



Third Session - Thirty-Fifth Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

39-40 Elizabeth II

*Chairperson
Mrs. Louise Dacquay
Constituency of Seine River*



VOL. XLI No. 2 - 10 a.m., THURSDAY, MAY 14, 1992



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

Members, Constituencies and Political Affiliation

NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHEEMA, Gulzar	The Maples	Liberal
CHOMIAK, Dave	Kildonan	NDP
CONNERY, Edward	Portage la Prairie	PC
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Clif	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Wolseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
HARPER, Elijah	Rupertsland	NDP
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCRAE, James, Hon.	Brandon West	PC
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MITCHELSON, Bonnie, Hon.	River East	PC
NEUFELD, Harold	Rossmere	PC
ORCHARD, Donald, Hon.	Pembina	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
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WOWCHUK, Rosann	Swan River	NDP

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

Thursday, May 14, 1992

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mrs. Louise Dacquay (Seine River)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Messrs. Enns, McCrae, Orchard

Ms. Barrett, Mr. Chomiak, Mrs. Dacquay,
Messrs. Lamoureux, McAlpine, Reimer,
Sveinson

APPEARING:

Ms. Irene A. Hamilton, Public Trustee, Justice

MATTERS UNDER DISCUSSION:

Bill 6—The Denturists Amendment Act

Bill 38—The Manitoba Evidence Amendment Act

Bill 48—The Personal Property Security Amendment Act

Bill 68—The Public Trustee Amendment, Trustee Amendment and Child and Family Services Amendment Act

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Madam Chairperson: Will the Standing Committee on Law Amendments please come to order. This morning the committee will be considering four bills: Bill 6, The Denturists Amendment Act; Bill 38, The Manitoba Evidence Amendment Act; Bill 48, The Personal Property Security Amendment Act; and Bill 68, The Public Trustee Amendment, Trustee Amendment and Child and Family Services Amendment Act.

I would like to advise the committee that we have not received any advance registrations of persons wishing to speak to any of the bills. At this time I would canvass the audience and ask if there are any individuals present who are interested in making a presentation to any of the bills that are before the committee this morning? No?

Seeing no presenters, we shall proceed with consideration of the bills. Is it the will of the committee to consider the bills in numerical order? Agreed? Agreed and so ordered.

Bill 6—The Denturists Amendment Act

Madam Chairperson: Does the honourable Minister of Health wish to make any opening statements?

Hon. Donald Orchard (Minister of Health): Madam Chairperson, I think there is consensus in the House and in the Legislature that the intent of the amendment to The Denturists Act is to bring it consistent with other professional acts where the association themselves undertake disciplinary action.

The tradition has been that the Minister of Health had that role and I think there is general agreement that that is inappropriate. This legislation corrects that and vests the responsibility for bringing forward disciplinary action with the board of the Manitoba Denturist Association.

Madam Chairperson: I thank the honourable minister. Do either of the critics wish to make any opening remarks? Okay, then we will proceed to consider the bill clause by clause.

Is it the will of the committee to have the Chair group the clauses when calling the clauses? Agreed.

I just want to remind the committee, the title and preamble of course will be postponed and dealt with after all the clauses have been agreed to by the committee.

Clauses 1, 2, 3 and 4—pass; Clauses 5, 6, 7, 8 and 9—pass; Preamble—pass; Title—pass. Bill be reported.

Bill 38—The Manitoba Evidence Amendment Act

Madam Chairperson: We shall now proceed with consideration of Bill 38, The Manitoba Evidence Amendment Act. Does the honourable minister wish to make an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): No, Madam Chairperson.

* (1015)

Madam Chairperson: Does the critic for the official opposition wish to make an opening statement?

Mr. Dave Chomlak (Kildonan): No, Madam Chairperson.

Madam Chairperson: All right, we shall then proceed to consider the bill clause by clause. I would remind the committee once again that the preamble and the title will be postponed for consideration until all other clauses have been passed.

Is it the will of the committee to once again group the clauses by page? Agreed.

Madam Chairperson: Shall Clauses 1, 2 and 3 be passed—pass; Clause 4—pass; Preamble—pass.

Point of Order

Mr. McCrae: When you called out Clauses 1, 2 and 3 on page 1, I take that to mean as continued over onto page 2 as well.

Madam Chairperson: Yes, that is correct. I was just doing that for the reference for the members of the committee. Thank you, Mr. Minister.

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Madam Chairperson: Shall the Title be passed—pass. Bill be reported.

Bill 48—The Personal Property Security Amendment Act

Madam Chairperson: We shall now proceed with consideration of Bill 48, The Personal Property Security Amendment Act. Does the honourable minister wish to make an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): Madam Chairperson, I will not make an opening statement if the honourable members do not have any—if there are no problems with this bill, I will not make an opening statement. I made comments at second reading. I have an opening statement I could make, but I think the bill is relatively clear and straightforward.

Mr. Dave Chomlak (Kildonan): The only statement I wanted to make was, I raised an issue at second reading which the minister replied in

writing to me on. I am quite satisfied with the bill as it is.

Madam Chairperson: Shall we then proceed to consider the bill clause by clause? Once again, is it the will of the committee to group the clauses by page? Agreed. I would remind the committee also that the title and preamble will be passed after consideration of the clauses.

Clauses 1, 2(1) and 2(2) of the bill be passed—pass; Clause 3—pass; Preamble—pass; Title—pass. Bill be reported.

Bill 68—The Public Trustee Amendment, Trustee Amendment and Child and Family Services Amendment Act

Madam Chairperson: We shall now proceed to give consideration to Bill 68, The Public Trustee Amendment, Trustee Amendment and Child and Family Services Amendment Act. Does the honourable minister have an opening statement?

* (1020)

Hon. James McCrae (Minister of Justice and Attorney General): Madam Chairperson, various questions were raised at second reading stage with regard to this bill. If honourable members feel that I have responded to them, they can say so. Otherwise, I have comments that would give direct response to the questions raised by them during second reading.

Mr. Dave Chomlak (Kildonan): I would appreciate if the minister perhaps could read his prepared statement to deal with some of the issues that were raised by both opposition parties.

Mr. McCrae: I will do that now, Madam Chairperson. The honourable member for Kildonan asked why Bill 68 is an omnibus bill. The amendments proposed to the three acts, that being The Public Trustee, The Trustee and The Child and Family Services Amendment Act, all relate to responsibilities or requirements of the office of the Public Trustee.

The honourable member's next question was: Why is the amendment to Section 7 of The Public Trustee Act, which will allow Section 62 of The MPIC Act to govern payments on behalf of infants and mentally disordered persons, necessary? The answer is as follows: The Public Trustee, whom I have with me here today—Irene Hamilton is the Public Trustee for the Province of Manitoba—The Public Trustee Act states that the Public Trustee

shall be the person to whom payments under Section 22 of The MPIC Act are made; Section 62 of The MPIC Act says that the payments may be made to the Public Trustee.

The amendment will allow the court to order payments to parties other than the Public Trustee, i.e., a trust company or a parent, where appropriate. The amendment does not have any effect upon the Public Trustee's role as litigation guardian.

The next question is a question put by the honourable member for St. James (Mr. Edwards). Why are the provisions in The MPIC Act preferable to the current requirement in Section 7, that monies payable under Section 62 of The MPIC Act be paid to the Public Trustee?

The answer is: The amendment will allow the court to order payments to parties other than the Public Trustee, i.e., a trust company or a parent, where appropriate.

The next question from the honourable member for St. James: Why do we need to do away with liability of the Public Trustee concerning mortgage sales agreements and tax sales?

The answer: The proposed amendment to Section 4 of The Public Trustee Act clarifies what appears to be the intention of the provision. However, the amendment will now clearly state what the responsibility of the Public Trustee is with regard to situations where she is served as litigation administrator in order to allow tax sales, mortgage sales and other property proceedings to proceed. The Public Trustee's duty will have been discharged when a recommendation to the heirs at law, if any can be found, is made.

The next question put by the honourable member for St. James: Why is it necessary to allow the Public Trustee to delegate responsibility to departments such as Health and Family Services?

The answer: The Public Trustee currently delegates the day-to-day supervision of clients for whom the Public Trustee is appointed as committee of the person and estate. The amendment allows what is currently being done. To have the staff of the Public Trustee responsible for the day-to-day supervision of clients would be a duplication of efforts which are currently undertaken by Health and Family Services for all people in the province who are mentally ill or mentally handicapped, whether they are under the orders of supervision to the Public Trustee or not. There would be no reduction

in the responsibility of the Public Trustee for these clients as a result of this amendment.

* (1025)

Here are some questions relating to The Trustee Act, Section 76. These are the questions of the honourable member for Kildonan (Mr. Chomiak).

The question is: Why is the Public Trustee no longer responsible for representing the interests of the beneficiaries of a common trust fund at the passing of the accounts of the fund in court, and why is the Public Trustee not given sufficient resources to carry out this function?

The answer is as follows: The Public Trustee has never had the resources necessary to carry out this function. The requirement for an annual audit of a common trust fund is intended to ensure that the fund is operated in accordance with the law and that proper accounting procedures are followed. Also, any accounts submitted to the court must be audited. There would be no point to having the Public Trustee duplicate the work of the auditor.

The amendments to The Trustee Act not only give a beneficiary the right to apply to the court for an order that accounts of a common trust fund be passed in court, but also give that beneficiary the right to represent the interests of the beneficiaries and to recover his or her costs from the income of the common trust fund.

In general, it is the responsibility of the beneficiaries of a trust to enforce the trust through the court if the trustee is not performing the duties of that office properly. The amendments leave the responsibility with the beneficiaries, which is where it should be.

The next question: Why are trust corporations allowed to give notice of the passing of accounts of a common trust fund in the newspaper and not required to send notice to each beneficiary?

The answer: The person who requests that the court order, the passing of the accounts of the common trust fund will be aware of the date and time for the passing of the accounts. The court can direct who will be served with notice of the passing of accounts.

The regulations will specify the information that must be provided in the notice. This will include a statement that accounts respecting the common trust fund are filed in the court for the purpose of passing the accounts, a statement on the nature and purpose of passing accounts, and the effect of

approval of accounts by the court and a statement that a beneficiary has a right to appear personally or by counsel at the time accounts are passed in court.

The costs of passing accounts of a common trust fund in the court are charged against the income of the fund and are therefore borne by the beneficiaries of the trusts included in the fund. It is therefore desirable not to increase these costs any more than necessary.

I have a table here that provides a comparison of certain provisions concerning the passing of accounts of common trust funds in Ontario and the three other western provinces to the old and new provisions in Manitoba legislation.

I trust that answers the question the honourable member raised. There were a number, and they are legal-type questions and I have been assisted by the Public Trustee in making response to the honourable member.

Madam Chairperson: Is the honourable critic for the official opposition satisfied with the response or have further questions?

Mr. Chomlak: Madam Chairperson, generally I am satisfied with the response to the questions from the minister.

Part of the point I was making in asking the question regarding the inclusion of the notification of the Public Trustee in the original legislation was asking the question why, in the first instance, the Public Trustee was to be advised and/or I believe the Corporations branch of the government were to be notified of the situation? I wanted to find out what the genesis of that notification was, why it was put into statutory law in the first instance.

The minister indicated in his response that the Public Trustee never had the resources to respond in the first instance. I just wonder what the public policy reason behind advising the Public Trustee was in the first instance.

Mr. McCrae: Madam Chairperson, we have the Public Trustee here. We are very fortunate in that regard, and I think I will ask the Public Trustee to respond directly to the honourable member if honourable members are satisfied with that.

Ms. Irene A. Hamilton (Public Trustee, Department of Justice): I have reviewed the files which are in existence in my office with regard to the issue of why the Public Trustee was given that legislative responsibility. I cannot find anything that

satisfactorily explains how it came about in the first place.

Mr. Chomlak: The other question I had was with respect to the passing of the accounts on a common trust. The minister indicated that the court can order who will be notified as to the passing of those accounts and indicated that in most instances it would be the beneficiaries of those involved who would initiate the proceedings in the first instance.

This is just a general question, and perhaps the Public Trustee can advise me. I assume the courts would generally order that all beneficiaries would be notified. I mean, I just cannot see an instance when the courts, as a matter of course, would not make an order that all beneficiaries be notified, or all interested parties, that the accounts were being passed. Would that not be the case?

* (1030)

Mr. McCrae: I would ask the Public Trustee to respond.

Ms. Hamilton: I really cannot comment on that because without any experience with the legislation as it is proposed, we really do not know what the courts will or will not order. What I can say is that in the past all that needed to be done was have the Public Trustee served.

Mr. Chomlak: We would be moving from a case where that notification was sufficient when the Public Trustee was notified to an instance where the court will now have the discretion as to who should be notified. I guess I am grappling with the issue. From my limited experience in practice, I would assume that it would be likely that the courts would order all interested parties, it seems to me, to receive notification. I guess I cannot verify it one way or the other.

Is it possible to get a copy of the regulations that are being proposed with this legislation?

Mr. McCrae: Normally, Madam Chairperson, regulations are brought about by Order-in-Council and they become available at that time.

Madam Chairperson, the normal procedure when dealing with regulations is that they are passed pursuant to legislation that is passed by the House, and then they are published and gazetted, and that is the normal practice.

Mr. Chomlak: I am aware of what the normal procedures are. I noted the minister in his comments made reference to the fact that

regulations will be introduced pursuant and did describe some of the factors that will be included in the regulations. I just thought the minister might have handy a general description but, if that is not the case, that is fine, I will wait.

Mr. McCrae: I am not able at this point to accede to the honourable member's request with regard to regulations not yet passed.

Mr. Kevin Lamoureux (Inkster): Madam Chairperson, just mostly for my own personal clarity, has the authority of the Public Trustee been reduced as a result of the bill?

Mr. McCrae: No, Madam Chairperson.

Ms. Becky Barrett (Wellington): I would like to, before we go into clause by clause, just make a general, very positive comment about one element in Bill 68. That is the attempt to begin the process of making the language in this legislation and, I am hoping, in other legislation as well, gender neutral, not in the least I am sure because the Public Trustee is a her rather than a him but, in addition to that, there are other—I see by the bill there are many instances where the language has been changed.

I think that is a very positive sign and wanted to put on record our support for that initiative in this instance and hope that it will be expanded in other legislation that comes forward.

Mr. McCrae: Madam Chairperson, I do appreciate the acknowledgement made by the honourable

member. The policy is not new, though. We cannot change all of our legislation as quickly as we would like to, but any new legislation coming along where it is possible in the legal and contextual way to make our legislation gender neutral, that is what we do. Any new legislation is all done that way, and it is only if we are prevented for legal reasons that you will still find some of that anachronistic language in our laws. We are doing our best to clean that up.

Madam Chairperson: Is it the will of the committee to proceed to consider the bill clause by clause? Agreed. Is it the will of the committee to once again group the clauses for consideration? I would once again remind the committee that consideration of the preamble and the title will be deferred until all clauses have been passed.

Shall Clauses, 1, 2, 3(1) pass—pass; Clauses 3(2), 4(1), 4(2), 4(3), 5(1), 5(2) and 5(3)—pass; Clauses 5(4), 5(5), 6, 7, 8, 9, 10, 11 and 12(1)—pass; Clauses 12(2), 13, 14(1), 14(2) and 14(3)—pass; Clauses 15, 16, 17, 18 and 19—pass; Clauses 20, 21, 22(1) and 22(2)—pass; Clauses 22(3), 22(4) and 22(5)—pass; Clause 22(6)—pass; Clauses 23, 24(1), 24(2), 24(3) and 25—pass; Preamble—pass; Title—pass. Bill be reported.

I thank the committee for their participation in the passing of the four bills this morning.

The hour being 10:35 a.m., committee rise.

COMMITTEE ROSE AT: 10:35 a.m.