



Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

**Mr. William Jenkins
Constituency of Logan**



TUESDAY, May 31, 1977, 8:00 p.m.

ME: 8:00 p.m.

HAIRMAN: Mr. William Jenkins

MR. CHAIRMAN: The Committee will come to order please. We have four bills that were not on the list before that we won't deal with this evening because they have just been passed out of the House and I have a representation on Bill No. 52. Is it the will of the Committee to hear the brief of the Manitoba Teachers Society? (Agreed)

MR. ART REIMER: Mr. Chairman, honourable members, I would like to this evening express support for Bill No. 52 on behalf of the teachers of Manitoba. We have had extensive discussions with representatives of the government on the matters that are contained in the bill and we are in agreement with all the provisions that are stated in it.

We are looking forward to having further discussions with the government since they have given us a commitment to continue discussions in the coming year to try to resolve some of the areas that are still left without resolution and we are looking forward to these in the next 12 months and hopefully another bill for the next session.

So very briefly then, Mr. Chairman, we are here to express our support and our hope that it will receive speedy approval. Thank you very much.

MR. CHAIRMAN: Are there any questions?

MR. PAULLEY: Just one comment, Mr. Chairman, if I may, because I had the responsibility of a companion bill, the Civil Service Superannuation Act, over a number of years and from time to time there were some areas of conflict — the Teacher's Pension Act and the Civil Service Superannuation Act. I do appreciate the remarks of the delegation that there is, generally speaking, a common appreciation of the provisions in each Act and I'm sure that the government will be meeting with the Teachers Society and indeed the Retired Civil Service Society and the likes of that in the future. So I appreciate, Mr. Chairman, the remarks of the delegation.

MR. CHAIRMAN: Hearing no further questions, thank you. Could you give your name just for the record so we will know who was . . .

MR. REIMER: Art Reimer.

MR. CHAIRMAN: I have two late submissions here by mail from two delegations on Bill 62 and I think I should mention them and perhaps they should be recorded in the proceedings: one from the Manitoba Environmental Council, from Mr. Onno Kremers, Chairman; and one from a Mr. Pat Tremma with respect to Bill 62. Will someone move that these be recorded in the . . .

MR. PAULLEY: I so move, Mr. Chairman, and refer to the Minister of Urban Affairs.

MR. CHAIRMAN: All in favour? (Agreed)

I now refer honourable members to Bill No. 8, An Act to Amend the Highway Traffic Act. I believe there are amendments to the bill. I believe there is one that I told you the other day we received and I asked you to hang onto it. I hope that you have. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, before we proceed with bills, it has been drawn to my attention that there has been some representation made that there are some people in the audience who would like to make a verbal presentation on some of the remaining bills. I wonder if we may have leave of absence from the Committee to do that? —(Interjection)— There was a representation still left from Bill 62 . . .

MR. PAULLEY: Mr. Chairman, it was my understanding at two o'clock this morning that the Committee on Law Amendments felt that they had completed the representations on Bill 62. Tonight, Mr. Chairman, we did receive some written submissions and they have been referred to the Committee and to a Minister. I would in all due respect suggest that because of the widespread representations that have been made in respect of Bill 62, that we don't reopen what I thought was an undertaking this morning at two o'clock, that we did not continue. Because once we reopen representations, and I don't want to deny any person from making representations but in all due respect, Mr. Axworthy, I thought this was an undertaking, that representations had been heard. I don't want to deny the rights, Mr. Chairman, of people to be heard on any bill but at some stage in the game, and I'm sure as my honourable friend will recognize, we have to come to a conclusion of public representations and go on with the job of passing legislation.

MR. CHAIRMAN: What is the will of the Committee?

MR. PAULLEY: I would suggest, Mr. Chairman, to my honourable friend, the Member for Fort Rouge, that the persons that he referred to submit their petitions or their observations in writing for consideration of the Committee when we go into Bill 62.

MR. CHAIRMAN: Agreed? (Agreed) Bill No. 8, An Act to Amend the Highway Traffic Act. I think Mr. Walding had made the first motion.

MR. WALDING: Mr. Chairman, I believe the first amendment was dealt with.

MR. CHAIRMAN: I don't think we actually completed it. I think we had just started Section 1, 8.1(1). I think that had been moved. Sections (1), (2) and (3) of 238.1. Is there any discussion on the amendment as moved the other day by Mr. Walding? Agreed? (Agreed) Pass. Mr. Minaker.

Law Amendments
Tuesday, May 31, 1977

MR. MINAKER: Mr. Chairman, I just had a question. The other morning when we dealt with this, I we had questions on 238.1 at this point, Subsection 5; would it be proper to raise the questions now or did that last amendment . . . ?

MR. CHAIRMAN: No, we would be dealing with this amendment right now.

MR. MINAKER: Okay, I have a question on 5(b).

MR. CHAIRMAN: Subsection 1 as amended—pass. Now, Mr. Walding, we will have to have a renumbering; I imagine that what is now (2) on your bill is (4), (5), (6). Mr. Walding.

MR. WALDING: Mr. Chairman, I move that the proposed Subsection 238.1(5) of the Highway Traffic Act as renumbered Subsection 238.1(3) as printed be amended by striking out the figures 24 in the third line thereof and substituting therefore the figures 12.

MR. CHAIRMAN: Mr. Pawley.

MR. PLEY: Mr. Chairman, if I could just address myself for a moment to that amendment, you will recall that when the Medical Examiner was present, he indicated that there would be no disadvantage in it being 12 rather than 24; in fact he indicated that that would be better. I caused a check and I'm assured that there is no need for us to make it 24, that 12 would be as good or better to serve the purpose of the legislation.

MR. CHAIRMAN: The new subsection as renumbered 238.1(5), Suspension of Licence *ipso facto* which now just substitutes the number 12 for the number 24 that was in the Act. Is there any discussion on the motion? Mr. Brown.

MR. BROWN: I'm wondering, Mr. Chairman, how is this licence going to be returned to the person who lost his licence?

MR. PAWLEY: Mr. Chairman, the licence would be picked up by the individual in question after the termination of the 12-hour period. If he could not pick it up for some reason or the other, then it would be mailed back but it would be expected that it would be picked up. To have it personally returned would, I think, involve the personnel of the police in a massive job. It would be a large job if they had to return all these licences.

MR. BROWN: The point I would like to make, Mr. Chairman, is that if this person has lost his licence, it's going to be rather difficult for him to go and pick up the licence. This would mean that he would have to get somebody else to go and pick it up for him or indeed it would have to be mailed which then, in effect, could possibly take in some cases a week or maybe even longer before he would receive his licence.

MR. PLEY: I would think that it would be very few cases where an individual wouldn't be able to obtain the assistance of family or friends to pick up the licence. There might be a few exceptions where that would not be possible, but what would be the alternative? The alternative would be to employ someone to return licences, which would be an enormous cost which I certainly wouldn't wish to venture into.

MR. CHAIRMAN: Any further discussion on the motion? The motion on the section as amended—pass. 238.1(6)—pass? Mr. Minaker.

MR. MINAKER: Mr. Chairman, I wonder, for an explanation, if Mr. Pawley would explain the reasons for keeping the record of those licences suspended — is there any intention to apply this record to the insurance rate of the individual involved if he is a repeat, or what is the indication here of keeping this record?

MR. PAWLEY: First I would like to just assure members that there would be no keeping of the record for purposes of demerit points that would affect the insurance. Mr. Goodman is just checking the original request for this. The reason was that every suspended person would be informed under the Act, I gather, and secondly if there was a pattern, then that would be useful information insofar as knowing whether or not a driving pattern was of such a nature as to affect his driving habits.

MR. MINAKER: I wonder if Mr. Pawley might expand on that explanation because my concern is that if we have accepted the law that .08 and anything above it is impaired driving, then when one starts to keep a record of someone who may be over the .05 mark, all of a sudden there is a new grey area or a new law that might affect the drivers of our province and that's why I would like the Honourable Attorney-General to maybe expand on what he means by "a pattern" and also "it might affect his driving, etc."

MR. PAWLEY: The real concern that exists is if there is a serious pattern plus a conviction for driving while impaired, it could be indicative of a problem which should be dealt with. There could be four or five such suspensions over a one-year period plus a driving while impaired conviction so that Mr. Dygala and the RCMP both indicated that they felt that it would be helpful insofar as ascertaining whether or not the driving pattern could be a danger insofar as the highways are concerned — a pattern that would be reflected in the record.

MR. MINAKER: Mr. Chairman, I don't quite follow Mr. Pawley's explanation of a pattern, but let's

Law Amendments
Tuesday, May 31, 1977

an example: Say that by chance, for some reason, a driver happens to be going down the right feet at the right time when they have the alert out and he's stopped, say, three times over a period of a year or two years and all three times he recorded that he was over .05 but he was not — it was just a warning. How would the Highways Branch use this record of three indications over a period of a year or a year-and-a-half that this driver had been over the .05 mark but not impaired?

MR. PAWLEY: Maybe Mr. Dygala, who is here, not on this bill but had some input, could deal with that.

MR. CHAIRMAN: Mr. Dygala.

MR. DYGALA: Thank you, Mr. Chairman. In answer to the member's question, in the situation mentioned, in the absence of any other driving record indicating alcohol involvement, the only action we could probably take is to call the individual for an interview and talk to him about his drinking habits and problems before he became involved in something much more serious. On the other hand, if he had three such incidents in a period of a year or a year-and-a-half, plus other records indicating alcohol involvement, then we might want that person assessed as to his drinking problems by an outside agency such as the Manitoba Alcoholism Foundation.

MR. MINAKER: Mr. Chairman, I appreciate I can't ask the gentleman a question directly but to the Attorney-General then, the question is: An average person, maybe 150 pounds or 165 pounds, how many ounces of alcohol would be required to be consumed to be at .05. Is there a rough figure?

MR. PAWLEY: There are so many circumstances that would influence that. It depends on what the individual has eaten and the extent to which he has eaten, when he has eaten and how quickly he consumed the alcohol. So that it's a difficult question to answer. I don't know whether anybody would. On the average, about three bottles of beer within an hour apparently would have to be consumed within an hour in order to reach that point.

MR. MINAKER: Three bottles of beer within an hour . . .

MR. PAWLEY: Or three ounces of whiskey.

MR. MINAKER: Or three ounces of whiskey. Then can I ask you a question, Mr. Pawley. Would you consider that having had three ounces of alcohol in a period of an hour and happened to be checked up because of circumstances over a period of a year or a year-and-a-half three times, would you consider that to be a drinking problem?

MR. PAWLEY: Well, Mr. Minaker must not have been present when the doctor was present and provided in his submission to the Committee. . .

MR. MINAKER: Yes, I was.

MR. PAWLEY: . . . when he indicated that, yes, he would consider it a hazard if that individual was utilizing the highways at that point and that it would be a hazard to other lives. Now, we can only base ourselves upon medical expertise and certainly that is the advice that we received.

MR. MINAKER: Mr. Chairman, why I raise the point is that we are sort of getting into an area now where an administration person will be able to make a decision to call someone in to discuss a possible drinking problem that might not exist and/or take other steps that do not basically relate to any written law. The law is such that it says if you are .08 or over, then you are an impaired driver. Now we are looking at a new law that says if you are .05 or over but not over the one, that your licence can be suspended and further now, it's not written into the law that it says a record will be kept. The big question mark now is what will happen with that record and who will make a decision on that record? I think we are getting into, I believe, very touchy grounds on just what is the law and what isn't the law and who interprets it. This is what I'm concerned about, what will be done with this particular record and how it will be applied.

MR. PAWLEY: Well, Mr. Chairman, as Mr. Dygala had pointed out, the real concern is that there could be established very clearly a pattern; a pattern which would relate to the number of times that the suspensions had taken place. If it was coupled by other offences then certainly there would be a clear need for some steps to be taken in order to request this person to attend at the Registrar's Office to ascertain whether or not there was cause for the licence to be removed, if there was a pattern that had been established.

Now, all I can say to you is that the licence wouldn't be suspended, Mr. Dygala points out, but it could be called in so that an effort could be made to ascertain whether or not there is a problem which should be dealt with involving alcohol, which would be characterized by the pattern of suspensions. I suppose it's a question of measurement as to whether this clause is useful or not. My own inclination would be if it assists in dealing with the problem involving the highways and potential injuries or deaths that flow from that, and I think it would to some degree, that we would want to not move it. That's my own inclination.

MR. MINAKER: Mr. Chairman, my final question. Who has the power to establish the policy on

Law Amendments
Tuesday, May 31, 1977

what decisions will be made on if a pattern exists, and how this record will be used? Who has the power to make the decision on how that information will be used in setting policies in regard to that

MR. PAWLEY: Well, the policy would be one that would be made by government and I suppose, in this case, through the Minister of Highways to whom the Motor Vehicle Branch reports.

MR. MINAKER: The Minister would make this decision and not the Deputy Minister or his designate?

MR. PAWLEY: No. No, unless the powers were delegated by the Minister. But I would assume her that the Minister would want to assume the ultimate decision-making on this.

MR. MINAKER: Thank you, Mr. Chairman. That's all I have on that section.

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Yes, Mr. Chairman. I've had many people in the rural areas express concern about the words in 238.1, Subsection 1, where a peace officer has reasonable grounds to believe that the driver of a motor vehicle has consumed alcohol. —(Interjection)— Yes, I know, but on the amendment there is still a lot of people that are concerned, especially in the rural villages where the police officer sits out in front of the hotel. He knows everybody that's in there on a first-name basis. He knows where they live. He knows their way home and he can pick them off any night on an individual basis, whatever one he wants. —(Interjection)— Well, on the other hand, these are taxpaying citizens that are consuming government liquor, which is provided by the province, and they feel that the discretion under the legislation and the amendment is still very unfair. And I don't know how you are going to deal with it. It may be a problem that we will never resolve. But nevertheless these are hardworking people that work hard all day and don't come in until maybe ten o'clock at night and have three or four beers because they worked and they think they have the right to consume that beer. They walk out and they may not get picked up tonight but the police officer knows they are in there. He knows them all on a first-name basis and he can pick anyone he wants and they are in a violation of the law on any given time, because they normally don't think about the fact that they are only entitled to the regulations under the Act. So I just wonder if there is an discretion, in fact, at all under this legislation.

MR. PAWLEY: Well, Mr. Chairman, all I would like to emphasize is that all we are trying to do here is to assure better safety in the use of our highways. I don't think I have to convince; I would think that Mr. McKenzie would be prepared to agree with me that drinking is one of the prime causes of accidents, injuries, deaths on the highways.

Mr. Goodman has just handed to me an address May 6th this year by the Honourable Francis Fox dealing with the relevancy of blood alcohol concentrations, the accidents resulting therefrom, the percentage of highway fatalities, injuries resulting from the mix of alcohol and driving.

I would like to say to the Honourable Member for Roblin that in a way this legislation provides a avenue by which a licence can be suspended. The only alternative now would be to take the individual in for a breathalyzer test and charge that individual under the Criminal Code. Take him in and charge him under the Criminal Code. Wait inside the hotel, if that is what is taking place, and take the motorist in for the breathalyzer and charge under the Criminal Code.

In this instance, and it's calibrated, the legal space is provided for now in the bill and I'm the first to admit that the bill was too broad, too wide, and too discretionary when it was first introduced. But I think now that the legal space has been tightened up and we heard the evidence of the doctor that was present, who referred to countries where it is an offence for the blood alcohol content to be in excess of 50 milligrams per 100 millimetres — Yugoslavia, Israel, Norway, other countries in the world. Even in Canada, in some instances a person could be convicted of driving while under the influence of alcohol at 50 milligrams, depending upon the circumstances and the makeup of the individual. That could happen right here in Canada. So 50 milligrams is quite a distance up on the ladder and I again repeat — I don't want to appear repetitive — the concern here is safety.

MR. MCKENZIE: Mr. Chairman, I certainly recognize the Attorney-General's concern and I think the members of the Committee recognize the concern in this very difficult subject matter. But nevertheless, the government, or the province, is in the business of selling booze through outlets such as we were discussing in this bill and other matters. We have a monopoly on the system and here are ordinary taxpayers coming in and once they have lost their driving privileges through the violation of this Act or other Acts, that, in my opinion, creates all kinds of hardships. And I'm sure you are familiar with that in your office.

I just wondered if there is some other better vehicle than the system we have today, where police officers I tell you, in my constituency, sit out in front of the hotel. They know everybody who is in there. They know them on a first-name basis and they know, in most cases, that they are over the limit before they even come out. So they can pick them off just like that. —(Interjection)— Let me . . .

MR. CHAIRMAN: Order please.

Law Amendments
Tuesday, May 31, 1977

MR. McKENZIE: There have been incidents in my constituency where police officers don't basically get along with a certain individual and, not in all cases, but in some cases, they look for some special guy and he is the one that gets it. So, they are back to me, the MLA. They have lost their driving privileges. It has created hardships in the family and we go to Mr. Dygala and try to solve the impasse. I don't know how you are going to solve it because I would say the word "discretion" doesn't solve the impasse. It's a most difficult situation and I don't have the answers. I don't think it's fair for the province to be offering these, unless we go in there and put alert signs all over the place at every table, and let them blow into these things at every table, and say, "Look, boys, when you've had your limit get out." Or have the province go in there and hire somebody and say, "Look, when you get over, you are going to get nailed." But under the present system, I don't think we can possibly put it on paper to solve this problem. My concern is the word "discretion". Now, where's the discretion? With the police or with the man that's in there having a couple of quiet beers after a hard day?

MR. PAWLEY: Mr. Chairman, the only alternative that we face is, in view of the fact that it is recognized that there is a problem, to do nothing. And I don't think anyone can advocate that we do nothing. The honourable member makes reference to the loss of licence and hardship. The loss of licence here is only for a 12-hour period in which the licence is removed. So to talk about losing job and other hardships, that does not flow from this legislation at all. It would flow from convictions that would be registered with a minimum of six months. So that here we are dealing with a 12-hour suspension and let me say to the honourable member that there is a real danger that the same individuals that he is referring to might lose their lives or be injured during that 12-hour period if this type of legislation was not provided for.

I would like to just also emphasize to the honourable member, in case he feels that this is something unique, that in Alberta and Saskatchewan they have this with a calibration. In British Columbia they have it with wide discretion. They don't even restrict it insofar as legal space is concerned — wide, very wide discretion.

MR. McKENZIE: Well, Mr. Chairman, I'll tell the Attorney-General real quick what concerns me and especially other members for rural Manitoba because you only have to look at the Annual Report of the Liquor Commission — 90 percent of the violations of the Act are from rural Manitoba. We're the guys that are getting crucified, and our constituents, and I think it's very unfair. Why should 90 percent of the violations of the Liquor Act come out of rural Manitoba and only 10 percent out of Winnipeg? If there isn't another answer, I think that is a fair question of the Attorney-General, Mr. Chairman.

MR. CHAIRMAN: Order please. Order please.

MR. PAULLEY: Mr. Chairman, on a Point of Order. We are dealing with legislation. We are dealing with clause by clause consideration of legislation. I do not take exception to the points raised by my honourable friend, the Member for Roblin, but we're dealing with amendments to legislation that has been given approval in principle by the Assembly. If my honourable friend is not in agreement, then I would suggest that there is an onus on him to produce an amendment for the Committee for consideration in legislation. His observations are valid but we're not dealing with the validity of observations of what happens in his constituency or any other constituency.

So I say, Mr. Chairman, on a Point of Order, we're dealing with legislation.

MR. CHAIRMAN: Mr. McKenzie.

MR. McKENZIE: Mr. Chairman, on the same Point of Order, I am only speaking on behalf of the rural people of this province and we think we think we are being discriminated against under the violation of the Liquor Act, and you only have to look at the Annual Report to see the number of people that are charged in rural Manitoba and see the number that are charged in the city.

MR. PAULLEY: Well, Mr. Chairman, on a Point of Order, the my honourable friend an amendment to legislation?

MR. McKENZIE: If the Honourable Minister of Labour would let me finish my comments, I'm just asking for the Attorney-General and the Director of the Highway Traffic Board to give us a better description of the word "discretion" under this legislation, so that we can hopefully eliminate this.

MR. PAWLEY: Mr. Chairman, there is no discretion left in this legislation. There is a legal space. Within that legal space, there is a suspension. We have removed the discretion. There is no longer any discretion in the hands of the peace officer.

MR. CHAIRMAN: Well actually, the honourable member, you are dealing with something that we have already passed. We have passed an amendment.

MR. McKENZIE: Can I ask the Attorney-General another question?

MR. CHAIRMAN: Go ahead.

MR. McKENZIE: Are he and the Director satisfied now that this will eliminate that wide variance of violations that has been in the Annual Report of the Liquor Commission?

Law Amendments
Tuesday, May 31, 1977

MR. PAWLEY: Mr. Chairman, this legislation has nothing to do with the Liquor Control Act. I think that the honourable member knows that there is no way I could give him that assurance.

MR. MCKENZIE: Mr. Chairman, I have another Point of Order on the same Point of Order in reply to the Attorney-General. Most amendments that we bring in, we don't have enough votes to get them passed. **A MEMBER:** That's too bad.

MR. CHAIRMAN: Order please. Order please. Mr. Walding . . .

MR. WALDING: Mr. Chairman, I have an amendment.

MR. CHAIRMAN: . . . on Section 1, Subsection 238.1 . . .

MR. BILTON: Mr. Chairman, I think I gave you . . .

MR. CHAIRMAN: Are you going to speak to the same point that Mr. McKenzie was speaking of because actually it's out of order.

MR. BILTON: I gave you due indication.

MR. CHAIRMAN: I know but actually we have passed that section.

MR. SHERMAN: Well, I'm a member of this Committee, Mr. Chairman, and there's not room for me around that table. I gave you the normal signal and I would like to speak to what was being said. — (Interjection)—

MR. CHAIRMAN: Order please. I have four people here but you're going to speak to something that we have already spoken on and was already passed.

MR. WALDING: That's against our rules.

MR. CHAIRMAN: We have already passed . . . Order please. Subsection (1), Mr. Walding moved 238.1, (2) and (3) and I asked you if you had any discussion. Nobody had any discussion and you accepted the motion. We have already passed that section. We passed that. We passed (4) which is renumbering; (5), which went from 24 to 12. We are now down on the new renumbered section 238.1 which was previously is now 8 because it is renumbered. It's the requirements of a peace officer. Now that is what we're on. As soon as he moves a motion, I will recognize you. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that the proposed Subsection 238.1(6) as renumbered Subsection 238.1(4) as printed, of the Highway Traffic Act as set out in Section 1 of Bill 8 be amended by lettering clauses (a) to (d) thereof as clauses (b) to (e) thereof respectively and by adding thereto immediately before clause (b) thereof as relettered the following clause: (a) Advise the driver that the provisions of Subsection (7) relating to the manner of terminating the suspension.

MR. CHAIRMAN: Now, Mr. Sherman, to (a).

MR. SHERMAN: Well, Mr. Chairman, I just had a couple of questions with respect to (a) related to the line of questioning that Mr. Minaker had raised a few moments ago, when we were first addressing ourselves to this clause.

One is, I'd like to ask the Attorney-General . . .

MR. CHAIRMAN: Order please. Then it is the new (a) that is amended. I'll read it to you so you know that you are speaking on the right thing; I think you are wanting to speak on (b) which has been renumbered.

The previous (a) now becomes (b) and the previous (b) becomes (c). The new (a) is "Advise the driver of the provisions of Subsection (7) related to the manner of terminating the suspension," which is on the other page. I would ask you to look now at 238.1(5) previously which is now 238.1(7).

Now, do you have any question regarding that portion?

MR. SHERMAN: No.

MR. CHAIRMAN: All right. Can we pass that? Mr. Graham, to

MR. GRAHAM: I would like to move a sub-amendment, a motion moved by myself and seconded by the Member for St. James, that that notification to the driver be in both official languages. — (Interjections)—

MR. CHAIRMAN: Order please. Order please. You know, I think we can have fun and games and the Chair can appreciate fun and games as much as anybody else but if you want to stay here until two o'clock again this morning, or tomorrow morning, fine and dandy; I'm game to stay here. But you want to play games go ahead.

MR. PAULLEY: Mr. Chairman, I think that motion is out of order because there is only one official language at the present time in Manitoba.

MR. CHAIRMAN: 238.1 (6) (a) as amended. Mr. Minaker.

MR. MINAKER: I just want to clarify that (a) which is in our Bill 8 has now been amended to (b)

MR. CHAIRMAN: Yes, I have already advised the Committee of that. It is a new (a). You have it on your piece of paper here. (a) as amended, the new (a)—pass; 238.1(6) subsection — the new subsection (b) which was formerly (a). "Keep a written record of the licence suspended with the name and address of the driver and the date and time of the suspension." Now Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. I'd like to, in relation to this, ask the Attorney-General

Law Amendments
Tuesday, May 31, 1977

hat in fact the roadside screening device contains in terms of gradations. Does it contain warn, fail and pass only?

MR. PAWLEY: Yes. The device from 0 to 50 milligrams per 100 millimeters would read pass; from 50 to 100 would read warning and from a 100 and over it would read fail. At the fail level an individual is taken in for a breathalyzer test so 50 to 100 is where this legislation would apply. Of course with the device there would be no problem.

MR. SHERMAN: So from 50 to 100 it registers warn.

MR. PAWLEY: That's right.

MR. SHERMAN: And at that point the peace officer has the right to take the licence away and the driver presumably finds his or her own way home. Is that correct?

MR. PAWLEY: Yes.

MR. SHERMAN: But is not taken in by the police officer.

MR. PAWLEY: That's correct, not charged, not taken in. All that the individual does is surrender his or her licence for the twelve hour period.

MR. SHERMAN: Well, my question basically, Mr. Chairman, is related to Mr. Minaker's line of questioning and I'd have to go through the Attorney-General to Mr. Dygala on this.

MR. CHAIRMAN: I'm sure you can ask Mr. Dygala a question.

MR. SHERMAN: In your remarks, Mr. Dygala, you made reference to incidents i-n-c-i-d-e-n-t-s talking about the need or the desirability of being able to examine a pattern of incidents. My question to you, sir, is what incidents are we talking about here? We've already passed an amendment which says that that kind of apprehension can be made on the demand of a peace officer. Who is to say that there was any incident at all? A peace officer can determine in his own mind driving along that either you or I should be stopped and subject us to this roadside screening device without necessarily any incident taking place.

MR. DYGALA: The word "incidents" as I used it meant the number of times the person had been stopped, given the test and failed and had his license suspended, not that there were any other incidents associated or incident associated with that particular event. In other words incidents rather than an incident.

MR. SHERMAN: But in each case if he comes off with a warning, he hasn't committed any crime.

MR. DYGALA: If a person has been stopped once and failed, a second time failed, a third time failed within a space of say 12 months then surely that gives some cause for concern as to that person's driving behaviour, or drinking and driving behaviour, particularly if there is also some other evidence, such as a conviction for impaired driving or such as a conviction for leaving the scene of an accident which is very frequently associated with impaired driving. In other words if you have that plus three such incidents then you have fairly reasonable grounds for asking that driver to come in for an interview. There is no suggestion there is going to be a suspension of his licence but surely there is reason to call that person in and discuss the problem with him.

MR. CHAIRMAN: I think what Mr. Sherman is getting confused with — and it confuses me too — when you say fail, Mr. Sherman, it's not referring to somebody failing because that's what the device is saying, it registers warn or fail. If he registers fail, it's my understanding that he's taken in for a breathalyzer. So, it would be between warn and fail. That's what Mr. Sherman is referring to I think.

MR. SHERMAN: That's right. Thank you, Mr. Chairman, and that's the concern of my colleague, Mr. Minaker, why there should be a written record maintained. Say that person never ever did drop into the fail category but on the three times that he or she happened to be subjected to that device was always only in the warn category. Why should there be a written record? Why should there necessarily be sort of supervision of his or her driving habits? I think that is what my colleague was trying to get at on this clause which was (a) and is now (b). It seems to me to be a little bit regulatory and a little bit heavy handed because the person may never have failed the test. He may just have hit the warning reading each time.

MR. DYGALA: If there's justification for removal of a person's licence because of the blood alcohol level for 12 hours or whatever period of time, if there's justification for that, and if this pattern of behaviour is repeated not once, twice but three or more times, then Surely there's equal justification to begin to wonder about that person's general . . . because bear in mind, how many times have you or I been stopped by a police officer for any reason? It doesn't happen that often. In fact I can't remember the last time I was stopped for a spot check. It's many years ago.

A MEMBER: I can tell you about speeding.

MR. DYGALA: Who me?

A MEMBER: No me.

MR. DYGALA: Oh you, but that's different. Well it happened to me once too but many many years

Law Amendments
Tuesday, May 31, 1977

ago. So, if a person is stopped three times, the question you have to ask yourself and I have to ask myself is how many other times has he been in the same condition and not been stopped. I mean, that's going to happen. So three such incidents in a period of twelve, eighteen months I think is indicative or very strongly suggestive that there may be a drinking problem. If that is the problem you're not going to solve it by suspending his driver's licence for a twelve hour period because that driver sooner or later is going to crash and kill somebody or himself.

MR. SHERMAN: I'm not going to delay the work of the Committee, Mr. Chairman, I think we probably have an amendment coming on this. But I wish to say to Mr. Dygala that I could understand it far better if it were limited to a fail rating rather than a warn rating.

MR. DYGALA: Well if a person fails then of course he's taken for a breathalyzer test and if he fails that that is if his blood alcohol registers above the .08 — usually it's .10 — then there's a charge. If there is a charge, then a conviction and then a suspension.

MR. CHAIRMAN: I have some more people here who wish to ask questions. Mr. Blake.

MR. BLAKE: I pass.

MR. CHAIRMAN: Mr. Bilton. Come to the microphone.

MR. BILTON: Mr. Chairman and gentlemen, and I say that without reservation. The thing that concerns me about this bill and particularly this part of the bill is the tremendous responsibility that is being placed on a peace officer. Mr. Dygala I know I've discussed with him my problems from my constituency too and he's bent over backwards to be of service to the people. But I'm not quite satisfied, Mr. Chairman, with his explanation of an incident. A man is driving a car at 67 miles an hour or 70 miles an hour which of course is breaking the speed limit and the peace officer comes up behind him and he can suspend his licence if he has liquor on his breath on the presumption that he should not be driving that car. This is what you're asking the peace officer to do. There's many peace officers, Mr. Chairman, that are out of recruiting when they come on duty. As young police officers they all anticipate themselves to be Dick Tracy and what my colleague from Roblin explained to you tonight — I was rather surprised that this Committee should take his remarks in a jocular way because that was very very obvious as to what was done. My concern at this point, Mr. Chairman, is the responsibility that is being placed on a peace officer with legislation of this kind. You're making him God Almighty of the highway and what are we developing? A police state? I would be the first to suggest to you, Mr. Chairman, that those that break the law by liquor on the highways should be punished and should be barred from driving. But legislation such as this opens the gate wide open for a peace officer to be the final judge on a given situation on the highway at any given time. And this is what worries me. I would like further explanation from Mr. Dygala, if I may call upon him, to give more sincere illustrations as to what he means by incidents. Because you can put anything on that title. If he has reason to suggest or give us much more than he's given us so far when he talks about incidents on the highway I think that's too trivial to ask us to approve of this legislation.

MR. CHAIRMAN: Well we've already approved that section, Mr. Bilton.

MR. BILTON: Well, here we go again. You said that to me ten minutes ago.

MR. CHAIRMAN: Right. And you are wrong in your summation of what you said. It is not in the discretion of the police officer. The person who has been stopped has to be between warn and fail for that license. There is no discretion left in the hands of the police officer

A MEMBER: Carry on with the legislation.

MR. CHAIRMAN: (b) "Keep a written record" . . . Mr. Minaker.

MR. MINAKER: Mr. Chairman, I have an amendment but it comes later on dealing with this so we'll approve it at this time with the understanding that. . . There's a problem here. If the amendment that we're proposing is approved by the Committee then we have no objection to passing this particular section at this point. If the amendment is turned down. . .

MR. PAWLEY: Probably I should indicate that Mr. Minaker has gone over the amendment with Mr. Goodman and myself and it seems reasonable and I would be prepared as Minister to indicate acceptance here.

MR. CHAIRMAN: Okay. (b) Mr. Adam.

MR. ADAM: Just on a point of clarification, Mr. Dygala mentioned that a record would be kept and if there were three incidents during a period of time that this person could be called in. My question is, under what section of this bill or any other bill would you have the authority to call anybody in. I want to know what section or what bill you'd have the authority.

MR. CHAIRMAN: Could we just wait a minute till we. . .

MR. ADAM: Mr. Chairman, by way of elaboration, "called in to discuss a personal problem," that's what I'm asking.

MR. PAULLEY: Under what authority can you invite the person in?

MR. PAWLEY: I think, Mr. Chairman, while Mr. Dygala's considering that that the Registrar of the

Law Amendments
Tuesday, May 31, 1977

Motor Vehicles Branch can within his discretion call somebody in at any time if he has information that indicates that that individual has a problem relating to alcohol, drugs or psychiatric difficulties or any other thing that might influence or impair that individual's capacity to operate a vehicle. The Registrar at the Motor Vehicles Branch has general powers along those lines. I believe that those powers are specified in the provision in the Highway Traffic Act. Highway Traffic Act'

MR. ADAM: What section is that, Mr. Chairman?

MR. CHAIRMAN: Mr. Dygala.

MR. DYGALA: Mr. Chairman, there are two sections of the Act which could be brought to bear on this. One is section 29 which authorizes the Registrar to call in any driver for examinations or re-testing, etc. who accumulates a driving record. The other one is Section 26 dealing with medical reports where there is authority to require a driver to file a medical report. In other words, the driver could be invited to come in to discuss a problem with no threats of suspension or anything else.

MR. CHAIRMAN: (b)—pass; (c)—pass; (d)—pass; (e)—pass?

MR. McKENZIE: I've a question on (d) Mr. Chairman.

MR. CHAIRMAN: (d) is now (e). Mr. McKenzie.

MR. McKENZIE: On the notification to the Registrar in writing of the suspension of the licence, giving the name and address and this comes up, the mail services in the bill, Mr. Chairman. I understand from the postal authorities now, if you write in your own hand the scanners will not pick up the mailing code. If you do it in typing the scanners will pick it up and the mail arrives in reasonably good time. I just wonder whether the person that has to write in on other matters if that has been considered in the legislation, the postal code and the fact that if you type it, it's okay but if you write it your own handwriting there's sometimes two or three delays in the arrival of the mail.

MR. PAWLEY: Mr. Chairman, this only relates to the letter by the peace officer to the Registrar of the Motor Vehicles Branch, it does not relate to the mailing of the licence back to the motorist.

MR. McKENZIE: But further down, Mr. Chairman, the return of the licence becomes involved. . .

MR. CHAIRMAN: We'll deal with that when we get to that please. (e) as amended —pass; 238.1(6)—pass; 238.1(7)(a) —pass; (b)—pass; 7 — pass; 8 — 238.1(8) formerly (6). In the second line where it says subsection 5, would you make a correction in your bills. That should be now (7). With a slight correction, 238.1(8)—pass; 238.1(9) which was (7). Mr. Minaker.

MR. MINAKER: No, it's okay, Mr. Chairman, we are by where I wanted to raise a question on. Can I, for informational purposes . . . ?

MR. CHAIRMAN: Yes, yes. Go ahead.

MR. MINAKER: There are so many changes in numbering on the original bill, 238.1 (5)(b).

MR. CHAIRMAN: 5(b), right.

MR. MINAKER: Could the Council or Mr. Pawley advise what governs the time lag between when a driver who is suspended has to go and have the blood test from the qualified medical practitioner? There doesn't seem to be any time limit. He could take an hour or two hours and go and give his test and it would show he would be under it and was quite qualified. I am wondering, couldn't there be some kind of time limit set for that?

MR. PAWLEY: No, no. Once he has obtained that certificate, then he is entitled to get his licence back, and I would think fair enough.

MR. MINAKER: It won't clear his written record, though?

MR. PAWLEY: There would be nothing. It would be negative.

MR. MINAKER: Okay.

MR. CHAIRMAN: 238.1.

MR. McKENZIE: Mr. Chairman, on that same one, could I now have a clarification on the mailing services?

MR. CHAIRMAN: Oh, the return of the driver's licence.

MR. McKENZIE: Right.

MR. CHAIRMAN: We are now on 238.1, which was formerly (7) and now (9).

MR. McKENZIE: Can I speak on it, Mr. Chairman?

MR. CHAIRMAN: Yes.

MR. McKENZIE: Well, Mr. Chairman, given the state of the present mail service for practical purposes, the suspension will be effective for much longer than 24 hours, and I think we also note that registered or certified mail usually requires the signature of the addressee acknowledging receipt of the letter, and this will cause further delay. So I don't know how we are going to get maybe personal return of the licence and then the fact that the scanners will not pick up his personal handwriting it is going to take more than the required time if the letter was typewritten and the secretary put the area code on the letter.

MR. CHAIRMAN: Mr. Pawley.

Law Amendments
Tuesday, May 31, 1977

MR. PAWLEY: Well, Mr. Chairman, we are not hung up on that. If the honourable member wants it to be sent by ordinary mail, it is just not quite as safe record-wise and whatnot, but . . .

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Mr. Chairman I well recognize the Minister ' and the director are not concerned about the length of time, but the chap that is returning it might be concerned that it didn't return in the normal time, because he, in some cases, would not have the ability of a typewritten letter or the area code on the letter and maybe if he could go and have it the system would work much faster.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, the suspension ends after twelve hours. All that the individual would be doing would be driving without his licence on him. He would not be charged with driving while his licence is suspended. After the twelve-hour period he is entitled to drive and the worst thing that would happen to him would be that he would be driving without his licence document on him. And I am sure that if it was explained that there would be no problem.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Mr. Chairman, just on a point of clarification, did I understand the Minister correctly that the driver would have twelve hours' time to go and get a blood test?

MR. PAWLEY: No, the individual could at any time obtain a certificate which would indicate that the blood test was less than 80 and upon receipt of that then there would be no suspension.

MR. ADAM: Within twelve hours?

MR. PAWLEY: Well, yes, anytime within that twelve hours he could do so. At the end of twelve hours the suspension ends anyway.

MR. CHAIRMAN: 238.1(9)—pass 238.1(10). Mr. Walding.

MR. WALDING: Mr. Chairman, I move that the proposed subsection 238.1(10) as renumbered, subsection 238.1(8) as printed, of the Highway Traffic Act as set out in Section 1 of Bill 8 be amended by striking out the words "the nearest" in the second to the last line thereof and substituting therefor the words "a nearby."

MR. CHAIRMAN: 238.1(10) as amended—pass. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that the proposed section 238.1 of The Highway Traffic Act as set out in Section 1 of Bill 8 be amended by adding thereto at the end thereof the following subsections:

Costs of Moving and Storage.

238.1(11) Where a peace officer requests assistance to remove a vehicle under subsection 10, the costs and charges incurred in moving or storing the vehicle, or both, are a lien on the vehicle and may be enforced under The Garage Keepers Act by the person who moved or stored the vehicle at the request of the peace officer.

Carrying Out Tests

238.1(12) Where a driver whose licence is suspended under this section by a peace officer

(a) indicates to the peace officer that he wishes to submit to a test to determine the proportion of alcohol in his blood, or

(b) attends at the place designated by the peace officer and indicates to the person in charge thereof that he wishes to submit to a test to determine the proportion of alcohol in his blood, the peace officer or the person in charge of the place shall take such steps as are necessary to have the tests carried out as soon as possible.

MR. CHAIRMAN: 238.1(11)—pass; 238.1(12)(a)—pass; (b)—pass; (12)—pass.

Mr. Minaker.

MR. MINAKER: Mr. Chairman, I would like to move a motion that the proposed section 238.1 of The Highway Traffic Act be amended by adding thereto at the end thereof the following subsection:

Use of Written Record

238.1(13) The written record kept under Clause 6(b) and the notice given to the registrar under Clause 6(e) shall not be used other than in respect of a prosecution for driving while the driver's licence is suspended' and is not admissible in evidence in any other prosecution for an offence under the Act.

MR. PAWLEY: That amendment is agreeable to me, Mr. Chairman.

MR. CHAIRMAN: New 238.1(13) as moved—pass.

MR. MINAR: Thank you.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Section 2 of Bill 8 be struck out and the following section substituted therefor:

(2) This Act comes into force on a day fixed by proclamation.

MR. CHAIRMAN: The amendment as moved. Is there any discussion on the amendment? Pass. Preamble—pass; Title—pass. Bill be reported. (Agreed)

BILL (NO. 51) — AN ACT TO AMEND THE CIVIL SERVICE SUPERANNUATION ACT

MR. CHAIRMAN: I believe there are some amendments to this bill. There is no amendment in Section 1 Section 1—pass.

Mr. Walding.

MR. WALDING: Yes, Mr. Chairman, I move that Bill 51 be amended by adding thereto immediately after Section 1 thereof the following section:

Subsection 9(5) amended.

1.1 Subsection 9(5) of the Act is amended by striking out the words and figure "clause (i) of" in the first line thereof.

MR. CHAIRMAN: The new Subsection 1.1 as moved. Any discussion? Pass.

There are no further amendments on that page, so Page 1 as amended—pass; Page 2—pass; Page 3—pass; Page 4—pass; Page 5—pass; Page 6—pass; Page 7—pass; Page 8—pass; Page 9—pass. Page 10, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Bill 51 be amended by adding thereto immediately hereafter Section 21 thereof the following sections:

Transitional provision for early retirement:

21.1 Where, immediately before the first day of July, 1977, a superannuation allowance was being paid to a person who had been granted the superannuation allowance under Section 29 or Subsection 31(5) of The Civil Service Superannuation Act, as that Act was prior to that date' or an annuity was being paid to a person who, at the death of a retired employee who had been granted a pension under either of those provisions as they were prior to that date, became entitled . to the annuity, the board shall pay to him from and after that date, but not in respect of any period before that date, an annual superannuation allowance or annuity adjusted on the basis of the lower reduction therein provided under Section 29 or Subsection 31(5) of that Act, as those provisions are amended by this Act, but with no other adjustment as a consequence thereof.

Effective date of increase in contributions:

21.2(1) The increase in contributions to the fund by way of deduction from salary arising out of the amendment to Subsection 17(1) of The Civil Service Superannuation Act enacted by this Act shall be effective in respect of all payments of salary, as defined in that Act, made after July 1, 1977, but not in respect of any payment of salary made on or before July 1, 1977.

Claim for adjustment:

21.2(2) Any person who feels that the manner prescribed under Subsection (1) of implementing the increase in the amount of deduction from salary, by reason of the amendment to Subsection 17(1) of The Civil Service Superannuation Act enacted by this Act, is unfair because he has received a retroactive increase in his salary due to a retroactive appointment, promotion or reclassification may, at any time before December 31, 1977, apply in writing to the board which shall determine whether or not the manner of implementing the increase was unfair to the applicant and caused the applicant undue hardship, and if it determines that it was unfair to the applicant and caused him undue hardship, the board may request the employer of the applicant to adjust the increase in the deduction by calculating the precise deduction that would have been made on the basis of that increase being effective as of July 1, 1977, and any amount that was deducted from the salary of the applicant for contributions to the fund under the Act in excess of the amount so calculated shall be refunded to the applicant by the employer, who shall adjust his remittances to the board accordingly.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, it sounds like a long-winded — and it is a long-winded — amendment, but the purpose of the amendment is because . . .

MR. SHERMAN: I would hate to see a medium sized one.

MR. PAWLEY: Okay. But anyway, basically, Mr. Chairman and members of the Committee, the purpose of the amendment is so that the . . . because there are different pay periods and different circumstances, to protect the individual the Civil Service Superannuation Board will be able to vary the amounts that may be accrued. It could be ten cents, it could be twenty cents, and the basic

principle involved in this is that if anybody really feels that they have been hard done by because of an adjustment, retroactive adjustment and the likes of that, if it is of an amount that the employee wishes to protest that he or she did not receive, the board can take it under consideration and make the employer pay the increased amount. Really, when we looked at the provisions in the Act and the cutoff date of July 1st, we saw that we could have a lot of problems and the purpose of the amendment is to make clear that the employee concerned has the right to appeal to the board prior to the end of the year for adjustment in the award. That basically is it, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I note that this comes in as an amendment. This provision was not contained in the bill when it was originally introduced, obviously. I would just as the ask the Minister whether this amendment came about as a consequence of having reviewed the provisions of the bill with the actuarial experts and authorities that he referred to when he introduced the bill for second reading?

MR. PAULLEY: My answer is yes, Mr. Chairman, in co-operation with the Superannuation Board, the general manager of the Superannuation Fund, we wanted to make sure that there was no undue hardship on any employee and the actuary was involved in the production of this amendment.

MR. SHERMAN: Well, Mr. Chairman, this is a complicated piece of legislation. The amendment appears fairly complicated, too, but on the basis of the assurance that the Minister has given us that the legislation is actuarially sound, I accept the amendment and its place in the legislation. We are taking the legislation somewhat on — not being actuarial experts ourselves — somewhat on the faith that we place on the actuarial advice he had, I believe the Minister had, I believe from Mr. Hugh Benham and Mr. Stuart Anderson, among others.

MR. PAULLEY: And John Turnbull.

MR. SHERMAN: And John Turnbull.

MR. PAULLEY: That's right. And of course you have a lot of faith in the Minister.

MR. SHERMAN: Well, I have a lot of faith in the Minister but not necessarily as an actuary.

MR. PAULLEY: Oh' I'm not, be assured.

MR. CHAIRMAN: The new Subsection 21.1—pass; 21.2(1)—pass; 21.2(2)—pass. Page 10 as amended—pass; Preamble—pass; Title—pass. Bill be reported.

BILL (NO. 52)— AN ACT TO AMEND THE TEACHERS' PENSIONS ACT

MR. CHAIRMAN: There are no amendments till we reach Section 17. Page 1—pass; Page 2—pass; Page 3—pass; Page 4—pass; Page 5—pass; Page 6—pass; Page 7—pass; Page 8. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Bill 52 be amended by adding thereto immediately after Section 17 thereof the following section:

Clause 55(1)(d) Amended.

17.1 Clause 55(1)(d) of the Act is amended by adding thereto, at the end thereof, the words "and, upon termination of any such period of service, the person shall for the purposes of this Act, be deemed to have terminated a contract of employment as a teacher."

MR. CHAIRMAN: The new Subsection 17.1. Mr. McKenzie wishes an explanation. Mr. Turnbull.

MR. TUBULL: Mr. McKenzie, the explanation is that this change is required so that substitute teachers who contribute to the retirement allowance fund receive benefit for their contributions. Often the contract between substitute teachers and regular staff teachers are not the same so we need this change to ensure that if a substitute teacher makes a contribution, that teacher derives a benefit from the contribution as the other teachers would as well.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, through you to Mr. Turnbull. Is there a minimum time requirement, say, for a number of hours put in annually by these substitute teachers before they would qualify or is that elsewhere in the Act?

MR. TURNBULL: There is not.

MR. MINAKER: In other words, if the substitute teacher instructed for, say, 50 hours for the year, then it becomes an accumulative . . .

MR. TUBULL: Well I think that likely what would happen in practice is that a teacher who was substituting for only 50 hours would not have the kind of contract that would enable them to qualify. I think that would likely be the case. Now, if we're talking about teachers who are going to be around for some time but are substitute teachers, they have another name for them which escapes me — supply teachers — then I think you are talking about teachers who would qualify for this arrangement.

They have to sign a contract in other words, and not all substitute teachers sign a contract with the

Law Amendments
Tuesday, May 31, 1977

board before substitute teaching.

MR. CHAIRMAN: Any further discussion on the amendment? 17.1—pass; Page 8, as amended—pass; Page 9. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Bill 52 be amended by adding thereto, immediately after section 20 thereof, the following sections:

Transitional provision for early retirement.

20.1 Where immediately before July 1, 1977, a pension or a disability allowance was being paid to a person who had been granted the pension or disability allowance under Section 7 or Section 19 of The Teachers' Pensions Act, as that Act was prior to that date, or a pension was being paid to a person who, upon the death of a retired teacher who had been granted a pension or a disability allowance under either of those provisions as they were prior to that date, became entitled to the pension, the board shall pay to him from and after that date, but not in respect to any period before that date, a pension or a disability allowance adjusted on the basis of the lower reduction therein provided under Section 7 or Section 19 of that Act, as those provisions are amended by this Act, but with no other adjustment as a consequence thereof.

Effective date of increase in contributions.

20.2 The increase in contributions to the fund by way of deduction from salary arising out of the amendment to Subsection 46(1) of The Teachers' Pensions Act enacted by this Act shall be effective in respect of all payments of salary, as defined in that Act, made after September 1, 1977 but not in respect of any payment of salary made on or before September 1, 1977.

MR. CHAIRMAN: The new Subsection 20.1. Any discussion on that part of the amendment? Section—pass? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I'd like to ask the Minister whether the explanation on this is approximately equivalent to the explanation that the Minister of Labour gave us on the preceding bill?

MR. TURNBULL: I can give you the explanation of this bill but I am assured by staff that the explanation is much the same as that for the other bill.

MR. CHAIRMAN: Pass?

MR. SHERMAN: And the Minister is satisfied with the actuarial soundness of the amendment?

MR. TURNBULL: Well, if I wasn't satisfied with the actuarial soundness we wouldn't be proceeding with the bill. But when dealing with actuaries, you know, one has to take a lot on faith. I'm sure Mr. Sherman appreciates that.

MR. SHERMAN: Well, I'm taking it on faith twice removed and I want to know whether you're taking . . .

MR. TURNBULL: Yes, I'm satisfied with the actuarial soundness of this. Indeed, if you recall my opening remarks, in introducing the bill for second reading the whole point was to ensure that if teachers were to receive additional pension benefits they would in fact make contributions for part of those additional benefits. I think that is one way of ensuring some additional actuarial soundness in the other system where the Crown or some other agency would pick up the total cost of future benefits, and there would be no contributions from those who would benefit from the plan.

MR. CHAIRMAN: 20.1—pass; 20.2—pass; 8 and 9 as amended—pass; preamble—pass; title—pass. Bill be reported.

Bill No. 14, An Act to amend The Landlord and Tenant Act. We have amendments. Mr. Jorgenson.

MR. JORGENSEN: I know that the bill was passed and I just wanted to raise a point of order.

Bill 52 contained an amendment to a clause in the original Act. That particular clause was not contained in Bill 52 and, as far as I'm concerned, we really have no right to be proposing amendments to the original bill that are not contained in the Act to amend. However, I am not going to raise a fuss about it, I just simply draw to your attention that we have done so. We'll let it go at that but I would hope that in the future when we propose amendments to a bill, it will be amendments to a bill that is before us, not the original Act.

MR. CHAIRMAN: It is my understanding that there is no amendment until we get to Page 3. Page—pass; Page 2—pass; Page 3. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Bill 14 be amended by adding "thereto" immediately after Section 9 thereafter the following section 9.1. Section 96 of the Act is repealed and the following section is substituted therefor:

Entry for Political Purposes.

96 No landlord or servant or agent of a landlord shall deny or restrict access to residential premises during all reasonable hours by political candidates or the

Law Amendments
Tuesday, May 31, 1977

authorized representatives of the candidates or their political parties for the purpose of canvassing or distributing election material for election to the House of Commons, the Legislative Assembly, Municipal Councils or School Board, or for distributing political material or information at any time.

MR. CHAIRMAN: The amendment is moved. Any discussion on the amendment? Before we get an explanation, I would suggest to you that on the second last line you make that "School Boards" instead of "School Board". In the second last line thereof where it says "Municipal Councils or School Board," it should read "School Boards". Any discussion on the motion? Mr. McKenzie. Order, please. Mr. McKenzie.

MR. MCKENZIE: I'd certainly like an explanation of the amendment, to start with.

MR. CHAIRMAN: Mr. Toupin.

MR. TOUPIN: Well, Mr. Chairman, I thought the amendment was explaining the intent desired here. Really there has been requests by quite a few tenants to have such a section passed in this bill, giving them their rights to support a candidate of their choice, whether it be a federal, provincial, municipal, or school board election. That's the intent of the amendment.

MR. CHAIRMAN: Mr. Johnston.

MR. G.E. JOHNSTON: Mr. Chairman, I think most members of the Committee agree with the intent of the amendment but the phrase "during all reasonable hours" could be left to the interpretation by the landlord. For example, reasonable business hours are nine to five. Reasonable canvassing hours for a political candidate might be until ten o'clock at night. So a landlord, or his agent, could say, "Nobody in here after six o'clock at night." Now I wonder if this clause is so vague that it lends itself to an improper interpretation. Perhaps the Minister could comment on that.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, on the subject that Mr. Jorgenson raised earlier, I wonder if the Chair could advise me where this particular Section 96 appears in the bill that we dealt with in the Legislature. I see Section 95 being dealt with and I see then we hopped to Section 98. I wonder where Section 96 is dealt with in the bill that we had on second reading and first reading.

MR. CHAIRMAN: Mr. Johannson.

MR. JOHANNSON: Mr. Chairman, Section 96 is not in the Act that is before us. I am certainly one who supports this amendment. But if members of the Committee feel that this is a bad precedent, I would certainly be willing to have the amendment withdrawn and the Act could be amended next year.

MR. PAULLEY: Well, Mr. Chairman, on a Point of Order, I think that it is within the context of this Committee to introduce amendments. Because when the bill is reported back to the House, it is reported with certain amendments to the bill and the members of the Assembly will have an opportunity at that particular time to accept or reject what this Committee has done. I've never known any prohibition for the introduction of an amendment of this nature by the Committee of Law Amendments. Because — and the reason I say that, Mr. Chairman — in the final analysis, it is the House that casts its judgment as to the acceptability or otherwise of the province.

MR. JORGENSON: Mr. Chairman, on that Point of Order. I'm going to attempt to explain once more the Point of Order that I originally raised. It is within the competence of this Committee to move amendments to the bill that is before us — that is the bill to amend. We have bills; in this particular case it is Bill No. 14 and it is within the competence of this Committee to move amendments to the clauses that are contained in here. But after this bill has passed second reading in the House, then it is not within the competence of this Committee to move amendments to the original Act, which is what is being done in this instance. You are moving amendments to the original Act that are not contained in the bill before us. I think that that is not within our competence; that a new bill has to be introduced or this should have been introduced in the House before the bill was past second reading. You know, I let it go by on one instance because I thought perhaps it was an oversight. But I see now if it's going to develop into a regular practice then I have to oppose it.

MR. PAULLEY: Well, Mr. Chairman, on the Point of Order . . .

MR. CHAIRMAN: Mr. Paulley, on the Point of Order.

Law Amendments
Tuesday, May 31, 1977

MR. PAULLEY: . . . I am not attempting to be adamant in my capacity at the present time as the Acting House Leader. Taking a look at the amendment, I'm prepared, I think, on behalf of the government to accept for the time being the position taken by the Honourable the House Leader of the Conservative Party on the Point of Order. — (Interjection)— Yes, I have a choice. Because, as you said just a few moments ago, Mr. McKenzie, we have a majority on this Committee and . . . —(Interjection)— Just a minute. You're just a newcomer to the Legislature. But, Mr. Chairman, here am I, attempting to be co-operative as far as the point raised by the Honourable the House Leader of the Conservative Party and one of his colleagues is daring me to do just the opposite. I'm prepared to accept the position taken by the House Leader of the Opposition. I do know that this has been done on some other occasions. I believe the Honourable the Member for Morris said that there was an occasion and I'm prepared, on behalf of the government to accept his reasoning at this time.

MR. JORGENSEN: Thank you very much.

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Mr. Chairman, on a point of order to the Honourable, the House Leader. I did not say that I dared him. I just said that he didn't have the right.

MR. PAULLEY: I don't know where you were over the supper hour.

MR. AXWORTHY: Well, Mr. Chairman, if you're going to follow the recommendation of the Member from Morris but frankly I don't understand what the amendment's about because it's already in the act anyway' so why are we bringing in a new amendment when it's already in the Act? I just read the Act. There is no difference, just the words changed around but the intent is the same. Can the Minister perhaps explain why we've got an amendment in the first place?

MR. CHAIRMAN: Mr. Johannson.

MR. JOHANNSON: Yes, Mr. Chairman, to the Member for Fort Rouge the Act as it presently reads would I think tend to restrict freedom of political canvassing largely to the period of an election campaign. This would open it up and make it clearly permissible at anytime during the year. Now, on the same point, Mr. Chairman, this matter can be moved I understand at the third reading stage. I would be quite prepared to support it at that stage.

MR. PAULLEY: A MEMBER: Well it can be done . . . another amendment . . .

MR. JOHANNSON: At that point it is dealt with by the entire House.

MR. PAULLEY: That's right. That's dealt by the House. Mr. Chairman, basically I'm prepared to accept the point raised by the Honourable Member for Morris at this time. But on third reading it is within the competence of any member of the House and the House to refer the thing back dealing with this particular clause and the House can order that to be done.

MR. WALDING: . . . Committee I will withdraw the amendment.

MR. CHAIRMAN: Amendment is withdrawn. Page 3—pass; Any further amendments? Page 4. . . —(Interjection)—

MR. PAULLEY: Well, we have the same problem and maybe we can handle them both, Mr. Chairman, at the same time on third reading.

MR. CHAIRMAN: All right. Motion No. 2 on the page that Mr. Walding has, this is referred to in the Bill. It comes on page 4.

MR. WALDING: No, Mr. Chairman we have an amendment.

Mr. Chairman, I move that section 18 of Bill 14 be amended by striking out the figure 4 on the second line thereof and substituting that for the figure 3.

MR. CHAIRMAN: The amendment as moved. Passed. Page 4 as amended—pass. Page 5.

MR. WALDING: Mr. Chairman, I move that the proposed new subsection 110(5) of the Act as set out in section 18 of Bill 14 be amended by adding thereto immediately after the word "investigation," in the first line thereof, the words "it is reasonable and practicable to do so."

MR. CHAIRMAN: Motion as moved. Pass. The next motion Mr. Walding.

MR. WALDING: Mr. Chairman, I move that section 18 of Bill 14 be amended by adding thereto, immediately after proposed new subsection 110(s) thereof, the following subsection:

Order without further hearing. 110(6) Upon receipt of the report of the rentalsman under subsection (4) or (5) and the report recommends that the application for an order

Law Amendments
Tuesday, May 31, 1977

for possession or compensation or both be granted or denied in whole or in part, as the case may be, a judge may grant or refuse the order as he deems just without holding any further hearing.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wonder if the Minister might explain more extensively the meaning of this amendment. As I read it, it would mean that there would be an investigation, a report to the judge and that the parties affected by that investigation would have no recourse to comment or react to it, to determine whether in fact the investigation was valid or subject to any kind of cross examination. If that's the case it seems that it would be a certain denial of rights.

MR. CHAIRMAN: Mr. Toupin.

MR. TOUPIN: Well, Mr. Chairman, it's really an addition to the rights as we see it of landlords and tenants here. This is something that's not now contained within the Act. It allows for possibly less costs attributed to the landlord in having the Rentalsman supply information to the court but without having the court necessarily holding a further hearing after he has received the information from the Rentalsman. That's my understanding it's meant to cut down on bureaucracy and possibly cut down on costs of landlords. I've got my Deputy-Minister here. Possibly he could add, if he feels that there's anything to be added to the explanation given.

MR. CHAIRMAN: Mr. Mason.

MR. MASON: Section 18 provides an amendment for two new subsections providing that a judge may request a rentalsman's investigation report. The objective here was to try to reduce the time element for a landlord to get into court to get an order for possession and the cost. That is to say that if he can rely upon the Rentalsman's report then it may not be necessary for him to hire a solicitor to plead his case before the court, if the court is satisfied with the results of that investigation. Now the idea of this further amendment is that it simply clarifies what the court can do, if the court is satisfied with the investigation. It does not follow that anybody is pre-empted necessarily from appearing in the court. It simply says that if the Judge takes the report and sees that it has been investigated and mediated as fully as would happen in court then he can proceed without a further hearing.

MR. AXWORTHY: Mr. Chairman, it's my understanding the way that our legal system works that it's an adversary system and it's based upon having the opportunity to be confronted with the evidence which is either for or against you one way or the other and if you have a situation where a judge who is depending upon a report from the Rentalsman the Rentalsman could under some circumstances, perhaps not have full access to the facts, maybe his investigation for some reason or other is not fully comprehensive. The judge has no way of knowing that. There is no opportunity under this section for anyone either landlord or tenant to challenge that report or to provide any alternative evidence to support or to deny it then the judgment of the court may be based upon faulty evidence. And it would seem to me that there is a real flaw in this particular amendment on that account and that I can sympathize with the need to try to cut back on timing but it would seem to me to simply deny any hearing and have a judge make a report solely on the word of the Rentalsman, you're really replacing then the court system with a report of an administrator who says this is my view of the way the world is. Then who's right and wrong?

MR. TOUPIN: Mr. Chairman, it doesn't limit the judge from receiving information from any other source. It only says here that the information of the Rentalsman, we feel, is of importance and should be considered. It doesn't foreclose. . .

MR. MASON: There is a point here that in filing an application for an order for possession there is nothing to say that a landlord cannot say in his application that the matter has been heard by the Rentalsman and that he disagrees with the Rentalsman. Conversely there is nothing to say that a tenant who disagrees with a ruling of the Rentalsman cannot say in his defense that he disagrees with the Rentalsman. This can all take place at the initiation of the action and the original filing of a statement of defense.

MR. AXWORTHY: Mr. Chairman, I still don't think though that either of the explanations satisfy my concern that if you read the previous clauses, 110(4) and 110(5) and then follow it up by this new 110(6), as I understand it the court could order the Rentalsman to undertake an investigation which is fine, but then the court could simply

Law Amendments
Tuesday, May 31, 1977

on the basis of that without any further examination in hearing, make a decision on the order. My concern would be that taking away that right of further hearing either from the point of view of the landlord or tenant would mean that they have no way of knowing what the report of the Rentalsman is. The Rentalsman files a report with a judge, the judge says, "Well, okay if that's the way it is, I'm going to decide." Bingo! You've had it, and your court case is over unless you go for an appeal. It would seem to me that the part I would suggest needs reconsideration is the one about making an order as needing a judge without holding any further hearing.

MR. TOUPIN: There is always, as the honourable member knows an appeal to the decision of the judge.

MR. AXWORTHY: I realize that, Mr. Chairman, but if the concern of the Minister was to evade or avoid further time and court costs, then certainly an appeal is an awful lot more cumbersome and complicated than simply having a one court action being conducted in a most open and fair manner possible and I'm not sure why this particular last phrase of the clause was introduced without hearing. It would seem to me that if that was taken off it would be a perfectly good clause, I suppose but I just don't understand why we're allowing in effect without a certain subvention of the court procedure.

MR. CHAIRMAN: Is there any further discussion of the motion. .

Page 5 as amended —pass. Page 6.

MR. WALDING: Mr. Chairman, I move that the proposed new subsection 123(2) to the Act as set out in Section 22 of Bill 14 be struck out and the following section be substituted therefor.

Application of subsection (1). 123(2) Notwithstanding subsection (1). Part IV does not apply where an employer is engaged in the mining, construction or logging industry and directly or indirectly provides room and board or room only to an employee.

MR. CHAIRMAN: The new subsection as moved. Is there any discussion to it? Mr. McKenzie.

MR. MCKENZIE: Could I have an explanation of this section, Mr. Chairman.

MR. TOUPIN: Mr. Chairman, it's intended here like the amendment indicates, to withdraw from the Act employers that are engaged in mining, construction, logging industry and directly or indirectly provide room and board, or room only to an employee. So, this supposedly is self-explanatory in the sense that the intent is to take them out of the responsibility of the Act.

MR. PAULLEY: Well, Mr. Chairman, in all due respect I suggest all we have to do is not book them in respect of section 123(2). You don't need a

MR. MASON: No' that won't work.

MR. PAULLEY: Pardon, I beg your pardon.

MR. MASON: That won't work, Mr. Paulley.

MR. PAULLEY: Why won't it work?

MR. MASON: Because we've brought Crown Corporations and everything explicitly under the Act. At the present time they are under the Act.

MR. PAULLEY: Crown Corporations?

MR. MASON: Yes, but private companies for instance, such as Inco up at Thompson are now under the Act. They are now under the Act.

MR. PAULLEY: I don't give a damn whether they are or whether they're not.

MR. MASON: . . . with bringing Crown Corporations in, we bring all construction companies in under the Act. And the original idea was that

MR. PAULLEY: The Rentalsman would supersede over collective agreements.

MR. MASON: Well, no, we're not getting into labour laws.

MR. PAULLEY: That's what this is.

MR. MASON: Well, the amendment is a reversal. It's saying that the rentalsman has nothing to do with arguments in construction camps of any kind.

MR. PAULLEY: As long as that's clearly understood that we're not going to have a third or fourth or fifth party in dealing with collective agreements.

MR. MASON: Well, you must have this amendment, Mr. Paulley, to straighten this out.

MR. PAULLEY: The present section is deleted and this is the substitution, right? It is going to achieve the Part IV objective that the rentalsman is not arbitrator in collective agreements.

MR. MASON: He has nothing to do with logging camps, mining camps or

Law Amendments
Tuesday, May 31, 1977

construction camps

MR. PAULLEY: As long as that's assured and I have that assurance, I'm prepared to accept.

MR. MASON: As a matter of fact none of Part IV will apply to those camps.

MR. CHAIRMAN: Order please. The new subsection —pass.

MR. SHERMAN: The amendment reverses . . .

MR. MASON: Yes, Mr. Sherman, it exactly reverses it.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, I move that proposed new Section 126 of the Act as set out in section 23 of Bill 14 be amended by striking out the words "under his jurisdiction" in the third line thereof and substituting therefor the words "employed by the government in the department administering this Act."

MR. CHAIRMAN: Motion as moved. Is there any discussion to the motion? Pass. Page 6 as amended—pass. Can we have a motion —(Interjection)— Just a moment, before we proceed here, this is just something procedural here — and I'll hear you then — but would someone move that the Legislative Counsel be authorized to renumber where necessary. Will someone so move that.

MR. WALDING: I will so move.

MR. CHAIRMAN: Any discussion on the motion—pass. Now, Mr. Minaker.

MR. MINAKER: Mr. Chairman, through you to the Minister, the amendment here where you're allowing anybody that's employed in that department, does that mean that now anybody whether it be a clerk or a typist or whatever will have the powers of the rentalsman if they so are designated the authority?

MR. CHAIRMAN: Mr. Mason.

MR. MASON: The intention of this particular amendment is to narrow the people to which the rentalsman can delegate his power and it is true that carried to the ultimate extent he could delegate a clerk or a typist or some such thing as this, but this is of course not logical. However, to narrow it down and use the phrasing that we did, what happens is that we send officers of the Consumer's Bureau out on field trips who also at the same time perform the function of the rentalsman and they are equally trained. So that we switch them back and forward for economy's sake. So that we can't say that an officer employed in his office sold this. We want to be able to use the officers of the Bureau as well as the officers of the Rentalsman interchangeably. This way we can manage to get all of our field trips done, and the people that go out on these trips can handle consumer complaints or landlord-tenant complaints.

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Mr. Chairman, I just can't understand that somebody without your jurisdiction, the Minister's jurisdiction or the staff would go out in the field. They would have to have a directive or an order from somebody. They go out without jurisdiction?

MR. MASON: Oh, that's true, but the problem is that it comes Actually the whole principle of the initial amendment as it is introduced in the bill is that under Section 19 of The Interpretations Act there did come to be a question. For instance, under The Landlord and Tenant Act, the Rentalsman has the power to mediate, and if he mediates under Section 19 of The Interpretations Act, an officer of his other than a Deputy Rentalsman cannot necessarily perform that function, because The Interpretations Act says that an authority can only be delegated to a deputy.

MR. CHAIRMAN: Mr. Toupin.

MR. TOUPIN: Can I attempt to clarify this? Let's say there is a Consumer Protection Officer in Gillam, actually is there to deal with Consumer Protection matters. Under the existing Act he cannot be delegated by the Rentalsman to deal with responsibilities of the Rentalsman while being in Gillam, so we would have to send two people there with authority. But with the amendment, the authority of the Rentalsman could be delegated to that Consumer Protection Officer to deal with both. And that is the ultimate intent.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: If we carry out this approach, Mr. Chairman, what would happen then if this Consumer man is up in Gillam and the complaint comes in and he goes and investigates it, takes down information, and it becomes a disputable item. Is he left out of the hearing, or what happens? Just his information that he gathered then presented as information by the Rentalsman down here in Winnipeg, or how would it work?

MR. MASON: It would depend upon the circumstances, Mr. Minaker. If it were a case

Law Amendments
Tuesday, May 31, 1977

f. . . let's say it was an emergent case such as a lockout or a distress which requires immediate attention, then that officer would have to try to resolve the problem on the spot, but if it became a question of the disbursement of a security deposit or some such thing as this, then he would gather up the information and it would come into the office to the Rentalsman. He would not make the final decision in the field.

MR. MINAKER: In other words, Mr. Chairman, none of these people would make the decision in the field?

MR. MASON: Not deferrable decisions. I can't promise you that they wouldn't make some decisions in the field. They would have to.

MR. MINAKER: Mr. Chairman, I liken this somewhat to . . . take, say, the Mines and Environmental Management department. What this amendment would say if it was that department might be that health inspectors that are responsible for certain things might be not available, but there might happen to be a geologist in Gillam that worked for the Mining Department, so he would take the information down and then make a decision. It is almost the same example that you're referring to me, that a Consumer man might be up there, not related to the rental, but now he can take over that responsibility. I question whether that would be efficient or not.

MR. MASON: Except for the fact that Rentalsman's officers are trained in the Consumer Bureau and *vice versa*. They are equally cognizant of both Acts, so that there is no question of sending somebody out who is inexperienced. And if there is a problem here, and it frequently happens, if we have an officer in the field and he has a dicey situation in the field, he phones in either to the director of the bureau or he phones in to the Rentalsman and gets his direction from there.

MR. MINAKER: Okay. Thank you.

MR. CHAIRMAN: Preamble — pass? Mr. McKenzie.

MR. McKENZIE: I still wonder if you would be kind enough to tell me where this officer gets his jurisdiction. Is a phone call not jurisdiction, or where does it become his authority to do that?

MR. MASON: It becomes his authority under the proposed Section . 126, by delegation.

MR. TOUPIN: Otherwise, Mr. Chairman, he has no authority.

MR. MASON: He has no authority. Yes.

MR. McKENZIE: You've telephoned and that's authority.

MR. MASON: Well, no, he would go out in the field with authority. As a matter of fact our officers have identification cards. I am sorry I don't have one here.

MR. McKENZIE: They become double agents?

MR. MASON: Yes, they have identification cards.

MR. MINAKER: 007 and 003?

MR. CHAIRMAN: If you would look at Section 126, Mr. McKenzie, I think it is fairly self-explanatory.

Preamble—pass. Title—pass. Bill be reported.

BILL (NO. 15) — AN ACT TO AMEND THE REAL ESTATE BROKERS ACT

MR. CHAIRMAN: I believe there are some amendments. I don't believe there are any bill we get to Page 2. Page 1—pass. Page 2, Mr. Walding.

MR. WALDING: I move THAT the proposed new sub-clause 22(1)(f)(i) of The Real Estate Brokers Act, as set out in Clause 6(a) of Bill 15 be amended by adding thereto, immediately after the word "that" in the first line thereof, the word "he".

MR. CANTLIE: If a real estate broker salesman is obtaining an offer by a promise to arrange the resale of the man's existing house, it has to be put in writing in the contract for the sale.

MR. CHAIRMAN: The amendment as moved—pass. Page 2 as amended—pass. Page 3, Mr. Walding.

MR. WALDING: Mr. Chairman, I move THAT the proposed new subsection, 26.1(1) of The Real Estate Brokers Act, as set out in Section 7 of Bill 15 be amended by striking out the last four lines thereof and substituting therefor the following words:
contract, and not as agent for anyone of them, and he shall have the responsibility to pay or account for it to the proper party and, in the event of any dispute between the parties in respect of the deposit, he may' and if it is necessary in order to resolve the dispute he shall' pay the deposit into court on an interpleader.

MR. CHAIRMAN: The amendment as moved — any discussion to the amendment? The amendment as moved—pass.

MR. WALDING: Mr. Chairman, I move THAT the proposed clause, 26.1(3)(b) of The Real Estate Brokers Act as set out in Section 7 of Bill 15 be struck out and the following clause substituted therefor: (b) except where so directed in writing by all persons interested, and except as may be permitted by the regulations, shall not invest any trust money but shall keep it in his trust account; and

MR. CHAIRMAN: The amendment as moved — any discussion? Hearing none—pass.

Page 3 as amended—pass. Page 4—pass. Preamble—pass. Title—pass. Bill be reported.

BILL (NO. 16) — AN ACT TO AMEND THE GARAGE KEEPERS ACT

MR. CHAIRMAN: There are no amendments as far as we know. Page 1—pass? Mr. McKenzie.

MR. McKENZIE: Mr. Chairman, I have had concerns from garage keepers in my constituency regarding 13.1(9), that over a long weekend or a holiday they are still worried that they would be facing penalties that they feel would be unfair. This was brought up in the debate and the matter they thought would be amended, but apparently it hasn't been, so I am just registering their concerns over . . . if somebody arrived at a garage at 5 o'clock on a Friday afternoon and the car maybe was ready but there was nobody there, the garage was closing up and he would be forced to keep that car over until a Tuesday morning, and they are concerned about that section. I will just register my concern and let it go on the record.

MR. CHAIRMAN: Fine, thank you.

Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I don't think I should allow the comment to go on the record unanswered. No garage keeper need be concerned in this legislation. All he has to do is obey the order of the court, and all that this provision provides for a fine if the garage owner defies the order of the court, the laws of the province sanctioned by a court. So that I am rather surprised at Mr. McKenzie's concern as to what might happen in an instance where someone deliberately defies an order of the court.

MR. McKENZIE: Mr. Chairman, I just ask the Attorney-General to go out and visit some six garages in my constituency. He will get the answer real quick.

MR. PAWLEY: Mr. Chairman, I must say that I would have sufficient confidence in the small businessmen in the Roblin constituency that I am sure that there wouldn't be six garage keepers that would tell you that they would be concerned, or tell anyone that they would be concerned about what might happen to them if they defy an order of the court. I am sure that they would be anxious to respect the laws of the Province of Manitoba and obey court rulings when they are handed to them and not defy them.

MR. CHAIRMAN: Page 1—pass? Mr. McKenzie.

MR. McKENZIE: Just for the record, Mr. Chairman, to the Attorney-General. They are not wanting to break the laws of the province. They just recognize there is a real problem there and they hope they can deal with it.

MR. PAWLEY: For the record, Mr. Chairman, I am concerned about the impression that their representative has left here tonight, that he has a number of garage owners that would appear to be careless as to the obeying of court orders and might wish to defy court orders.

MR. CHAIRMAN: Page 1—pass. Page 2—pass. Preamble—pass. Title—pass. Bill be reported.

BILL (NO. 21) — AN ACT TO AMEND THE REAL PROPERTY ACT

MR. CHAIRMAN: Page 1, Mr. Walding.

MR. WALDING: Mr. Chairman, I move THAT Bill 21 be amended by striking out Section 2 thereof, by renumbering Section 1 thereof as Section 2 thereof, and by adding thereto, immediately before Section 2 as renumbered, Section 1 as printed, the following section:

Subsection 17(4) amended

Subsection 17(4) of The Real Property Act, being Chapter R30 of the Revised Statutes, is amended by striking out the words "searches made in a Land Titles Office by personnel of" in the first and second lines thereof and substituting therefor the words "services rendered by a district registrar for."

MR. JORGENSEN: On a point of order, I wonder if you could tell me where Section 17(4) is in Bill 21?

MR. TALLIN: The practice in Committee has for 20 years now been to accept amendments to any portion of an Act when it is put in.

MR. CHAIRMAN: It might be interesting for Mr. Jorgenson to know that Mr. Minaker's motion that

Law Amendments
Tuesday, May 31, 1977

removed was also out of order.

MR. JORGENSEN: Pardon?

MR. TALLIN: The one dealing with the teachers' pension bill had nothing to do with it.

MR. CHAIRMAN: I can't hear you.

MR. TALLIN: The amendment that was accepted by this Committee just a few minutes ago in the Teachers' Pension Bill was accepted, and with no

MR. JORGENSEN: Yes, I know, I raised it. I raised it after and said that we had done it illegally.

MR. TALLIN: Well, as I say, for 20 years the practice of the Committees of the House has been to bring in amendments of that kind.

MR. JORGENSEN: Well, it has not been the practice as long as I've been in the Legislature.

MR. TALLIN: Oh, I think if you will look at the amendments that are made to bills . . . in fact many throughout the last seven or eight years, Mr. Jorgenson, you will find that many of them have been made.

MR. JORGENSEN: We have raised this before, and I think it's been fairly clearly established that it is not within our competence to introduce amendments that are not contained in the bill to amend. Otherwise it would be free for anybody to propose any kind of an amendment to the original bill. We could have amendments here till kingdom come, and we would not have a bill authorizing those amendments. There is just no way.

When you are passing a bill in the House on second reading, ostensibly it is adopted in principle, and all the provisions of that bill are contained in there, and so that's what you pass. And when you come outside the House, do you mean to tell me that you can pass amendments to the original Act that are not contained in this bill, for which there has been no debate on second reading? I don't believe it. I don't have the authority in front of me right now but I know I can find it.

MR. PAWLEY: Mr. Chairman, I wonder if . . . there appears to be some argument as to whether there has been a past practice of introducing amendments that don't relate to the substance of the bill. I gather there is reasonable doubt as to whether that has occurred or not. I couldn't give examples of whether that has occurred or not. I am sure that the elder Mr. Paulley here could, I would invite him for his comments. But I am wondering whether, leaving aside the principle, whether or not it would seem to be such a technical amendment, yet important to only those that deal with the mechanics of the Lands Titles Office, if we would want to frustrate this amendment, a very technical amendment.

MR. JORGENSEN: No' Mr. Chairman, please don't misunderstand me. I am not attempting to frustrate anything. If, as the Minister says, it is a sort of a technical thing, I am not opposed to accepting it, but I still say that it is not within our competence to do so. However by unanimous consent I suppose we can do anything, and I am prepared to let it go on that basis.

MR. PAULLEY: If we can do it here I think it facilitates . . .

MR. JORGENSEN: I am prepared to let it go here.

MR. PAULLEY: . . . and if the House Leader of the Conservatives is prepared to allow it to go, he would allow in The Civil Service Act the introduction of an amendment clarifying the eligibility or the right of protest of recipients of old age retirement pensions that went through because of a relatively technical explanation. As long as it doesn't change the real substance of the bill, I think that we can proceed. I'm glad to hear that the House Leader of the Conservative Party, if he's assured that it's a technical cleaning up of a word or two here or there, even though it wasn't fully explained in the bill, we may in the proceed.

MR. McKENZIE: On the same point of order, may I ask the Attorney-General why he can't bring the bill in the House in third reading and be debated there and moved properly.

MR. JORGENSEN: I'm prepared to let it go here. So, let's pass it and get it over with.

MR. WALDING: Mr. Chairman, just to the same point of order, I was wondering if you were searching for a reference for the guidance of the Committee. Obviously we would want to be consistent in our practices and not change the ground rules every ten minutes or so, or every bill, very sitting in the House.

MR. PAWLEY: I wonder if we could from practical purpose proceed with this now and some search done as to what has been the . . .

MR. PAULLEY: If I can say so, let's go ahead with this now, Mr. Chairman. I would suggest to the member for Morris, it may be a matter that we could consider for in Rules Committee that insofar as the nature of amendments in law amendments. Proceed Mr. Chairman.

MR. CHAIRMAN: The motion is moved. Agreed.

MR. PAULLEY: Where are we now, Mr. Chairman?

A MEMBER: Ayes and nays?

MR. WALDING: You don't have any ayes and nays on unanimous consent.

Law Amendments
Tuesday, May 31, 1977

MR. PAULLEY: Your House Leader says, "We'll accept it." There's a division within the Conservative Party which is normal.

MR. CHAIRMAN: Is the honourable member requesting ayes and nays?

A MEMBER: What for?

MR. PAULLEY: Well Mr. McKenzie objects to the suggestion of his House Leader.

MR. SHERMAN: Just registering his personal objection.

MR. PAULLEY: We'll accept his personal objection. Proceed.

MR. CHAIRMAN: Page 1 as amended—pass; Page 2—pass; Preamble—pass; Title—pass. Bill b reported. (Agreed)

Do you want to deal with Bill 18?

A MEMBER: Committee rise?

MR. PAULLEY: No, Mr. Chairman, committee will not rise until it has considered Bill No. 18.

MR. CHAIRMAN: Bill No. 18. Clause by clause, okay. Bill No. 18, the Retail Businesses Holiday Closing Act. I don't believe there are any amendments on Section 1. Does everyone have copies of their amendment? Section 1(a). Mr. McKenzie.

MR. MCKENZIE: Mr. Chairman, I wonder if the Minister would consider the definition of an employee in the definition section of this Act.

MR. PAULLEY: The definition of an employee is contained in other Acts, the Employment Standards Act and other Acts, Mr. Chairman. It's not necessary to repeat a definition in this Act.

MR. MCKENZIE: Mr. Chairman, I just wondered, in the food industry there is part-time help. I think we've heard in the Committee from merchants and others that are in the industry that some of them are employing part-time help. They are employing students after school. This is a wide-ranging bill that is going to impose a lot of restrictions on the retail industry and I think the least the Minister could do in this is, if it's mentioned three or more employees, not to exceed three; and I think to be fair to the retail trade and those that are in the industry, the least he could do is define who he's talking about. Three what? Employees, part-time, full-time, on an hourly basis, delivery people, or what are we talking about in the legislation?

MR. PAULLEY: Mr. Chairman, there is no necessity in this Act to define an employee. As indicated to my honourable friend, there is a definition of an employee. In this particular bill, there is reference to three or more employees and whether they're part-time full-time or extra-time they're still employees, at any one time. That's what this bill refers to. Is that not correct?

MR. MCKENZIE: Okay, have I got that? For clarification, Mr. Chairman, part-time, full-time or on an hourly basis, they're still classed as employees.

MR. PAULLEY: At one time.

A MEMBER: That's what it says, "At any time."

MR. PAULLEY: At one time. That's what this bill refers to, 3 employees.

MR. MCKENZIE: At any time, or at one time — let's have a clarification on that.

MR. PAULLEY: Mr. Chairman, we haven't reached that section. We'll discuss that. . . . As far as definitions are concerned, the definition of an employee is contained in other legislation.

MR. CHAIRMAN: Section 1(a)—pass; 1(b)—pass; 1(c)—pass. Section 1—pass. Section 2—pass. Section 3(a)—pass; (b)—pass. Section 3—pass. Section 4. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that subsection 4(1) of Bill 18 be amended by striking out the word "section" in the first line thereof and substituting therefor the words and figure "Sections 2 and 3."

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

MR. BALKARAN: Mr. Chairman, for the benefit of the members of the Committee the subsection would now read, "notwithstanding Sections 2 and 3". You will recall that some delegation had pointed out an error had been made, so we're correcting it now. (Agreed)

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I propose the following amendment to Section 4(1), Mr. Chairman. I move that all the words in clause 4(1) as amended be deleted and the following be substituted therefor: "Notwithstanding Sections 2 and 3, a person who owns and operates a retail business establishment may elect to sell or offer for sale goods or services therein on a retail basis on Sundays where the person, on application to the Attorney-General, receives an exemption from Sections 2 and 3 or strongly held religious grounds; but where a person receives an exemption on such grounds, he shall not sell or offer for sale goods or services in his establishment during a continuous 24-hour period or the 30-hour period immediately preceding the Sunday, or Sundays, for which he has received the exemption."

The explanation and the reasoning for this proposed amendment, Mr. Chairman, is that we believe, as we've stated in the House, that the day of commercial rest that should be observed in the Province of Manitoba is Sunday, but we recognize that there are adherents of many religions who do not observe Sunday as their Sabbath Day, and as a consequence, if they wish to take the effort to demonstrate on strongly held religious grounds that they observe another Sabbath and make

Law Amendments
Tuesday, May 31, 1977

application through the Attorney-General, they would have the right to operate their establishments on Sundays, provided they closed them in the period specified in the amendment. The reason the time is specified as 24 continuous hours within the 30-hour period immediately preceding the Sunday is that that gives them the time frame from 6 p.m. Friday to midnight Saturday which would accommodate those religions that observe the Sabbath on a sundown to sundown basis.

MR. PAULLEY: I do not feel inclined to accept the amendment of my honourable friend. The purpose of this Act is not to enter into considerations of religious inclinations, which would become part of the Act if we accepted the amendment. I am not aware of any indication in the Act, indeed I think I am correct in saying there is no indication of religious favour, either toward those who observe Sunday or Saturdays, and I think that it would be wrong for this Legislature to bring into effect religious considerations in a bill of this nature. We have tried to provide in many pieces of legislation a non-discriminatory approach to our legislation. I realize that my honourable friend, the Member for Fort Garry, is introducing into this bill, a feature that is prevalent at the present time in the Ontario Act.

When representations were made to the Committee, I was, as I'm sure my friend was, aware that some of the representations referred to this particular aspect and indicated that they were prepared to accept the alternatives of the use of the word Saturday, or the use of the word Sunday, without reference to any religious domination. It just happens, Mr. Chairman, that as an Anglican I do respect Sunday as being my Sabbath. But as the sponsor of this bill, I reject completely the suggestion as contained in the amendment proposed by the Honourable Member for Fort Garry, reference to choices based on religious convictions. I think that the time and day has come when we as democrats — whether New Democrats, old Democrats or progressive Democrats or what not — I think that the day has come when we should make decisions, not on the basis of religion, but on the basis of equal treatment. If our merchants in Manitoba want to take the options that are presented to them and contained in the Bill as to opening on Saturday or Sunday, let it be their choice on that basis' but not on the basis as to adherence — and there's the Lord helping me once again — that on the basis of religious convictions. I suggest in all due respect to my honourable friend that we should not support this amendment.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I would like to just deal with two aspects. One is, I would be concerned about the suggestion that the application be made to the Attorney-General; receives an exemption, it states, on strongly held religious grounds from the Attorney-General. So that in fact, the Attorney-General will be placed in a position of determining whether or not the views are strongly held religious grounds or not. What is the degree of strongly held religious ground? That will be in the hands of the Attorney-General to determine. I would think that would be a very dangerous precedent. I would not think that the honourable Honourable Member for Fort Garry would want to place, for instance, in the hands of the present Attorney-General, the decision making as to whether or not the individual held sufficiently strong religious conviction to receive an exemption. So that's my first concern.

The second, I would think that in practice, that a person that would close on Saturday in reference to Sunday would surely have to have very strong religious grounds to do so. Because from an economic point of view, I would think that they would be much wiser to remain open on Saturday and close on Sunday. So that the individual who is closing on the Saturday, it would seem to me that he is going to pay for that economically and thus must have very strong religious grounds in self.

MR. SHERMAN: Mr. Chairman, if I may reply to the two Ministers, starting with the Attorney-General first. I don't see that there is any difficulty in determining strongly held religious grounds. If a person is an Orthodox Jew and wants to be closed from sundown Friday to sundown Saturday — a simple demonstration of the fact to the Attorney-General or whoever should be the officer of the Government in charge; that designation of the Attorney-General could be changed if the Attorney-General felt it should be some other Minister or some other officer of the Government or the Crown. A simple demonstration of the fact that a person is an Orthodox Jew is sufficient to demonstrate strongly held religious grounds; a simple admission by a person that he is a Seventh-Day Adventist and observes Saturday as his Sabbath, I suggest is on strongly held religious ground. So I don't see any difficulty there. In fact that is the kind of legislation that exists in the Province of Ontario. I have taken some pains to investigate the situation in the City of Toronto, and I have found that there are substantially less than a dozen. In fact the figure that I got from the Attorney-General's department in Ontario was half a dozen, but even allowing for a little leeway on that, something between half a dozen and a dozen merchants in the entire City of Toronto have taken advantage of the opportunity

Law Amendments
Tuesday, May 31, 1977

because they are Orthodox Jews or Seventh Day Adventists to close on Saturday and operate on Sunday.

I agree with the Attorney-General when he says there would be economic disadvantage. That is precisely why nobody would do it unless they felt so strongly about their religion that they wanted to do it simply to observe their Sabbath.

Now with respect to the comments raised by the Minister of Labour that I or my party seems to have injected religion into this situation, I reject that allegation out of hand, Mr. Chairman. The subject of religion was introduced on March 17th on Page 817 of Hansard by the Minister of Labour in his introduction of the bill on second reading, and I quote, Sir' I wish to quote for the record for one minute.

"I can appreciate" (and this is the Minister of Labour speaking in his introductory remarks) "I can appreciate and realize that on first glance, for instance, Mr. Speaker, of a choice between Saturday and Sunday for store opening or store closing, in certain instances that it may be subject to misinterpretation. As a matter of fact I heard some comment over the air to the suggestion that because of those alternatives within the bill, that I was knocking the observance of Sunday all to hell, figuratively speaking. My honourable friend who made the statement has just repeated it. I want to say to him particularly and to all the members of the House and the general public and to all of the members of the community that the intent and the objective certainly is not that, but to recognize and realize, Mr. Speaker, that we don't all observe the same Sabbath. While I appreciate there are those who feel that maybe we should exclude the Seventh Day Adventists who observe Saturday and we should serve those who attend the synagogue on their Sabbath, which is Saturday, that we should say in effect we are not concerned with you. You have to observe that day of rest on what we as Christians consider the Sabbath."

Now I ask you, Sir, and I just leave it to your judgment as to when the whole question of religion became introduced into this debate. On the same page the Minister, it has just been pointed out to me by one of my colleagues, the Minister said "The least that we can do it is to recognize the fact that there are others who observe a different Sunday or Sabbath than we who follow the Christian religions. "

So, Sir, I think that establishes the right of members on this side and members of the Committee generally to address the question of religion and religious observances and Sabbath days where this legislation is concerned, and that is precisely what this amendment does. It says that there is more than one religion in the Province of Manitoba and we recognize that, and where those persons who adhere to religions observing a Sabbath other than Sunday wish to observe that Sabbath and operate their commercial establishments on Sunday, this is offered to them through the amendment in a democratic and catholic way.

MR. CHAIRMAN: Mr. Barrow.

MR. BARROW: Mr. Chairman, we could go on for hours and hours. I move the question be put.

MR. CHAIRMAN: Moved that the Question be put. All those in favour of the motion that the Question be now put?

All those opposed? Order please. The question has been put. (Agreed)

QUESTION put on the proposed amendment by the Honourable Member for Fort Garry.

A COUNTED VOTE was taken, the result being as follows:

Yeas 8; Nays 14.

MR. CHAIRMAN: I declare the motion lost.

Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I just want to explain that I preferred not to vote and abstained from that because I just felt there was not sufficient grounds to hear the full discussion on that amendment, and I was not prepared to vote on it as a result.

MR. PAWLEY: Mr. Chairman, one of the rules is that no member shall refer to a vote that has already been taken. Carry on. —(Interjections)—

MR. CHAIRMAN: Order please. —(Interjections)— Order.

MR. PAWLEY: Carry on, Mr. Chairman, with the bill.

MR. CHAIRMAN: 4(1)—pass; 4 as amended—pass; 4(2)—pass. Section 5(a). Mr. Walding.

MR. WALDING: I move that Section 5 of Bill 18 be amended by adding thereto immediately after the word "sections" in the first line thereof the figure "2."

MOTION presented and carried.

MR. SHERMAN: 2(a)—pass; 2(b)—pass; 2(c)—pass; 2(d)—pass? Mr. Sherman.

MR. SHERMAN: Are we looking at Section 5(d)?

MR. CHAIRMAN: 5(d), right.

MR. SHERMAN: I have an amendment to propose, Mr. Chairman. I move that Subclause (d) of

Law Amendments
Tuesday, May 31, 1977

ause 5 be amended by deleting all the words after the word "services" in the second line thereof, and substituting the following therefor: "on Sunday does not exceed seven."

MR. CHAIRMAN: The motion is moved. Is there any discussion? Mr. Paulley.

MR. PAULLEY: Yes, Mr. Chairman, again we have just passed a section dealing with an option clause, Saturdays or Sundays. My honourable friend has introduced an amendment only dealing with Sunday which could conceivably be in conflict with statutory legislation and The Lord's Day Act in the first place because that is not the intent of this bill; and secondly, the other point raised by my honourable friend increases the number of three to seven, and I suggest to the Committee that after due consideration, my honourable friend, the Member for Fort Garry, took a look at the Ontario legislation which contains, as I understand it, the word "three." If we extended this legislation to the use of the numeral 7 instead of "three," we might as well forget about the whole damn thing because it would not give to those small operators that appear before this Committee of the so-called mama and papa stores and ask for their consideration, their objectives. So I suggest, Mr. Chairman, that we would reject the amendment of the Honourable Member for Fort Garry.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. PAWLEY: Mr. Chairman, I would be concerned that if this amendment was allowed, that additional staff would be employed during the week which would contribute to stacking up the shelves, stocking the store. Then on Sunday it would be possible to continue to operate, for example' chain store with seven individuals or seven staff members after the preparatory work had been done during the week, to ensure that a skeleton staff could maintain the operations on a Sunday, thus destroying the whole purpose of this legislation, which was to ensure that there would be one family day during the week.

Secondly, I would be somewhat concerned that this could contribute more to what could be and has been admitted could be some thoughts that the legislation could be challenged on the basis of it being *ultra vires*.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. In response to the Minister of Labour, he is correct when he says that I referred to the Ontario legislation. He is incorrect when he says that the Ontario legislation specifies three. The Ontario legislation in fact specifies seven in dealing with stores that could be exempted from the holiday and Sunday closing, and it specifies specifically the figure "no more than seven persons" working in that store.

MR. PAWLEY: Okay, I stand corrected but insist on three.

MR. SHERMAN: But' Sir, beyond that I didn't merely consult the Ontario legislation. I have, and members of this Committee have consulted with members of the economic community of Greater Winnipeg and Manitoba generally, and I think the point has been effectively registered here, that to limit the staff total to three, as the bill does, works a very grave hardship on many small businessmen and women, small independent operators in our economy who need Sunday to fight the inroads of the major chains, to be able to maintain a viable business. Sir, it is our contention that this legislation directly desired by the major supermarket chains who do not want to work on Sundays and don't want anybody else to have the Sunday business. We have had ample conversations within and without the Committee to demonstrate that there are many independents who have to have Sunday to keep their businesses viable. You cannot always do it with three persons, Sir; I think that is a totally reasonable figure, and that is the reason for requesting seven.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, there is conflict in the Ontario Act, as there indeed is conflict in any conservative mind. On Page 2 of the Act that I have from Ontario, the statement is that "the number of persons engaged in the service of the public in the establishment does not exceed, at any time, three."

MR. SHERMAN: That is right.

MR. PAULLEY: That is right. Then when we get into the exempted section —(Interjection)—

MR. CHAIRMAN: Order please. Now one at a time.

MR. PAULLEY: — there is reference to the numeral 7, but I don't think that they are co-related. They mean two different things' and we want to make sure in our legislation we know where we are going and what the number actually is.

MR. CHAIRMAN: Question on the motion. Mr. Johnston.

MR. J. FRANK JOHNSTON: Mr. Chairman, the Attorney-General refers to the small stores that we at we had in front of us, and I might say I spent six years of my life calling on small grocery stores and I am quite aware of the situation. Mr. Chairman, there are people within this community who have a local corner store that they have built up over the years, and because they have taken the opportunity to keep their stores modern so that they can be on a competitive basis — they didn't set

Law Amendments
Tuesday, May 31, 1977

the rules on how to merchandise, the large chains set the rules on how to merchandise, and they made their stores such — in many cases some of them are very large, but I am not talking about the very large ones, I am talking about the corner stores in your neighbourhoods that are built up to be merchandising stores from a self-serve type of business. Those men have put their names on the line at the bank, Manitobans have borrowed the money. They have put their name on the line, not any big corporation, and they have every right to the same privileges that anybody else has in this province

Mr. Chairman, the Minister is prepared to let the Shell Oil Company sell groceries on Sunday. He is prepared to let a franchised store come in and sell on Sunday under any particular basis because of the number of three, but he is not prepared to let a person born, raised, built his business in Manitoba work on Sunday, mainly because — mainly because the big stores don't want to stay open on Sunday because they have got a union contract for double time, and it's as simple as that. As the Minister of Mines said in the meeting here, it was very obvious what he said to the man from the union, he said you don't want it because it is other clerks in competition with your clerks.

Now if you want to take that attitude and you want to cut off Manitobans in your country towns and in this city' go ahead and do it. You have a man come forward who said he is a Mom and Pop organization. I watched those organizations and I called on them. They could have grown with it. They chose not to. I am not criticizing their operation in any way, shape, or form. They are the backbone of the marketing system as well, but they chose not to have their operation such that they could compete with the chains.

Now we turn around, or this government turns around, and says to a Manitoban, "You cannot stay open." And the only thing that started it was when the chains started opening. There was no cause for confusion until that happened. But if you want to go by a Shell station on Sunday and buy your groceries and then walk by a man who has got an investment in his store, a Manitoban, and look at him closed because you closed him, go ahead and do it.

A MEMBER: Where's that Shell station?

MR. F. JOHNSTON: Lots of them. There is one right down here on the corner.

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Mr. Chairman, I want to make one last appeal to the left wing party of this province, the socialists who, again, the big hand of socialism, the big hand of government is finally closing in on the little country merchants. The chap like the one who stood here the other night from Garson, Manitoba, clean cut, hard-working, taxpayer, paying his bills, employing people, contributing tax dollars to this government's treasury — (Interjections) —

MR. CHAIRMAN: Order please. Proceed, Mr. McKenzie.

MR. MCKENZIE: Well, Mr. Chairman, I know they don't like the poison when they have to eat it, and that is the problem with this crowd we are sitting across the table from, that don't understand what it is to operate a retail business in this province — first of all to deal with all the paperwork and the red tape that is involved in merchandising, but nevertheless when somebody has . . .

MR. CHAIRMAN: A point of order has been raised. Order please. Mr. Johannson, would you state your point of order, please.

MR. JOHANNSON: Mr. Chairman, we are dealing with a specific amendment which has very clear limitations in terms of subject matter. Would the member please confine his remarks to that? He is talking in the most general terms that I have heard this evening, and he is clearly out of order.

MR. CHAIRMAN: Mr. McKenzie.

MR. MCKENZIE: Am I out of order, Mr. Chairman?

MR. CHAIRMAN: I told you to proceed.

MR. MCKENZIE: Thank you. On the same point of order, Mr. Chairman, I would certainly welcome the member across who just spoke, to go out and work in a grocery store once in a while, and find out what it is to get your hands dirty.

MR. CHAIRMAN: Order please. You are now not on the section.

MR. MCKENZIE: Mr. Chairman, if he had understood what I am talking about, he wouldn't have raised that point of order. Let me again, Mr. Chairman, refer to this clean cut gentleman, the merchant from Garson who appeared here the other night in this Committee, employing five people, some of them part-time, some full-time — (Interjections) —

MR. CHAIRMAN: Order please.

MR. MC MCKENZIE: . . . a dedicated citizen of this province, loyal as you could ever find — and under this legislation the Minister of Labour and the big chains and the unions are going to say: "Look, my friend, you can't operate the same as you used to. You are going to have to come under the big wing and the big, heavy hand of government, and you will open when we tell you and you will close when we tell you." Mr. Chairman, that is a step back for Manitoba, one of the dark days for the

Law Amendments
Tuesday, May 31, 1977

small businessman in this province, what we are doing here with this legislation tonight.

MR. PAULLEY : Question, Mr. Chairman?

MR. CHAIRMAN: Section 5(d)—pass? Mr. Minaker.

MR. MINAKER: Mr. Chairman, I would like to make a few comments on Section 5. We listened to the president of the Mama-and-Papa store owners here not too long ago, and I questioned him on what he thought employees were, and he indicated, I think, to the Committee that he didn't feel that a son or a daughter or a wife was an employee; yet we asked the Honourable Minister tonight to define employee and I think he made it very clear. Whether he would give the full details or not, but he said anybody who was employed, received moneys, part-time, hourly or full-time, would be considered employees. Well I suggest to you, Mr. Chairman, that with that kind of definition of employee if a mama-and-papa store employed sons and daughters and wives, paid them moneys, show them on some tax T-4 slips, that they will exceed three employees.

The other grey area that exists right now, as the Minister tonight said very clearly, and I asked him again and he repeated, he said it was three employees at any time. The Act says "at all times". I would suggest to you, Mr. Chairman, that the Act very clearly says "services at all times"; that there is a difference between any time and all times. All times to me means total. Total in summation for the full year or time period. Any time means instantaneous. That means right now is there three people employed in the store, and that is not what the Act says in front of us that we are dealing with right now.

Mr. Chairman, I suggest to you that we are making a big mistake. Because you're not only going to affect the family-owned unit. I have a family-owned store where there is something like four or five in the family that are employed on a Sunday, and that's their livelihood, that's how they make the store run. We heard the mama-and-papa store President say to you what they thought an employee was, and it's not what the Minister is implying what an employee is now. It's not the total that the Minister is implying. Verbally, the Act very clearly says that total number of employees at all times — which could be for a year, I would presume — is three, and it's not any time, like he suggested tonight. So he is misleading us.

MR. PAULLEY: That's not the intention. Regulations can cover that.

MR. BOYCE: Of all the legislation that I have been involved with, this is one piece of legislation that I would rather not pass. But nevertheless I see no other alternative because of the conditions which exist and the public support which has come to me directly. I take the question raised by the Member for Sturgeon Creek quite seriously, hasn't been a mama-and-papa operation.

I, for one, will be quite anxious to see how this bill operates for the next year. I will be quite anxious to see how the next section that we will consider will be operating.

But nevertheless, Mr. Chairman, I think that this is the best that we can come up with in the present circumstances. I intend to vote down the amendment. Albeit that I think there is some merit in some of the suggestions that have been made by the members on the other side.

MR. PAULLEY: Mr. Chairman, just on that point . . . —(Interjection)—

MR. CHAIRMAN: Order, please. Order, please. I just want to set members straight. Now, you have been members of the Legislature for a long time. You know that someone saying the question be called does not automatically call for the question. If you want the question called, you have to move it. Now I want that understood. Do I have to give you a lesson in procedures? Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I want to make an observation. I think that there is some validity in the point raised by the Honourable Member for St. James. There is, however, a section in the Act, section No. 10, which deals with the matter that the Lieutenant-Governor-in-Council can make regulations not inconsistent with the Act. I think that the point raised by the Honourable Member for St. James can be clarified by that methodology, rather than the other. I am sure that the Lieutenant-Governor-in . . . —(Interjection)— No, Mr. Chairman, it is not behind closed doors; we make the decision and it becomes a public decision when the Orders-in-Council are approved by the Lieutenant-Governor of the Province of Manitoba, who is not appointed by this government.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I appreciate the words of the Minister of Corrections. At the present time, the problem has come just from something that happened last fall. But I would like to say that how come that I could walk into a florist's shop or a greenhouse and buy the bedding plants that I want on a Sunday afternoon with seven people running around serving at least a line-up of people getting their bedding plants for their summer garden. Tell me why we can go into pool halls. Tell me why we can do all of these other things and then tell me why you take a Manitoban, over and over national chains and over and above people that are national chains that are going to be open and are open now on Sundays in this province. You know, it's just not fair.

You know you talk about groceries being a necessity. You know, is it a necessity that the

Law Amendments
Tuesday, May 31, 1977

greenhouse be open on Sundays, which they are? Have you seen some of those places? They sell everything from pots to lawn chairs. They are allowed to stay open on Sundays. Nothing is said about them, but we turn around and we specify against one segment of this society.

MR. CHAIRMAN: 5(d)—pass; 5(e).

MR. PAULLEY: Pardon me. We reject No. 7 and I guess, Mr. Chairman, the vote actually was called on that amendment.

MR. CHAIRMAN: Order, please.

MR. SHERMAN: I'd like a vote on that, Mr. Chairman.

MR. PAULLEY: On the increase from three to seven, my recommendation is that we do not accept the amendment of the opposition.

MR. CHAIRMAN: The motion is moved by Mr. Sherman that subclause (d) of clause 5 be amended by deleting after the word "services" in the second line thereof and substituting the following: "on Sunday, does not exceed 7;". Shall the motion pass? All those in favour of the motion? All those opposed to the motion? I declare the motion lost. 5(d)—pass; 5(e)—pass; 5(f)—pass; 5(g)—pass; 5(h)—pass; 5(i)—pass; 5(j)—pass; 5(k)—pass; 5(l)—pass. Mr. Sherman.

MR. SHERMAN: (l) is passed I presume. Mr. Chairman, I have an amendment to Section 5 at th

MR. CHAIRMAN: Following clause (l)?

MR. SHEAN: . . . point in time following clause (l). Yes. I move that clause 5 of Bill 18 be amended by adding after subclause (1) the following: (m) a retail store privately owned by the retailer or owner by a corporation directly controlled by that retailer.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I suggest to the Committee, rejection of this because amendment of my honourable friend really in effect would leave the door wide open. A retail store privately owned, I understand that there is an individual almost solely owns Dominion Stores. A good friend of mine down in Toronto — I believe it's Dominion Stores that he owns privately or supposedly owned privately — this would exempt that whole chain, because it happens to be owned by an individual in a situation where it may be owned by an individual, it could conceivably be an open sesame to chain stores or any other type of stores no matter what the size would be, to operate in contravention of this Act, and I suggest to the Committee rejection of the proposition of the honourable member.

MR. PAWLEY: Mr. Chairman, I would be concerned that this is in conflict with (e). (e) specifies certain types of retail stores, not to exceed three. Then we would proceed to the suggested (m) which would establish a type of retail outlet in which there would be no restrictions' so that we would have two classes of retail outlets: (a) limited to three employees (b) A group which would be unlimited. This would be the worst form of discriminatory legislation. If the honourable members really believe what they preach in respect to competition, then in fact, they would be coming down heavily on the side of one particular type of business as against another type of business. I couldn't think of a more unfair suggestion than this one.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, the Attorney-General raises a valid point and it's one that was considered when we were preparing our amendments. In fact, had our amendment to sub-clause (d) been carried, we would have withdrawn the proposed amendment (m), and we are only moving it because of the fact that (d) amendment didn't pass.

The objection however, I think is exaggerated, because we are talking here about retail stores privately owned by the retailer and they refer in the main, in fact, I could say exclusively in our examination of the field, to small independence of the type that particularly operate in the grocery field at the present time. The Minister of Labour makes reference to a friend in Ontario or a friend in Toronto who owns Dominion Stores — Well, we are not concerned with Toronto or his friends in Toronto. We examined the possible wording that we might use on an amendment of this kind very carefully, Sir, and sought legal advice on it, purposely didn't use the term "independent stores" because we wanted to differentiate between those franchise operations that are parts of major chains and those true independents that are owned and operated by the retailers on the premises.

So I think that the fears that are raised by the two Ministers are not justified and can be allayed on that basis. The argument in favour of this amendment is parallel to the one advanced on amendment (d) proposed earlier, Sir, that the independent grocery operator in Manitoba needs help, needs recognition, needs Sunday to maintain his viable business.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, it seems to me that (m) would mean that T. Eaton store would be allowed to remain open as a family owned retail outlet, and we would be closing many many other outlets, but T. Eaton and Co. would remain open.

QUESTION put.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: I'd just like to briefly clear up the Attorney-General's definition of who owns stores. It is not the family anymore and it's E.P. Taylor who owns Dominion and it's large corporations who own other ones.

But, I just go back, Mr. Chairman, we can now have our boat serviced, we can go into drug stores and we can buy tooth-paste, toilet paper, and cokes. We can buy everything and yet, the man who is right next door, who's got the same investment out of his own pocket, a Manitoban, is not allowed to sell groceries on Sunday just because we are protecting the big chains. The big chains don't want to stay open, and all the Minister is doing — he's actually doing a job for the president of those people because they can't make the decision themselves. It's as simple as that.

QUESTION put on the amendment. MOTION lost.

MR. CHAIRMAN: Order please. 5—pass; 6. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Section 6 of Bill 18 be amended by adding thereto immediately after the word "sections" in the fourth line thereof and again in the sixth line thereof, in each case the figure "(2)."

MR. CHAIRMAN: The amendment is moved. Is there any discussion on the amendment? All those in favour—pass. Section 6—pass; Section 7.

MR. F. JOHNSTON: Mr. Chairman, I've had the opportunity to speak to three lawyers on this particular section, and would somebody please explain it to me?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, may I suggest to my honourable friend that if he takes a look at the Lord's Day Act of Canada, then he will see the reasons for Section No. 7. There are certain exemptions covered, or certain permissive actions covered as I understand it in the Lord's Day Act, and the cross-reference is to make this clearer, that this Act is not in conflict with the Lord's Day Act of Canada as it is at the present time. I do acknowledge that there are certain provisions, and the Attorney-General can correct me if I am wrong, there are certain provisions in the Lord's Day Act of Canada, which makes it permissible for the provincial jurisdiction by legislation, to make exemptions from that Act, and that is not the purpose of this Act. It's the conformity in general principle with the exemptions contained at the present time in the Lord's Day Act of Canada, and in all due respect to my honourable friend the Member for Sturgeon Creek, maybe he should get his lawyers to take a look at the Lord's Day Act of Canada so that they may be informed as I think that I am, as to the reasons for these questions.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Well, Mr. Chairman, my only comment to that is that they have looked at the Lord's Day Act, and what you say it will do, it doesn't do.

MR. PAULLEY: Well okay. It's there anyway.

MR. CHAIRMAN: Section 7—pass; Section 8—pass; Section 9. Mr. Sherman.

MR. SHERMAN: I have an amendment I would like to propose to Section 9, Mr. Chairman. I move that Clause 9 of Bill 18 be amended by deleting all the words after the word "than" in the second line thereof, and substituting therefore, the following: "\$500.00 or more than \$2,500.00."

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: I would reject that. As a matter of fact, I had an inclination to suggest to the committee that the penalty should be increased in order that it's clearly understood that this is a serious business, and to me the reduction from \$1,000 to \$500, and from \$5,000 to \$2,500 would be meaningless insofar as the large operators are concerned. I would respectfully suggest, that when the legislatures in the future are considering this, they may triple the penalties, and I think that that would be the direction that we should be taking rather than a reduction.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I must confess that although I can understand that the Minister could be exercised about it because this is his legislation and he's keenly interested in it. I'm absolutely thunderstruck by the kind of reaction coming from particularly the back row of the members on the other side of this Committee in dealing with this concept in front of us, Mr. Chairman. This section is oppressively punitive, oppressively harsh, and, Sir, I suggest to you it flies in the face of the whole thrust and the whole direction of our approach to justice and to crime and to rehabilitation today.

When I was asked about it a few days ago by a newspaper reporter I made the reference and I think bears repeating that Patty Hearst robbed a bank and got away with probation. All the way through our system of justice in Canada and United States in the past 20 years and I believe the Minister of Corrections would agree with this statement, the tendency, the trend has been to try to be humane

Law Amendments
Tuesday, May 31, 1977

where infractions of the law are concerned, to try to treat first infractions humanely and to try to rehabilitate people to a productive and a constructive role. We have on every hand in the area of justice, a trend and a tendency toward lighter sentences and lighter penalties. Here we're going directly opposite that. We're saying that people can commit major crimes, capital crimes and be let off lightly but a small business man who happens to make a mistake or who happens to try to test the law or who happens to commit an infraction for one reason or another of this kind is going to be wrapped with the heaviest hand of the law, with the heaviest penalty imaginable, a \$5,000 fine would put a lot of these small businessmen out of business, Sir.

And I say, in the context of the approach to justice today, this is totally unreasonable, totally unfair, totally unjust and I'm appalled at the reaction of members on the back row of seats opposite who laugh at this, who have no regard for businessmen, who have no regard for the effort that goes into the operation of a private business and just are prepared to crush them into the ground and to hit them with the heaviest penalties and to drive them out of business. I think this section is reprehensible in its present form, Sir.

MR. CHAIRMAN: Mr. Johannson. Order please.

MR. JOHANNSON: Mr. Chairman, I'd like to comment on the rather stupid remarks of the Honourable Member for Fort Garry. The honourable member was making some rather insulting remarks about the back row of members here.

MR. SHERMAN: You were the ones who were laughing. . .

MR. CHAIRMAN: Order please.

MR. SHERMAN: If you want to talk about stupidity, look at yourself. You were yapping and guffawing with regard for individuals in the front row.

MR. CHAIRMAN: Order please. Order. ORDER! Either you are going to behave like gentlemen and carry on or we're going to take off and go home, one or the other.

A MEMBER: I'm afraid we're not going home.

MR. CHAIRMAN: Mr. Johannson.

MR. JOHANNSON: Mr. Chairman, the bill specifically exempts small businessmen about whom the member was making such a great fuss. And the small businessman is not the small businessman with less than three employees, with the family helping him, is exempted in the legislation. The member is making a great deal of fuss about nothing.

MR. CHAIRMAN: Mr. Johnston.

MR. J. FRANK JOHNSTON: Mr. Chairman, the Minister was so quick to say that in Section 10 when we were talking about the 5(d) that the regulations could be such. If there is a small mama and papa store who does have to happen to pay some of his family and if he does happen to have delivery boys during the week, which he stated that he did have. He had delivery boys, he had boys that sweep up and if he has a total of more than three employees, that same mama and papa man that was standing here is subject to a fine of \$1,000 and I tell you that will break him. So let's have the Minister start to get this bill in shape where at least the way he passes it and the way he wants it it can be workable.

MR. CHAIRMAN: Section 9—pass.

MR. PAULLEY: A question, Mr. Chairman.

MR. CHAIRMAN: No, we have an amendment here. That's right. Section 9 as moved by the Honourable Member for Fort Garry, Mr. Sherman.

Moved Clause 9 of Bill 18 be amended by deleting all the words after the word "than" in the second line thereof and substituting, therefore the following: "\$500 or more than \$2,500." All those in favour of the motion?

A COUNTED VOTE was taken the result being as follows:

Yeas 9, Nays 13.

MR. CHAIRMAN: I declare the Motion lost. Section 9—pass; Section 10. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, thank you. Thank you, through you, Mr. Chairman, to the Minister. I have an amendment on Clause 10 to propose: Moved that Clause 10 of Bill 18 be amended by eliminating all the words after the word "law" in the fifth line thereof.

MR. PAULLEY: It's acceptable to the government, Mr. Chairman, to take out those (a) and (b) clauses primarily which in the debate indicated that there would be pretty wide powers to the Lieutenant-Governor in Council. We are a very fair government and we are prepared to accept the amendment proposed by the Honourable Member for Fort Garry. —(Interjection)— Well, okay, let's call for the vote.

MR. CHAIRMAN: Section 10 as amended —pass; Section 11—pass; Section 12—pass Preamble—pass. Mr. Johnston.

MR. F. JOHNSTON: Mr. Chairman, I would ask if I could have the legislative counsel tell me the

Law Amendments
Tuesday, May 31, 1977

me of the Act which gives the Province of Manitoba the chance to have a specific law tested before it becomes legislation. I would like to make a motion.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY No, Mr. Chairman, if this law is to be tested then it ought to be tested after the passage of the legislation by way of a reference to the Supreme Court of Canada and questions can be posed to the Supreme Court of Canada pertaining to whether the legislation is *intra* or *ultra vires*. I suspect that may very well happen although it has not happened yet in Ontario, it may very well happen here by way of a reference to the court. Certainly I'm not aware of any means by which legislation would be referred in advance to the Supreme Court of Canada. If it is possible then I would like to want to propose that that be done.

MR. F. JOHNSTON: Well, Mr. Chairman, I would like to say that the Minister mentions the Ontario case. The Ontario law is certainly much different than what has been passed here tonight. You have air-space restrictions and everything else involved which makes it fair and I don't know who would want to test the Ontario law because it's fair to all the people in Ontario and this one isn't fair to all the people in Manitoba.

Mr. Chairman, I would only bring forward that we had two lawyers come before this Committee and tell this Committee and ask the Attorney-General if he had examined the fact whether this legislation was *ultra vires* or not. I read the report of Mr. Regier that he gave the Attorney-General and he is kind enough to send copies to the opposition caucus room, and in every case that a law such as this that has been tested in the courts to the Supreme Court, it has lost pretty well. Now there may be some but I don't know of any that haven't. Here we are in Manitoba, planning to see that this Government puts the people of Manitoba to the expense of going to the Supreme Court because I am sure you that's where it's going. And, Mr. Chairman' if there is any possible way that, as the Attorney-General says that this law can be tested, or an opinion given, I believe it goes to our courts and then there's an opinion by the Supreme Court, it should be done. I would so move that that be done.

MR. PAULLEY: Mr. Chairman, on a point of order. I suggest the motion is out of order. We're dealing with bills, which we feel are within the competence of this Legislature, that if after the passage of the bill there is a question as to the constitutionality of our rights to pass any bill, then they can be then referred through the due process of law. It is not, in my opinion a question for we in this Committee to decide whether the bill is *ultra vires* or not, the Supreme Court, after the passage of the bill can be subject matter through the courts.

MR. F. JOHNSTON: At great great expense to the people of Manitoba.

MR. PAULLEY: Well, we pay you a hell of a lot of money.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: We pay you more. You're the Minister who should bloody well know.

MR. CHAIRMAN: Order please. Order please.

MR. PAWLEY: Mr. Chairman, I would like to answer the question of the Honourable Member forurgeon Creek. The Act that he was making reference to is an act for expediting the decision of the institution or other provincial questions and it's C180.

MR. CHAIRMAN: Preamble—pass; title—pass. Shall the bill be reported?

A COUNTED VOTE was taken, the result being as follows: Yeas 14, Nays 9.

MR. CHAIRMAN: I declare the Motion carried.

MR. PAULLEY: Mr. Chairman, I move the Committee rise.

MR. CHAIRMAN: Committee rise.

