modern medical literature which I surveyed, shows

Monday, March 12, 1990

that in those fire forces studied, there is no evidence of ill effects of being a fire fighter today. Acute effects may occur, but there is no cumulative damage. This did not seem to be the case in the 1970s. It is assumed that modern equipment is truly effective to explain these findings. However, I do not know what equipment the firefighters studied were using. It is hard to imagine that the fires have changed (I believe with more plastics they may be worse), and the men would not have changed. Their hours firefighting and hence exposure could be less. You might know this.

* (1525)

I therefore conclude that either the original studies were wrong to conclude that firefighting produced permanent damage or most likely that the firefighters are now properly protected. This seems more likely from the Boston studies where it was first thought there was a problem and later research excluded it, signed, Yours sincerely, C.P.W. Warren, MBF RCPC.

I am sorry I cannot interpret those initials, and I can file a copy with you.

This is an example of medical expert evidence that could be provided, provided adequate time to consider the issue were provided.

Mr. Patterson: Thank you, Ms. Frame. Going back in time with your experience, could you still not be more specific or would you not have records of the various firefighters' cases that have been filed over the years, things like the number of cases that were alleged to have been due, say to cancer of the liver or the lungs or brain trouble or heart trouble or whatever. I would assume from the resistance shall we say to the reinstatement of this regulation that it is more or less an implication that it is thought that some or maybe many of the claims are not at all attributable to the employment as a firefighter. How many of each do you have and which are you dubious about? Obviously if a firefighter goes into some particular fire and is seriously exposed to the smoke, fumes or whatever, and is very clearly incapacitated as a result of that particular incident that seems relatively clear, of course. What are the specific cases and type of case where you feel that the employer is being hard done by shall we say.

Ms. Frame: Mr. Chairman, certainly if a firefighter collapses with as a result of being overcome by fumes at a fire, the city would not be taking the position that it should not be considered as a compensable incident. We do not have with us figures on the specific claims that we have had concerns with over the years, although once again we could provide that. The euphemistic example that we have used in many places was of a firefighter who had a heart attack while deep sea fishing in Florida who was considered compensable because he had served as an active firefighter within two years of that heart attack, and it is these kinds of things which we feel there should be some onus on the employee to show that there is a connection to the workplace rather than an assumption that the workplace is at fault.

There may in fact be some fault in the workplace for such an incident, but the automatic presumption is one that the city has great difficulty with.

Mr. Chairman: Any more questions? Mr. Patterson.

Mr. Patterson: Thank you, Ms. Frame.

Hon. Edward Connerly (Minister responsible for The Workers Compensation Board): Ms. Frame, have you read the King Commission Report?

Ms. Frame: Yes, I have.

Mr. Connerly: Are you aware that in the King Commission Report it was recommended that there be a study of all occupational diseases in concert because of the changing workplace. This was a recommendation of the King Report that all occupational diseases be studied and this is what the board of commissioners is in the process of doing. Have you reviewed that at all.

Ms. Frame: I am aware of that, Mr. Minister, but it has been a while since I have reviewed the King Report. As an employer, we are following the outcome of that report, but I cannot speak of recent experience in looking into it. Perhaps Mr. Irvine can?

Mr. Connerly: There is also another book put out by Annalee Yassi, M.D. and it is occupational disease and worker's compensation in Ontario, and I wonder if other members of the committee have had a chance to peruse that? It is a very in-depth study, and one sentence that she has here, and of course you can take things out of context and people will say it is, but it says here a causal relationship is not considered established until it has been shown to exist scientifically. There is a lot of information in this on occupational disease. Of course this is why we asked the board of commissioners to study the whole occupational disease situation in context rather than band aiding.

* (1530)

The concern that we have as a Government—when you make a presumption for one group, how do you exclude others from having the same presumption? This is the difficulty that we have and this is why we asked the board of commissioners to review it and to come forth with the next package which is the benefits package for the next Session in context so that it is studied and it is a common thread through. Would you accept that sort of an approach?

Ms. Frame: In fact, we do concur with that approach. It was our understanding that the Workers Compensation Board was looking at the issue of industrially related diseases and was also looking at the necessity for a replacement for the firefighter regulation. That is exactly what we think should happen. The board should have opportunity to research and consider that and bring it forward in due course with an opportunity for consultation.

Mr. Connerly: Well, we recognize that the City of Winnipeg is impacted the most severely under it

Monday, March 12, 1990

because of the large number of firefighters. Other cities like Brandon, Portage and other small towns also are impacted to some degree. Has the board of commissioners had an opportunity to consult with you on this particular clause?

Ms. Frame: That being the board of commissioners for the Workers Compensation Board?

Mr. Connerly: Yes.

Ms. Frame: No, sir, they have not. We are not only concerned about the City of Winnipeg; we are concerned about firefighters who work for other employers in the province. We are also concerned about the spillover into other employers on non-firefighting issues, and that is why the chairman of the employers' task force is here today in support of the city's position on the regulation.

Mr. Connerly: I have been accused of not having enough consultation with people before bringing in Bills, and this is really the reason why we are not bringing it forward at this time. You do not have objection to the board of commissioners coming forward or something in the next benefit package if you have had an opportunity to have input along with the employers, the unions and the all of the other groups to bring forth a resolution to the problem that is satisfactory to all concerned?

Ms. Frame: Process-wise, we have no problem with that at all. We would of course reserve the right to come forward again and speak to individual issues that may be recommended.

Mr. Ashton: Yes, in that statement with a question at the end for confirmation, the Minister talked about the King Report. I know he had raised this question before. I think it is important to note for the record, and I will not ask it in the way of rhetorical question, but the court decision that came down in terms of the firefighters regulation came down in January, in fact, January 29, 1988, which was after the King Report which was released in May of 1987. I do not wish to leave any misunderstanding on the record. This arose after the King Report. In fact when the King Report was drafted, this was assumed to be part of the standard, the normal practice, in terms of Workers Compensation.

I apologize, Mr. Chairperson, for raising it this way, but I believe the Minister has perhaps been going a little beyond questions into debate, and I just want to make sure the record was clear.

Mr. Chairman: Any more questions to Ms. Frame in respect to her presentation? If not, we want to thank you for making your presentation this afternoon.

Ms. Frame: Thank you, Mr. Chairman.

Mr. Chairman: Thank you. One last time, any presenters to any of the Bills that were read out earlier? Seeing as we are finished with presentations, we shall

now proceed with consideration of the Bills. Did the committee wish to consider the Bills in a numerical order? Is that the will of the committee? Agreed.

Bill No. 56, did the Minister responsible have an opening statement?

Mr. Connerly: No.

Mr. Chairman: Did the critic from the official Opposition Party have any brief opening remarks? No. Did the critic from the Second Opposition Party have any brief opening remarks? Mr. Ashton.

Mr. Ashton: Mr. Chairperson, I most definitely do. I want to indicate to the committee that we will be moving a number of amendments to this Bill before committee, because as we indicated in the House, we believe it was a flawed Bill when it was introduced. We understand the Minister himself is recognizing this fact by the fact that amendments are being introduced in response to a number of the concerns that were expressed. We will be bringing in amendments that deal with some of the flaws as we see them, but I do not want to miss this opportunity to indicate that we believe that what is significant about this Bill is in as much what is not in it, as what is in it.

There are many reports of the King Report, the Legislative Review Committee, that was released in May, 1987; significant legislative provisions that have not been enacted by this Government. As I indicated, we recognize they have moved on some administrative items and this does deal with some of the legislative recommendations of the King Report.

We believe this Bill should have been the benefits package, as the Minister refers to it. We believe it is now some three years after the report was brought in. This Government has been in office for two years. Many of those recommendations that were brought in by the Legislative Review Committee were unanimously recommended by all three of the commissioners. We believe that the Minister has had the opportunity to deal with many of those important issues and we are very concerned. The fact that the needed reforms to Workers Compensation has now been once again delayed until the next Session—even at this point, even in March of 1990, we still have no indication of what form that may take.

Mr. Chairperson, we really believe that the time for studying the study is over. We believe that the blueprint is there for Workers Compensation reform in the forum of the Legislation Review Committee. I am not saying it is a perfect document, but when you can have any document that has 95 percent unanimity, I believe it is most definitely blueprint.

As we enter discussion on this Bill, I want to indicate we could very well have come into this committee with some very substantive amendments to Workers Compensation. I will indicate to the Minister that we very seriously considered, and not to say that amendments we are bringing in at this committee were not important, but we did not go that route largely because we felt that the Minister himself should have

Monday, March 12, 1990

been bringing in those types of amendments and should have done the work, the consultation, et cetera.

What we are going to be dealing with in terms of amendments or changes to this particular Bill—also in terms of firefighters, we are going to be introducing an amendment that would bring into legislation something that existed in regulation between 1966 and 1988. We have not gone that extra step, but it is not because we consider this to be a sufficient step in terms of Workers Compensation. We do not. We consider Bill 56, even with amendments that will correct the serious flaws that were in the original case, to be only a small step towards the very real need for Workers Compensation reform.

With those comments, Mr. Chairperson, I am pleased to get into clause-by-clause analysis.

Mr. Chairman: Thank you. As you did indicate you have some amendments. What I would like to ask the committee Members from both Opposition Parties, is if they would indicate to me on what clause their amendments are then we can go clauses in blocks which would expedite matters. Is it the will of the committee that you would do that, please?

Some Honourable Members: Agreed.

Mr. Chairman: Okay. Would the first Opposition Party indicate to me whether they have any amendments and which areas? Does any Party have any amendments to be made between 1 and 9 inclusive? Mr. Minister.

Mr. Connery: We have one in 1 Subsection (1).

Mr. Chairman: Clause 1.

Mr. Connery: I move

THAT the definition of “accident”—

Mr. Chairman: Have you circulated, Mr. Minister?

Mr. Connery: This, by the way, was asked for by both management and labour. It is going back to the original definition. I move:

THAT the definition of “accident” in Subsection 1(1) of the Act, as proposed in Section 2 of the Bill, be amended by deleting Subclauses (a)(iii) and (iv).

(French version)

Il est proposé que la définition d’ “accident”, figurant à l’article 2 du projet de loi, soit amendée par suppression des sous-alinéas a)(iii) et (iv).

I move it in both English and French.

Mr. Chairman: Moved by the Minister, shall the amendment to Clause 1 pass—pass. The amendment to Clause 1 passed. Shall Clause 1 as amended pass—Mr. Minister.

* (1540)

Mr. Connery: I move

THAT clause 1(3)(f) of the Act, as proposed in section 5 of the Bill, be deleted and the following substituted:

- (f) a person who
 - (i) ordinarily resides outside Canada;
 - (ii) is employed in the cartage trucking industry by an employer whose principal place of business is outside Canada; and
 - (iii) is temporarily working in or passing through the province.

(French version)

Il est proposé que l’alinéa 1(3)(f) de la Loi, figurant à l’article 5 du projet de loi soit remplacé par ce qui suit:

- f) une personne:
 - (i) dont la résidence habituelle se trouve à l’extérieur du Canada;
 - (ii) qui travaille dans l’industrie du camionnage pour un employeur dont l’établissement principal se trouve à l’extérieur du Canada;
 - (iii) travaille temporairement dans la province ou ne fait que la traverser.

I move them in both English and French.

Mr. Chairman: Shall this amendment pass? Mr. Minenko.

Mr. Mark Minenko (Seven Oaks): Why was this change necessary to the Bill?

Mr. Connery: This is in the trucking regulation just to ensure that it was only for the trucking industry. There was a concern that we would allow it to be too broad. It is specific to the trucking industry. These truckers are covered in their country of origin, basically the United States, and it created some problems for those truckers coming in. It is accepted by the labour side and management side. It is a clarification; it is a narrowing of the definition.

Mr. Minenko: Is this similar to other definitions in other jurisdictions?

Mr. Connery: It is similar to Alberta’s.

Mr. Chairman: Any more questions? Shall the amendment to Clause 1(3)(f) pass? Mr. Patterson.

Mr. Patterson: Mr. Chairman, with leave, may I ask the indulgence of the committee. I was speaking with Legislative Counsel and back on page 2—

Mr. Chairman: We are on Clause 1, Mr. Patterson, the first clause.

Mr. Patterson: On page 1?

Mr. Chairman: Yes. Page 1, Clause 1. Shall Clause 1, as amended pass?

Mr. Patterson: I am not clear, the—

Mr. Chairman: I am on page 1 of the Bill and Clause 1.

Mr. Minenko: Mr. Chairman, this amendment that the Minister proposes affects Section 5 of the Bill on page 5. Although it amends Section 1 of the legislation, it is really amending Section 5 of the Bill, just for your information.

Mr. Chairman: Thanks for drawing that to my attention. We will ask for Clause 1, as amended to be passed. This is not part of the amendment. Mr. Minenko.

Mr. Minenko: Clause 1, I presume the Chairman is referring to Clause 1 of the Bill.

Mr. Chairman: That is right.

Mr. Minenko: The amendment proposed by the Minister, which has just been read out and some questions followed, is Section 5.

Mr. Chairman: You are right, Mr. Minenko. We will introduce this at the time when we are at Section 5.

Shall Section 1 as amended pass—pass. Shall Clause 2 pass? -(interjection)- I understand the Liberals have an amendment to Section 2, am I correct? -(interjection)- I think we have made an error in this. Members of the committee, Clause 1, in our opinion, does not have an amendment, it is Clause 2. Am I correct, Section 2? If we could just revert back to Clause 1, it has no amendment. Shall Clause 1 pass—pass; Clause 1 with no amendments. Clause 2, that is the amendment that the Minister brought forward before. Shall the amendment to Clause 2 pass, which the Minister brought forward—Mr. Patterson.

Mr. Patterson: This is on the amendment.

Mr. Chairman: This is on the amendment. The amendment that the Minister brought forward, I will read the amendment:

Moved by the Honourable Mr. Connery

THAT the definition of “accident” in subsection 1(1) of the Act, as proposed in section 2 of the Bill, be amended by deleting subclauses (a)(iii) and (iv).

That is the amendment. This is the very first amendment that was handed out by the Minister. Shall that amendment pass? We are now on Clause 2 where this amendment should have been brought forward. That amendment is passed; Clause 2 as amended—Mr. Patterson.

Mr. Patterson: Thank you, Mr. Chairperson. I will finally get this paper straightened around here a little. I would move, seconded by the Member for Ellice (Ms. Gray)

THAT the definition of employer in clause 2(c) be amended by striking out Clause (a) and substituting the following:

a) a person (1) who has in service under contract for hiring or apprenticeship, written or oral, expressed or implied, a person engaged in work in or about an industry, or (2) who employs a person for more than 24 hours a week,

(a) in domestic service,

(b) as a sitter to attend primarily to the needs of a child who is a member of the household, or

(c) as a companion to attend primarily to the needs of a child who is a member of the household.

Mr. Connery: Mr. Patterson, were those amendments given to us prior to this? Did you forward those amendments to us to review them?

Mr. Patterson: I apologize, Mr. Minister. No, they were drafted late last week. I mentioned the rationale for this particular one. I do not have the Act itself before me, but under the—

Mr. Connery: I am disappointed, Mr. Chairman, because Members of the Opposition and all consulting groups had copies of our resolutions a long time in advance. They have had them for a week or 10 days to peruse and I ask that any amendments be brought forward so that our legal people could peruse them in the context of the total Bill. It makes it very difficult at committee stage from the Government side for the people to have to now review it in context of other clauses and it makes it very difficult to make sure we do not make a mistake somewhere in the Bill.

Mr. Chairman: Members of the committee, would it be—possibly I could recommend to Mr. Patterson at this time that we would just hold off on passing this clause and also this section until legal counsel will have been able to review this in its context of the Bill and later on at the next meeting or later on today for that matter, if they have checked it out, we could revert back to this clause which you are proposing to amend.

Mr. Patterson: That would be perfectly satisfactory, and I apologize.

Mr. Chairman: Is that the will of the committee? Agreed. We will come back to Mr. Patterson's amendment later on after we have had legal counsel review his amendment.

Mr. Patterson: I might add there is one other amendment in that same section. It will be Clause 2(e), it is at the top of page 3.

Mr. Chairman: Mr. Patterson, has legal counsel reviewed that one?

Mr. Patterson: No, the Minister has not had it. We have had them from legal counsel.

Mr. Chairman: I would suggest then—

* (1550)

Monday, March 12, 1990

Mr. Patterson: Leave them until later as well, with leave.

Mr. Chairman: Very good, Mr. Patterson. If you introduce it and circulate it—it is being circulated right now and then you maybe want to introduce it, read it into the records, and after that we will let legal counsel review it. We will carry on with the next clause.

Mr. Patterson: Mr. Chairperson, I move, seconded by the Member for Ellice (Ms. Gray),

THAT the definition of “worker” in clause 2(e) be amended by striking out clause (j) and substituting the following:

- (j) a person who is employed for more than 24 hours a week by the same employer
 - (i) in domestic service,
 - (ii) as a sitter to attend primarily to the needs of a child who is a member of the household, or
 - (iii) as a companion to attend primarily to the needs of a child who is a member of the household;

Mr. Chairman: You move that, Mr. Patterson, both in the English and the French?

Mr. Patterson: I am sorry, Mr. Chairperson, yes.

(French version)

Il est proposé que la définition d’“ouvrier”, figurant à l’alinéa 2e) soit amendée par substitution, à l’alinéa j), de ce qui suit:

- j) de la personne qui travaille pendant plus de 24 heures par semaine pour le même employeur:
 - (i) à titre de domestique,
 - (ii) à titre de gardien chargé principalement de pourvoir aux besoins d’un enfant qui est membre de la maisonnée,
 - (iii) à titre de compagnon chargé principalement de pourvoir aux besoins d’un enfant qui est membre de la maisonnée;

Mr. Chairman: Thank you, Mr. Patterson. If it is the will of the committee we will ask legal counsel to review that amendment as well, and we will come back to it later on, after they have ruled on it.

Clause 3—pass; Clause 4—pass.

Clause 5, shall Clause 5 pass—Mr. Minister.

Mr. Connery: In Clause 5, Mr. Chairman—

Mr. Chairman: Clause 5, Mr. Minister?

Mr. Connery: —is what I had read earlier, the trucking one comes under Clause 5. Do you want me to read the amendment again?

Mr. Chairman: Yes, Mr. Minister.

Mr. Connery: I move

THAT clause 1(3)(f) of the Act, as proposed in section 5 of the Bill, be deleted and the following substituted:

- (f) a person who
 - (i) ordinarily resides outside Canada;
 - (ii) is employed in the cartage trucking industry by an employer whose principal place of business is outside Canada; and
 - (iii) is temporarily working in or passing through the province.

I move it in English and French.

(French version)

Il est proposé que l’alinéa 1(3)f) de la Loi, figurant à l’article 5 du projet de loi soit remplacé par ce qui suit:

- f) une personne:
 - (i) dont la résidence habituelle se trouve à l’extérieur du Canada;
 - (ii) qui travaille dans l’industrie du camionnage pour un employeur dont l’établissement principal se trouve à l’extérieur du Canada;
 - (iii) travaille temporairement dans la province ou ne fait que la traverser.

Mr. Chairman: Is it the will of the committee to pass that amendment—pass. Mr. Patterson.

Mr. Patterson: Mr. Chairman, I have a third and final amendment in this clause. I move, seconded by the Member for Ellice (Ms. Gray), that section 5 be amended by adding the following clause after clause—

Mr. Chairman: Mr. Patterson, your motion is being distributed. Very good.

Mr. Patterson: Oh, I thought they were all distributed together. I am sorry.

Mr. Chairman: If you have any more they can be distributed well ahead of time. Feel free to give them to our legislative Clerk, and she will make sure that it is distributed in time. Okay, Mr. Patterson, please proceed.

Mr. Patterson: I move, seconded by the Member for Ellice (Ms. Gray),

THAT section 5 be amended by adding the following after clause (c):

- (c.1) by repealing clause (c);
- In both the English and French version.

(French version)

Il est proposé que l’article 5 soit amendé par insertion, après l’alinéa c), de ce qui suit:

c.1) par suppression de l'alinéa c);

Mr. Chairman: Moved by Mr. Patterson. Again, Mr. Patterson, would it be the will of the committee that we allow legal counsel to review this before we ask for the question? Mr. Ashton.

Mr. Ashton: I am wondering if the Members introducing amendments might also give a brief explanation of the intent.

Mr. Patterson: I thought we would leave that until the discussion, Mr. Chairperson.

Mr. Chairman: At the same time, if I just may add to it, by the request of Mr. Ashton, I think it could be quite valid because it would put on the record what legal counsel and everybody would be understanding, what the Member is trying to implement with the amendment. So, Mr. Patterson, if you would like to speak to your amendment on Clause 5. Is there an amendment on Clause 5?

Mr. Patterson: Well, we are now speaking about this most recent one I just proposed, Section 5. What is being removed, Mr. Chairperson, is Clause (c) under the heading, Restriction on the definition of worker.

Clause (c) refers to a person, I will just quote it here: A person employed in a private family home and paid by a member of that family, where the person is employed as a sitter to attend primarily to the needs of a child who is a member of the household or as a companion to attend primarily to the needs of an aged, infirm or ill member of the household.

Now under that particular clause, Mr. Chairman, there are many domestics who are largely from the Pacific Rim countries, but not necessarily so, who are here and employed more than the 24 hours in private homes. Their duties are really twofold, both as a sitter or a tenant or whatever to a child or an aged or infirm individual, such as mentioned here, but as well they do a very, very significant amount of domestic duties.

We might reasonably speculate that if a time study were done on the work that they perform in the course of a week, possibly a good majority of it—certainly something more than 50 percent—would be domestic duties. So these amendments, and some of the earlier ones I mentioned, are to define those people into coverage instead of being under the restriction, so that they must work for more than 24 hours a week by the same employer, either in domestic service fully or as a sitter to attend to the needs of a child or as a companion primarily to attend the needs of a child who is a member of the household.

So this would give coverage to those, really, full-time workers.

Mr. Connery: I would like to ask the Member what consultation he has had with various groups. Does he know what kind of numbers we are talking about? What are the cost implications? Does he have any idea of the administration to the Workers Compensation? What research has the Liberal Caucus office done to substantiate this resolution?

Mr. Patterson: Mr. Chairman, we have had representations. One of our Members has, the Member for Inkster (Mr. Lamoureux), I should state, and the Member for Ellice (Ms. Gray), who have many, many constituents of this nature and have made representations to them.

The numbers are not high. They are people who are working probably a good 40 hours or more a week. Their duties are mixed. You might speculate that the major reason the family brought them over, took them on in the first place, was, say, to look after some children.

Nevertheless, that is only part of their work. They spend a very, very considerable part of their day in doing ordinary domestic work, but they have been excluded because they were—the primary impetus to bring them over would be as “a sitter,” we might say.

Mr. Connery: Have you consulted with any of the employers of these people to see what the implications are and the problems that will be involved?

* (1600)

Mr. Patterson: Mr. Chairperson, no, the employers are all individual households, and to that extent they are no different. Under the Act, as it exists, any domestic who spends more than 24 hours a week with the same employer, is covered. How do you find those employers? They are just individual households—could be you or me or anybody here. It is not an organization which employs dozens or hundreds of workers. It is the organization of the workers that has come to us.

Mr. Connery: Has the Member given any consideration as to how the Workers Compensation would find out who all of these employers are?

Mr. Patterson: Mr. Chairman, in exactly the same way as Workers Compensation finds out those domestic workers who work more than 24 hours a week now and are covered by the Act.

Mr. Chairman: Okay, if there is no more discussion in this amendment then we will have legal counsel review this amendment, Mr. Patterson, and we will deal with it later on, after legal counsel has reviewed it.

So we will go to Clause No. 6. Shall Clause No. 6 pass? Clause 6? Clause 7—shall Clause 7 pass—Mr. Minister. I am sorry, Mr. Minenko, were you on Clause 6? Yes, Mr. Minenko.

Mr. Minenko: I was just once again reviewing 1(7), period of employment for casual emergency workers, and the definition of when the Act may be applicable. I am just wondering if the Minister could advise us that in 1(7)(a)—

Mr. Chairman: Mr. Minenko, do you have an amendment to that?

Mr. Minenko: No, I do not. I am asking the Minister a question on that.

Mr. Connery: What is your question?

Mr. Minenko: I was wondering if the Minister could advise us—

Mr. Connery: Would you speak into your mike, please? My tractor ears give me trouble hearing.

Mr. Minenko: If it was any closer I would be sitting on it, I think.

In 1(7)(a), where it defines the completion of presumably when the Act will no longer apply to the casual emergency worker, is it the Minister's opinion that this is indeed sufficient type of coverage "or to any place for treatment, refreshment or recreation," at the end of 1(7)(a)?

Mr. Connery: This is the same as the existing Act. There is no change.

Mr. Chairman: Mr. Minister.

Mr. Connery: I said, it is the same as in the existing Act.

Mr. Chairman: Any more questions?

Mr. Connery: It is in the definition.

Mr. Chairman: Clause 6—pass. Shall Clause 7 pass—Mr. Minister.

Mr. Connery: No, Clause 7 shall be deleted. I move THAT the Bill be amended by deleting section 7.

(French version)

Il est proposé que le projet de loi soit amendé par suppression de l'article 7.

I move that it be deleted and in English and in French. This was requested by the industry and by the labour side.

Mr. Chairman: The amendment to Clause 7 has been brought forward by the Minister. It is a deletion. Is it the will of the committee to pass the amendment? Agreed. So Clause 7, as amended, which deletes it is passed. Is the committee in agreement to pass the amendment, which deletes Clause 7? Passed. Clause 8—does anyone have an amendment on that page, from Clauses 8 to 15? Clause 8—pass; clause 9—pass.

Clause 10—Mr. Ashton.

Mr. Ashton: Yes, I have an amendment. I move that the following be added after section 10—

Mr. Chairman: Mr. Ashton, is it being distributed?

Mr. Ashton: It is being distributed I believe. Once again, I move

THAT the following be added after section 10:

Section 4.1 added

10.1 The following is added after section 4:

Definition

4.1(1) In this section, "fire fighter" means a full time member of a professional fire fighting department.

Presumption relating to heart injury

4.1(2) An injury to a fire fighter shall be presumed, unless the contrary is shown, to arise out of and in the course of employment as a fire fighter, where

- (a) the fire fighter suffers an injury to the heart and is so diagnosed by a duly qualified medical practitioner;
- (b) the fire fighter has been in continuous service as a fire fighter during the 2 years preceding the injury; and
- (c) the fire fighter, on or before beginning service as a fire fighter, has undergone a physical examination required by the fire fighting department of which he or she is a member that included an examination of the circulatory system, and was, in light of the physical examination, approved for service as a fire fighter.

Recovery from heart injury

4.1(3) A fire fighter who suffers an injury to the heart and who is medically certified to be fit for return to service as a fire fighter is, in the case of a later injury to the heart, entitled to the benefit of subsection (2).

Presumption relating to other types of injuries

4.1(4) Where a fire fighter suffers an injury to his or her lungs, brain or kidneys, the injury shall be presumed, unless the contrary is shown, to arise out of and in the course of the employment as a fire fighter, resulting from the inhalation of smoke, gas or fumes.

Presumption relating to carbon monoxide

4.1(5) Where a fire fighter suffers disability by reason of the inhalation of carbon monoxide, the disability shall be presumed, unless the contrary is shown, to be caused by an injury arising out of and in the course of employment as a fire fighter.

Deemed date of accident

4.1(6) Where a fire fighter is disabled by reason of inhalation of carbon monoxide, or by reason an injury to his or her lungs, brain or kidneys that results from the inhalation of smoke, gas or fumes, the date of the beginning of the disability is deemed to be the date of the accident that causes the disability.

(French version)

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 10, de ce qui suit:

Adjonction de l'article 4.1

10.1 La Loi est modifiée par adjonction, après l'article 4, de ce qui suit:

Définition

4.1(1) Pour l'application du présent article, le terme "pompiers" s'entend de tout membre à plein temps d'un service d'incendies.

Présomption

4.1(2) Toute lésion que subit un pompier est présumée, sauf preuve du contraire, survenir du fait et au cours de son emploi si, à la fois:

- a) le pompier subit une lésion au coeur qui est diagnostiquée par un médecin;
- b) le pompier exercé son emploi de façon continue pendant la période de deux ans qui a précédé la date à laquelle il a subi la lésion;
- c) le pompier s'est soumis, au plus tard au début de son emploi, à l'examen exigé par le service des incendies, cet examen comprenant un examen du système circulatoire, et il a été jugé apte à exercer son emploi.

Rétablissement

4.1(3) Peut se prévaloir de paragraphe (2) le pompier qui subit une lésion au coeur et qui, après avoir été déclaré en état de reprendre son travail par un médecin, subit une autre lésion au coeur.

Présomption concernant les autres types de lésions

4.1(4) Le pompier qui subit une lésion aux poumons, au cerveau ou aux reins est présumé, sauf preuve contraire, avoir subi cette lésion du fait et au cours de son emploi par suite d'une inhalation de fumée, de gaz ou de vapeurs.

Présomption concernant l'oxyde de carbone

4.1(5) Le pompier qui subit une incapacité en raison d'une inhalation d'oxyde de carbone est présumé, sauf preuve contraire, avoir subi cette incapacité par suite d'une lésion survenue du fait et au cours de son emploi.

Date réputée de l'accident

4.1(6) Le pompier qui subit une incapacité en raison d'une inhalation d'oxyde de carbone ou en raison d'une lésion aux poumons, au cerveau ou aux reins découlant d'une inhalation de fumée, de gaz ou de vapeurs est réputé avoir subi l'incapacité à la date de l'accident qui a entraîné cette incapacité.

Mr. Chairman: Mr. Ashton, you are moving that in respect to both the English and the French version?

Mr. Ashton: That is correct.

Mr. Chairman: Bill No. 56 does not deal with professional firefighters or with presumptions or proof of claim. The proposed amendment goes beyond the Bill's dealings with firefighters and it singles them out for special and unusual treatment, and that would be unique in the Act. In my opinion, the proposed amendment is beyond the scope of the Bill and is therefore ruled out of order. Mr. Ashton.

Mr. Ashton: Mr. Chairperson, I looked at the Act. This is not a new matter. It relates to a regulation that had

been in place for more than 20 years in this province, and with all due respect I challenge your ruling.

Mr. Chairman: The ayes and nays. The ruling of the Chair has been challenged. All those in favour of upholding the ruling of the Chair say aye. Those opposed, nay. The ayes have it. Mr. Ashton.

Mr. Ashton: Mr. Chairperson, I would ask for a counted vote, please.

Mr. Chairman: All those in favour of the ruling, please raise your hand. Four in favour of the ruling. All those opposed to the ruling, please raise your hand. Minenko, are you a Member of the committee? Minenko, you cannot vote. You know whether you are on the committee or not.

An Honourable Member: He is not on the committee.

Mr. Chairman: He is not on the committee. Four and four.

An Honourable Member: Okay, the Chairperson casts a vote and rules it.

Mr. Chairman: I rule that I am naturally in favour of this. Mr. Ashton.

* (1610)

Mr. Ashton: Mr. Chairperson, I just want to indicate that we will be moving this again at report stage. It is unfortunate there was a mix up in terms of who is on the committee and who is not part of the Liberal Caucus -(interjection)-.

An Honourable Member: There was no mix up.

Mr. Ashton: Mr. Chairman, the Member for Seven Oaks (Mr. Minenko) had thought he was on the committee, was not. What I am saying is, we will be moving this again at report stage. Our two Members were here and voted and will continue to fight for the firefighters of this province.

Mr. Chairman: Very good, Mr. Ashton. Thank you for those comments. Clause 11—shall Clause 11 pass? Mr. Minenko.

Mr. Minenko: Pass.

Mr. Chairman: Clause 11—pass.

Clause 12—pass, Clause 12—Mr. Plohman on a point of order.

Mr. John Plohman (Dauphin): Yes, just for clarification for the committee. Could you read into the record the names of those Members who are officially Members of this committee at this time? I think it is necessary to know that, so we know who can vote and who cannot on this committee?

Mr. Chairman: Who can vote and who cannot? Okay, the Members on this committee are: Mr. Ashton, Mr.

Monday, March 12, 1990

Burrell, the Honourable Mr. Connery, Mr. Edwards, Ms. Gray, Mr. Findlay, Mr. Mandrake, myself - Pankratz, Mr. Patterson, Mr. Plohman and Mr. Praznik.

Clause 12 was passed. Clause 13—pass; Clause 14—Mr. Minister.

Mr. Connery: I move

THAT the Bill be amended by deleting Section 14.

This was agreed to by both management and labour in consultation. I move it in English and French.

(French version)

Il est proposé que le projet de loi soit amendé par suppression de l'article 14.

Mr. Chairman: Is it the will of the committee to pass that amendment—(Pass) Clause 14 is then deleted and all in favour of that amendment? Agreed.

Clause 15, shall Clause 15—

Mr. Connery: I move, and this is under Clause 15— I move

THAT subsection 18(4) of the Act, as proposed in subsection 15 of the Bill, be amended by deleting “, unless excused by the board on the ground that the report for some sufficient reason could not be made,”.

I would move that in English and French.

(French version)

Il est proposé que le paragraphe 18(4) de la Loi, figurant à l'article 15 du projet de loi, soit amendé par suppression de “, à moins que la Commission n'excuse son omission au motif que le rapport n'aurait pu, pour une raison valable, être fait”.

Mr. Chairman: Shall the amendment pass to Clause 15—pass; Shall Clause 15 as amended pass—pass; Clause 16—pass; Clause 17—pass; Clause 18—pass; Clause 19—pass; Clause 20—pass; Clause 21—pass; Clause 22—Mr. Minister.

Mr. Connery: I move

THAT subsection 27(1.1) of the Act, as proposed in section 22 of the Bill, be amended by deleting “or for time lost from employment, or both, owing to the accident” and substituting “as a result of the accident”.

I move it in English and French.

(French version)

Il est proposé que le paragraphe 27(1.1) de la Loi, figurant à l'article 22 du projet de loi, soit amendé par suppression de “et du temps d'emploi perdu”.

Mr. Chairman: The amendment moved by the Minister, shall the amendment to Clause 22 pass?—Mr. Plohman is asking the Minister to explain. Mr. McKinnon.

Mr. Gordon McKinnon (Legal Counsel, The Workers Compensation Board): Quite simply, the wording in

this section was not carefully reviewed. That was not intended in the first instance. The intention of this is to provide financial support to families to take the families to the hospital side in case of serious accidents. It was not intended to provide wage loss benefits to non-workers.

Mr. Connery: It is a major improvement to the Bill and been recognized by the labour component that it is a major improvement and an assistance to those—If you are up in Thompson, we can fly the immediate family with no cost to them to Winnipeg, if need be. So it is to get the immediate next of kin to the injured worker.

Mr. Chairman: Shall the amendment to Clause 22 pass? The amendment to Clause 22 passed. Clause 22 as amended—pass.

Clause 23—Mr. Minister.

Mr. Connery: I move

THAT subsection 27(11) of the Act, as proposed in section 23 of the Bill, be amended by deleting “doctor's” and substituting “medical”.

(French version)

Il est proposé que le paragraphe 27(11) de la version anglaise de la Loi, figurant à l'article 23 du projet de loi, soit amendé par substitution, à “doctor's”, de “medical”.

Mr. Chairman: Shall that amendment pass—(pass). Shall that amendment to Clause 22 as amended pass—(pass). Mr. Ashton.

Mr. Ashton: I just once again reiterate my suggestion that on all the amendments we just have a brief explanation so the intent is clear.

Mr. McKinnon: It was viewed as too narrow to only include doctors' reports. The intention here is to have reports from therapists and other non-physicians, as well.

Mr. Chairman: Any more questions? If not, shall Clause 23 as amended pass—pass.

Clause 24—Mr. Minister.

Mr. Connery: I move

THAT section 24 of the Bill be deleted.

(French version)

Il est proposé que l'article 24 du projet de loi soit supprimé.

Mr. Chairman: Amendment to Clause 24 that Section 24 of the Bill be deleted, is it the will of the committee to pass this amendment? Mr. Minister.

Mr. Connery: This was a concern from labour that ambulances would not be paid. It was a labour request, and we accommodated them.

Mr. Chairman: Shall the amendment pass—pass; Clause 25—I am going to ask Members on the committee whether there is—the next amendment that the Minister has is in Clause 34, can all clauses until 33 inclusive pass? Mr. Minenko.

Mr. Minenko: I have questions on some of them.

Mr. Chairman: We will go clause by clause. Shall Clause 25 pass—pass; Clause 26—pass.

Clause 27—Mr. Minenko.

Mr. Minenko: On 27, my question to the Minister is: There is a change by striking out 16 days and substituting 18, I am just wondering whether the Minister could advise us—

An Honourable Member: Years.

Mr. Minenko: —16 years, sorry, 16 years and substituting 18 years. Can the Minister advise us?

Mr. Connery: It is extending the age for coverage to age 18 from 16. It is a move in the common thread, and it is one that is appropriate. It is extending for youth up till 18 instead of 16. It is an improvement to the Bill.

Mr. Chairman: Any more questions? Shall Clause 27 pass—pass; Clause 28—pass; Clause 29—pass; Clause 30—pass; Clause 31—pass; Clause 32—pass; Clause 33—pass.

Clause 34—Mr. Minister.

Mr. Connery: I move

THAT section 50.1 of the Act, as proposed in section 34 of the Bill, be amended

- (a) by striking out “solicit and may consider nominations” and substituting “consult with”;
- (b) by striking out “from” after “(a)” and after “(b)”.

(French version)

Il est proposé que l'article 50.1 de la Loi, figurant à l'article 34 du projet de loi, soit remplacé par ce qui suit:

Consultation concernant les nominations

50.1 Afin d'effectuer les nominations prévues aux paragraphes 50.2(1) et 60.2(1), le lieutenant-gouverneur en conseil consulte:

- a) les personnes auprès de qui des cotisations sont prélevées en vertu de la présente partie en ce qui concerne la nomination de personnes représentant le point de vue des employeurs;
- b) les ouvriers qui travaillent dans des industries visées par la présente partie en ce qui concerne la nomination de personnes représentant le point de vue des ouvriers.

Mr. Chairman: An amendment to Section 33, shall - (interjection)-

Mr. Connery: Consulting is a broader term, basically—

Mr. Chairman: Clause 34, my correction. Clause 34, the amendment that the Minister brought forward, shall the amendment pass? Mr. Ashton.

Mr. Ashton: Once again, I note the Minister is attempting to put on the record the explanation of the costs.

Mr. Connery: It is just a broader term for us to consult with. This was never in legislation before, and this is the first time that we are enshrining in legislation that we must consult with.

Mr. Chairman: Shall the amendment to Clause 34 pass—Mr. Ashton.

Mr. Ashton: Yes, I was willing to pass. I have another amendment to 34.

Mr. Chairman: To 34—the amendment brought forward by the Minister, shall the amendment pass—pass. Mr. Ashton.

Mr. Ashton: I move

THAT section 34 be amended by striking out clause 50.2(1)(d) and substituting the following:

- (d) three members representative of the public interest who are acceptable to the representatives of workers and employers.

* (1620)

(French version)

Il est proposé que l'article 34 soit amendé par substitution, à l'alinéa 50.2(1)d, de ce qui suit:

- d) de trois membres représentant le point de vue du public qui conviennent aux représentants du point de vue des ouvriers et des employeurs.

Mr. Chairman: Mr. Ashton, do you move that in the English and the French version?

Mr. Ashton: I move that in both English and French.

Mr. Chairman: It has been moved by Mr. Ashton that Section 34 be amended by striking out Clause 50.2(1)(d) and substituting the following: (d) three members representative of the public interest who are acceptable to the representatives of workers and employers. Mr. Ashton.

Mr. Ashton: This is just as an explanation. This is one of the points that once again was made by both the employer and employee organizations, in that being the concern to ensure the individuals who are appointed for the public interest are individuals acceptable to the stakeholders in listening to both presentations by

Monday, March 12, 1990

employers and by employees. We are introducing this amendment to achieve that in legislation.

Mr. Chairman: In order that we put our time to the best use, would it also be a proposal that we take this amendment and have legal counsel review them and be able to get back to it later on when we have a ruling on the amendment? Mr. Ashton.

Mr. Ashton: Mr. Chairperson, I am a bit confused here. This has been drafted by legal counsel, copies have been made available to the Minister and to the Liberal Critic. I am not sure what the ruling would be.

Mr. Chairman: I was not aware of that. Thank you, Mr. Ashton. Mr. McKinnon.

Mr. McKinnon: There is just some confusion here. The Government had intended to propose an amendment similar to the one just proposed by the NDP. I see it in the draft prepared by Legislative Counsel as referencing to Section 36 instead of 34 of the Bill. I would just like a minute to see how that confusion arose.

Mr. Chairman: Section 34 is on hold. Mr. Plohman.

Mr. Plohman: Mr. Chairman, I would suggest that as soon as the explanation is found we return back to this clause and not leave it to the end of the Bill.

Mr. Chairman: Very good, Mr. Plohman, we will try to do that. Clause 35, shall Clause 35—Mr. McKinnon.

Mr. McKinnon: We have not clarified the error. The handout—sorry, we need a minute.

Mr. Chairman: If it is the will of the committee, then we will come back to Clause 34 a little later on when this has been reviewed. So we will leave 34—Mr. Ashton.

Mr. Ashton: On a point of order, it has come to—

Mr. Chairman: On a point of order, Mr. Ashton.

Mr. Ashton: Yes, Mr. Chairperson, it has come to my attention there was an error in terms of the records of this committee as to who was a Member of this committee. A substitution was made at three o'clock by the Liberal Whip apparently, which did put the Member for Seven Oaks (Mr. Minenko) on the committee.

There may have been an error in terms of the House not communicating that to this committee, but Mr. Minenko was apparently a bona fide Member of this committee. So I would, in light of that error, ask for another vote, a further vote, in terms of the section that had been moved by myself, the amendment in regard to firefighters.

Mr. Chairman: Mr. Ashton, I think for clarification, this committee started proceedings at three, and this

change was made at 3:15, I have been told. So this would be after this committee has been in Session. Mr. Ashton.

Mr. Ashton: Well, Mr. Chairperson, we are in a unique situation here because leave has been given by the Opposition Parties to even have this particular sitting, and I think if you will check any precedence, any analysis of this, a committee substitution becomes valid at the point it is made in the House. So in other words, Mr. Minenko was a Member of this committee as of 3:15. You may wish to check the records on when the vote was taken, but I think you will find it was taken well after that, so I am asking, and once again this has arisen because leave was given by the Opposition to allow what normally would not take place.

Normally, we do not have committee meetings while the House is in Session, but whether this was communicated to this committee or not, the fact is that Mr. Minenko was a Member of this committee and I would ask once again that we revert to the amendment that I had introduced in light of that error. I believe the vote was invalid and that we have a further vote which reflects the wishes of the official Members of this committee.

Hon. Glen Findlay (Minister of Agriculture): Mr. Chairman, I believe that you did the appropriate thing, you had the membership in front of you as it was given to you at the beginning of the meeting. I believe that I cannot recall at any time that a committee changes membership during the sitting of the committee, and I think that is the appropriate way, and we can get on with the business of this Bill.

Mr. Parker Burrell (Swan River): Well, you should leave this until the end of the—and come back to it because then that will give the staff a chance to research it.

An Honourable Member: There is nothing to research.

Mr. Burrell: Well, they would have to establish the time for sure, and to see what other precedents there are.

Mr. Plohman: Mr. Chairman, we are clearly dealing with the privileges of a Member of this House sitting at this committee who was a bona fide Member of this committee at the time the vote took place and who is now not being allowed, because of a technicality and a failure in breakdown of communications, to cast his vote, which he has a right to cast as a Member of this committee.

It has been demonstrated clearly that he was a Member as of that particular time. The change had been made prior to the vote taking place, but it had not been communicated. Therefore, we should automatically go back to that position, have that vote again. In view of this information, that is the only respectful way to treat the situation dealing with a Member of this committee and the privileges of that Member.

* {1630}

I do not see any alternative that you have, Mr. Chairman, but to go back and have that vote again,

regardless of the consequences. You cannot hide behind technicalities. You may lose the vote, you may not, but you cannot try to ram it through on the basis of a technicality, in improper record keeping or communication that took place.

Mr. Chairman: Mr Plohman, you are finished? Mr. Praznik.

Mr. Praznik: Mr. Chair, you know one fully appreciates that Mr. Minenko's membership of this committee at 3:15 was confirmed by the House, but if committees are to operate with some sense of rule and some sense of propriety and be able to carry out its functions, those changes by the House, when committees in the House are sitting at the same time, should be and must be communicated to the committee in order for that to happen. As we sit here and deal with legislation, if one just accepts the premise that the change taking place in the House without communication is fine, then all of us can have our mandates of this committee removed by the House and continue to function here without even knowing it.

I think in terms of precedent, it has to be very clear that when a change is made in the House while a committee is sitting concurrently, it only makes common sense that is not effective until it is communicated to the Chair of the committee. If we accept any other premise than that in dealing with this, then we can have changes going on in this committee or being made in the House while a committee is sitting and the committee may not have any mandate whatsoever.

Mr. Ashton: First of all, the change was made officially. Second of all, if there was any error it is in terms of the communication to this committee. I am not blaming staff of this committee, I am not even really blaming the staff of this House in general because we are in an unusual situation. By leave of the Opposition we are sitting in an afternoon to expedite our business, and we are doing it at the time when the House is sitting. That strains the staff. What we have is a straightforward error, not on the part of the—in this case—Liberals, not on the part of the New Democratic Party or the Conservatives, but an error in terms of communication from the House staff which is totally explainable.

Now as to when changes are official, in terms of who is on a committee and who is not, it is clearly the House that decides it. It was moved and accepted by the House. It was a motion of the House, so there is no question that the substitution was official in my mind. All that has happened is an error in communication.

What I am asking in a co-operative spirit here, because let us not forget we are sitting this afternoon because of the co-operation of both Opposition Parties. We gave leave; something we did not have to do. What I am suggesting in the same spirit of co-operation is that we go back to that clause and have a vote of the legitimate Members of this committee who are on this committee. I believe in the spirit of co-operation that is essential. Because quite frankly if this can happen in this particular case, I know our caucus is going to

be very reluctant to give leave, for example, as we have done for tonight and as has been talked about for tomorrow afternoon when we are sitting.

If a motion of the House to make a change to a committee does not have an impact while the committees are sitting, if we are going to run into this situation because we are short of staff, the ultimate conclusion, if the Government Members on this committee do not want to be co-operative as the Opposition has not been, is that we will not have afternoon sitting meetings or evening sitting meetings when the House is in Session. I do not believe that is what we wish to achieve.

I would urge you, Mr. Chairperson, to go back to the clause, indicate that there was an error to this committee, that in fact Mr. Minenko was a Member of this committee, that we have the vote and determine what the true will of the official Members of this committee, how the firefighters amendment should be dealt with.

Mr. Patterson: Mr. Chairperson, I would like to support the comments of Messrs. Plohman and Ashton. This meeting is by leave of the Opposition Parties and the House is in Session. It is difficult. We have two committees running right now, and we all have to man the committees themselves and also maintain our presence in the House. So these arrangements were made. Our Whip and the other Opposition Whip would have known this morning who they were going to put on the committees and, certainly, Mr. Minenko was—that arrangement was made. The Whip does not have the opportunity to put it on record, in the House, until the proper point on the order paper.

Mr. Praznik implied if this is allowed that some how or other there will be a shuffling of people on and off committees, while they are operating, somewhat as a routine manner. It is very exceptional, Mr. Chairperson, and I firmly think Mr. Minenko was a duly appointed Member of the committee.

Mr. Chairman: One point I would want to make as Chairman of this committee, that if a change has been made anywhere and I have not been made aware of it, that it is very difficult to recognize people as Members. I think you are putting the decision on me as Chairman at this point in time, which I am supposed to do. I would wish basically that we would let our House Leaders decide and we would carry on with the Bill, because the point is this, we can now get into a time frame whereby we do not know what time this change has been made technically in the House. We do not know what time this amendment was defeated in our committee. I think we are running into quite a few questionable areas and at that point in time, as far as I as Chairman am concerned, I allowed those people to vote that were Members on my record.

I think it is the responsibility of the Member, that has his change made, that he notifies the Chair and if he does not take any responsibility of that nature whatsoever, in my opinion I have a problem allowing us to go back. For that reason, I would wish the committee would at this point in time allow this to stay

on the record and we would let the House Leaders decide and later on, maybe in the evening, when we come back, then the House Leaders will have made a decision possibly how to handle this at that point in time. Mr. Ashton.

Mr. Ashton: Mr. Chairperson, first of all it is not the responsibility of the Member moving a motion in the House to advise committees of changes. The responsibility of Members moving a motion in the House is to move the motion, provide it to the Page; it is then put in the official records of the House.

What has happened here is a straightforward case, not of any fault in terms of the staff, but we do not have the staff to deal with this unusual situation. It is a very difficult situation for the staff because we do not normally sit in two committees and in the House concurrently. This is arisen, obviously, because of the fact there was not sufficient staff.

I do not understand what the difficulty is on Members of the Government—the only reason we are here is because the Opposition has been co-operative in terms of having that vote again, Mr. Chairperson. I want to stress once again, this official change was made in the House. If it was not communicated to this committee, it is no fault of the Member for Inkster (Mr. Lamoureux) any more than it would have been no fault of my own, if changes I had made in the House were not communicated to this committee. That is not the responsibility of Members; the responsibility of Members is to move it in the House.

I would once again urge—particularly the Government Members. We are here through the co-operation of the Opposition. I would ask for the Government Members to be co-operative on this as well and have a vote which reflects the will of the committee. Clearly, it is a very important matter, it is very important to the firefighters of the province. If we had the official records, then Mr. Minenko had been recognized as a Member of this committee and if he had voted with his caucus, as I am sure he would have, what would have happened is, the amendment we would have introduced in terms of firefighters would have passed.

It is a very important matter to people in this province, Mr. Chairperson. I do not want to get to the point of having to adjourn this committee until we can discuss this as House Leaders. I do not know why the Members of the committee cannot do that. I can indicate that I will be telling the House Leader, from our caucus, as House Leader for the New Democratic Party, that we expect co-operation where co-operation is given.

In this case, what we expect is an error was made through no fault of any Member of this committee or really in terms of the staff. All we are asking is that error be corrected, Mr. Chairperson.

Mr. Chairman: Mr. Plohman. Another change possibly. Mr. Plohman.

Mr. Plohman: Mr. Chairman, may I point out to you that at quarter after three we were considering—we were hearing the presentation of the City of Winnipeg.

There is no doubt about that, we do not have to be treated like fools here. We know that was happening, the amendment took place after that.

The change in the committee took place after that, at 3:15, an amendment took place after that. Do not tie them to that technicality, Mr. Chairman.

* (1640)

Mr. Chairman: I would like to ask the committee that this could be reviewed actually by the House Leaders, and that when we come back in the evening in that regard at eight o'clock prior to going into the Bill that we would then have a ruling on this, and then would be able to decide on it or vote on this as to how to proceed. I would wish that we would, in order to expedite matters, be able to carry on with this, that this has been raised by Mr. Ashton and all Members here and that it would be then dealt with first thing at eight o'clock in the evening when we reconvene. Mr. Ashton.

Mr. Ashton: On a point of order, Mr. Chairperson.

Mr. Chairman: On a point of order.

Mr. Ashton: I am just wondering, and I am not sure if that is a ruling, but I would like to ask what we do in this committee now? We have other amendments coming up. What list are we going to use? The old list? The new list? The list as of 3:15? I mean, Mr. Chairperson, I do not know how we can deal with other amendments at this time if there is any doubt whatsoever as to what is the official list of the committee. Also I suggest that the question as to the validity of other amendments is also being called into question as well, because every amendment that was put to a vote after Section 10 now I think has been called into question.

I just want to indicate that there have been court cases, including in Ontario, Mr. Chairperson, as I understand it, where errors in the Committee of the Legislature were used to strike down legislation because proper procedure was not followed. I would suggest, Mr. Chairperson, if you do wish to come back in this afternoon, the issue is not just in terms of firefighters but every single amendment after that point. In addition to that I would suggest that we are really wasting our time for the next 15 minutes because I am not sure which committee list we are going to be dealing with.

I would suggest, since we are only 15 minutes away from five o'clock, that we adjourn until you can come back in tonight with a ruling on that, so that we do not end up passing any more amendments or defeating more amendments which could potentially be ruled out of order.

Mr. Chairman: One last final comment that I would just like to make on this before I ask whether it is the will of the committee to adjourn and that is, I think you are raising a very valid point. If I, as Chairman, cannot

Monday, March 12, 1990

go by the list that is given to me, before me, then how many Members have been changed in the meantime? I think you are raising a very valid point and that is why it is so important that we ask the House Leaders

to review this and come back with a ruling. Committee rise? Committee rise.

COMMITTEE ROSE AT: 4:46 p.m.