



**Legislative Assembly of Manitoba**

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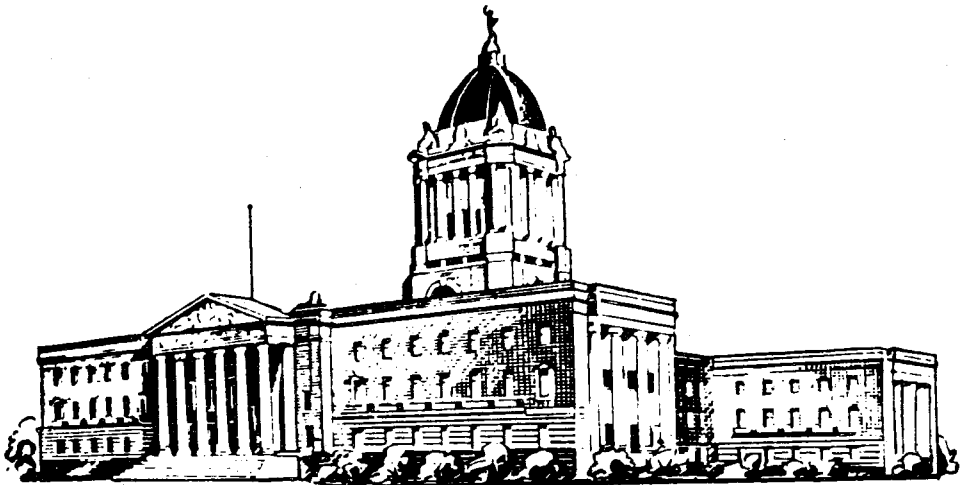
**HEARING OF THE STANDING COMMITTEE**

**ON**

**LAW AMENDMENTS**

**Chairman**

**Mr. J. Wally McKenzie  
Constituency of Roblin**



**Tuesday, July 4, 1978 8:00 p.m.**

**Hearing Of The Standing Committee  
On  
Law Amendments  
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**Time: 8:00 p.m.**

**CHAIRMAN:** Mr. J. Wally McKenzie

**MR. CHAIRMAN:** . . . call the Committee on Law Amendments, and under the notice of the Committee, the Standing Committee on Law Amendments will meet Tuesday, July 4th, 1978, at 8:00 p.m. in Room 254 of the Legislative Building to consider the following bills:

- No. 2 — An Act to amend The Distress Act.
- No. 3 — An Act to amend The Provincial Judges Act.
- No. 4 — An Act to amend The Highway Traffic Act.
- No. 9 — An Act to amend The Mortgage Brokers and Mortgage Dealers Act.
- No. 11 — An Act to amend The Retail Businesses Holiday Closing Act.
- No. 19 — An Act to amend The Public Trustee Act.
- No. 20 — An Act to amend The Garage Keepers Act.
- No. 21 — An Act to amend The Real Property Act.
- No. 22 — An Act to amend The Jury Act.
- No. 23 — An Act to amend The Securities Act.
- No. 24 — An Act to amend The Real Estate Brokers Act.
- No. 27 — An Act to amend The Clean Environment Act.
- No. 36 — An Act to amend The Highway Traffic Act (3).
- No. 40 — An Act to amend The Provincial Judges Act (2).
- No. 50 — An Act to amend The Tuberculosis Control Act.

**BILL NO. 11 — AN ACT TO AMEND THE RETAIL BUSINESSES HOLIDAY CLOSING ACT**

**MR. CHAIRMAN:** Members of the Committee, I have briefs on Bill No. 11, An Act to amend The Retail Businesses Holiday Closing Act, a Mr. Harry Schacter of the Winnipeg Jewish Community Council, and, number two, a Chaplain Spencer Burrows of the Seventh Day Adventist Churches of Winnipeg, and, number three, Mr. Art Coulter of the Federation of Labour. Those are the names of people that have indicated they would like to make a presentation.

Are there any other citizens in the room that would care to make a presentation on any of these bills tonight; if so, would you come before the microphone and let your names be on the record?

Appearing none, then I call on Mr. Harry Schacter of the Winnipeg Jewish Community Council to deal with Bill No. 11, An Act to amend The Retail Businesses Holiday Closing Act. Mr. Schacter.

**MR. HARRY SCHACTER:** Thank you very much, Mr. Chairman. I just want to make a number of very general remarks. Perhaps I could say, first of all, that a delegation from the Winnipeg Jewish Community Council met with the Minister of Labour, Mrs. Price, and with the Minister without Portfolio, Mr. Johnston, on June 8, and we had a fairly lengthy discussion of this bill and the ramifications of the bill, as we saw it. I don't know what the outcome will be. I hope that the objections that we raised at that time will be taken into consideration this evening. Perhaps we will be hearing from Mrs. Price later on.

But the general statement that I would like to make is with regard to the provision to repeal Section 4 of the existing Retail Businesses Holiday Closing Act. This is the provision which would remove the Saturday option, that is the option that businesses have under existing legislation to close on Saturday and remain open on Sunday.

We felt, representing the Jewish Community which, as I'm sure you are all aware, observes

as its day of rest, as its sabbath, that the provision in the existing legislation, which was introduced only in 1977, to allow this particular option, to allow retail merchants the option to close on Saturday if that followed their particular dictative conscience, was an expansion of freedom of religion in our society. At this stage to take away this option after it has been enshrined in legislation, after it has been recognized by society through this particular Act that was passed in 1977, we felt that this would be a regressive step and this was the general statement of concern that we made to the Minister in our meeting and we hope that this particular objection can be taken into account.

We would like to see Section 4 of the existing Act retained so that retail merchants who observe Saturday as their Sabbath can remain open six days out of seven. Because unless Section 4 is retained there will be retail merchants who will be forced to close, both on Saturday because of the dictates of their conscience and on Sunday as well because of the law as set out in Statute. Therefore, these people will be under an economic hardship in comparison with the rest of society.

Perhaps I should say that our concern was not with Section 2 of the Act. We have no objection to that at all. Thank you very much.

**MR. CHAIRMAN:** Thank you, Mr. Schacter. Are there any questions? Mr. Schacter, would you remain a moment for members of the Committee? If there be none, I thank you, Mr. Schacter, for your presentation.

I call Chaplain Spencer Burrows, Seventh-day Adventist Churches of Winnipeg. I thank the Clerk for the distribution of your brief. Proceed Mr. Burrows.

**MR. BURROWS:** Mr. Chairman, honourable members of this Standing Committee and guests.

The Honourable Minister of Labour in introducing her presentation of Bill No. 11 stated, "We support the concept of having one day of partial economic rest, that is, a day of pause and a day for family life, or if one so chooses a day for religious observance."

We wish to call attention to the fact that as the Act now stands it offers this very privilege without discrimination to all people, majority and minority groups alike, through the option of choice, and by that option it grants this privilege even to minority groups, not as a concession, not as a special dispensation, not as a toleration, but as a human right — one of the earmarks, indeed, of true democracy.

Now the Honourable Minister continues with the thought that "with the option clause, we question whether the concept of having one day of partial economic rest can be preserved." We ask respectfully — preserved for whom? The majority? And if so, shall it be preserved at any cost, even to the denial of the rights of minorities, which rights the Act, as it now stands, protects.

May we point out at this juncture the illogic of presuming that the preservation of one named day is necessary for partial economic rest. I am privileged to enjoy four weeks vacation per year consisting of 28 consecutive days. During those days I enjoy complete and satisfying economic rest in the relaxing release from my customary workaday schedule, even though I am usually surrounded by men and women occupied with their customary economic pursuits. My economic rest depends upon my own release from duty, not upon theirs.

The Honourable Minister further declares that, "Our society and the traditional pattern of our holiday schedule is such that Sunday is the most practical day of partial economic rest." Again, may we respectfully ask — practical for whom? Certainly not for those citizens listed under the caption "Exceptions" in the Act — that sizable group whose services on Sunday are deemed essential for the best interests of society. For them a day other than Sunday becomes the most practical day of partial economic rest.

May we enlarge this minority group of exceptions considerably by adding those religious bodies whose day of spiritual rest falls upon Saturday rather than Sunday. The Seventh-day Baptists, the Seventh-day Adventists, the Seventh-day Church of God, and, of course, the great number comprising the Jewish faith, and others.

Let it be noted that we are aware that neither the existing Act nor its proposed amendment contains any religious reference whatsoever. We contend, however, that any law, non-religious though it may be, which obviously affects the peaceful pursuit of the religious practices or beliefs of any religious body or its adherents, or which interferes with the economic adjustments necessary in the pursuit of those beliefs, deserves most serious consideration in the light of freedom.

We believe the removal of the option from the present Act destroys that human right to choose one's own day for partial economic rest and thus proposes just such a law.

We ask you to reject this Amendment as a threat to the human rights of minorities, and as an interference with the God-given endowment of the power of choice.

Respectfully submitted, Spencer Burrows.

**MR. CHAIRMAN:** Thank you, Chaplain Burrows. Are there any questions from the members of the committee re his brief, or any other aspects of the Bill as before us?

If there's none, I thank you Chaplain Burrows for coming here and making your presentation.

**MR. BURROWS:** Thank you.

**MR. CHAIRMAN:** Mr. Art Coulter, Federation of Labour.

**MR. ART COULTER:** Thank you, Mr. Chairman and members of the committee.

I represent the Manitoba Federation of Labour here this evening, and I've been asked to express a word as well for the concern of the employees engaged in the retail trade, both that are covered by the Retail Clerks' Union and the Retail- Wholesale Department Store union.

The Federation has long stood for the protection of Sunday as a family day and were very much involved in requesting the tighter controls for Sunday shopping and that for statutory holidays. We think that the present tampering with this particular piece of legislation is really only nitpicking and totally unwarranted. The law that is or was seem to work well and it appeared to us, and I think to the public generally, that it had settled the problem of Sunday shopping, at least there were no outcries demanding a further change or liberalizing of the regulations.

Getting to the bill that you have before you, the deleting of the words, "at all times does not exceed three," and replacing it with the words, "on a holiday does not exceed four," does really two things. It puts another foot in the door for larger operators to open their premises. It, with regard to the words, "at all times," really contained the larger employers that had a number of stores or a chain or stores from functioning because it, in our view, meant three employees, including the owner, which for all intents and purposes closed them up on holidays and Sundays. With the deletion of those words, naturally the door is wide open.

It opens the door for all operators of retail stores, no matter how large they are — and that's in our opinion — you may see, because of the threat of competition, or the experience of competition setting in as things develop, that the large chain stores may be moved to open their stores, mind you on a limited basis, with four employees, with unrestricted hours. We think that this is the wrong direction in which things should be going. We are concerned of the effect this will have on workers, both organized and unorganized. More of them will be required to work on such days and this, we are satisfied, destroys the main concern we have, and that is for preserving holidays and Sundays for family activity and activity with friends.

Once this thing is opened up there will be no end to it. I suggest the amendments here are really ill-conceived and should not be proceeded with. We urge you therefore to give some real serious consideration on these matters and not proceed with the bill.

I am pretty sure in my references here, that Ontario have legislation they are not completely satisfied with, and I'm speaking for the labour movement now, but at least they can curtail the opening where it would be restricted to three employees. You have gone to four. In Ontario they have also put a further provision that no establishment, and I believe it is more than 2,400 square feet in floor space, can open. They are restricted from participating, which means most of the major stores whether individually operated or of the chain variety.

So we believe that what you are doing here is going far beyond what is necessary or in vogue in Ontario for instance, and is going to set the situation and conditions in Manitoba back pretty close to where they were and at a time, I think, when the public in this province were appreciating the fact that the stores were under control and that family life had some precedence in the scheme of things.

I urge you therefore, Members of the Committee, to give serious thought to not proceed with this bill.

**MR. CHAIRMAN:** I thank you, Mr. Coulter, for your presentation to the committee. Are there any questions from the committee members to Mr. Coulter re bill No. 11? Mr. Pawley, the Member for Selkirk.

**MR. HOWARD PAWLEY:** Mr. Coulter, I don't know whether you commented — I don't recall you commenting in connection with the issue of Saturday being included either/or as it was during the previous legislation, being removed from this legislation.

**MR. CHAIRMAN:** Mr. Coulter.

**MR. COULTER:** Well, I must admit that the Federation has not, to my mind, given any consideration to this matter. It was introduced during the consideration of the bill, I think, last year and it didn't

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appear to us to have any real serious effect other than it may extend the protection that was designed in the whole bill to the Mama-Papa store operations that may wish to respect another day of rest other than Sunday. So we had no quarrel with the provisions nor do we have any fixed position at the present time as to whether it should be retained or not. We could see the validity for it and did not quarrel with that provision.

**MR. CHAIRMAN:** Are there any questions for Mr. Coulter from the members of the committee? If not, I thank you, Mr. Coulter, for your presentation and for coming here tonight and let the views be known of the Federation of Labour.

**MR. COULTER:** Thank you, Mr. Chairman, and members of the committee.

**MR. CHAIRMAN:** Members of the committee, are we now prepared to deal . . . Are there any other presentations from members in the room regarding these bills that are before us? If not, then I call Bill No. 2 - An Act to amend The Distress Act.

**BILL NO. 2 — AN ACT TO AMEND THE DISTRESS ACT**

**MR. CHAIRMAN:** (Bill No. 2 was read clause by clause and passed.; Preamble—pass; Title—pass; Bill be reported. .

**BILL NO. 3 — AN ACT TO AMEND THE PROVINCIAL JUDGES ACT**

**MR. CHAIRMAN:** Bill No. 3 - An Act to amend The Provincial Judges Act. We have some amendments. 1—pass; 5 (1) (a)—pass; (b)—pass — the Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I would just like to ask legal counsel, in the event that a judge resigns prior to his matter being dealt with, say, as a result of a complaint to the Judicial Council, resigns rather than having that matter dealt with, I gather that under this provision that judge would still be able to present judgment, complete judgments, regardless of the fact that the resignation may very well have been for cause.

**MR. CHAIRMAN:** Mr. Tallin.

**MR. TALLIN:** I presume so, unless of course he has been suspended.

**MR. PAWLEY:** If the judge had been suspended, then of course he would not be able to complete judgments. Fine.

**MR. CHAIRMAN:** (b)—pass; (1) 5—pass; Section 2—pass; 6(1) (a) — we have an amendment. The Honourable Member for Rhineland.

**MR. ARNOLD BROWN:** We have an amendment to Section 1(a) That the proposed clause Section (1)(a) of The Provincial Judges Act as set out in section 2 of Bill 3 be amended by striking out the words "Court of."

**MR. CHAIRMAN:** Any discussion on the amendment?

6(1)(a)—pass as amended; (b)—pass; (c)—pass; (d)—pass; (1) 6—pass; 3 — there is an amendment for Section 3. The Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, the amendment reads That Section 3 of Bill 3 be renumbered as Section 4 and that the following section be added thereto, immediately after Section 2 thereof:

Subsection 7(2) of the Act is amended by striking out the word "chairman" in the first line thereof and substituting therefor the words "Chief Justice of the Queen's Bench."

If anybody wants an explanation I will ask them to ask the Attorney-General to explain.

**MR. CHAIRMAN:** Does the Honourable Member for Selkirk have a question?

**MR. PAWLEY:** No.

**MR. CHAIRMAN:** 3 as amended—pass — the Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move that that amendment be passed, seconded by the . . .

**MR. CHAIRMAN:** You don't need a seconder, sir.

**MOTION presented and carried.**

**MR. CHAIRMAN:** Section 4—pass; Preamble—pass; Title—pass; Bill be reported.

**Bill NO. 4 - AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT**

**MR. CHAIRMAN:** Bill No. 4 - An Act to amend The Highway Traffic Act. Section 1—pass — the Honourable Member for Selkirk.

**MR. PAWLEY:** I'm just wondering first how you are dealing with this. I see Section 1 is the first two pages. My question dealing with Section 1 doesn't take place until we are on Page 2.

**MR. CHAIRMAN:** I will stop at any item along the bill and deal with matters that are a concern of members of the committee; there's no problem.

238.1, Subsection 1—pass; 238.1, Subsection 2—pass; 238.1, Subsection 3—pass; 238. 1, Subsection 4—pass; 238. 1, Subsection 5—pass; 238. 1, Subsection 6 — the Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, my comments in connection with this are comment and also to some extent by way of a question to the Attorney-General. During second reading of this Bill I had indicated that last year when we arrived in Committee we had been dealing with 24 hour suspension, and if you can recall, as a result of reconsideration during Committee stage 24 hours was reduced to 12. . I have reason to believe since, however, that in view of medical evidence that 6 would be quite adequate. I had hoped that Dr. Penner or someone might have been present to have given us the benefit of his wisdom in respect to this. But after a 6-hour period it is my understanding that a point would have been reached where there really would be no longer any need to continue to retain the driver's permit.

Certainly this legislation is not meant as punitive. It is meant as legislation to try to ensure that the highways are kept as safe as possible from drivers abusing their driving through drinking. So I would ask whether or not it is really necessary that we rely upon 12 hours, whether 6 would not be adequate, and simply because 12 was that which was established last year, isn't really, I think, a sufficient reason because as I indicated the first representation that had been made had been to the department for 24 and that was reduced to 12. I have reason to believe that 6 would be quite adequate.

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR. MERCIER:** Mr. Chairman, the difficulty is not with persons who register "Warn" on the alert machine, that is between .5 and generally .1, because I would suspect that within a 6-hour period those people would have reached a state of sobriety that would bring them below the .05 limit.

The difficulty is that the Bill really also deals with those persons who failed the alert machine and 6 hours, according to the advice of Dr. Penner whom a member of my staff did discuss this matter with, is that for a person with that level, he is not likely to reach a point where he is under .05 within a period of 6 hours.

In all western provinces the period of suspension is 24 hours and in the recently announced Ontario legislation under which they propose to bring in similar suspensionsir the period of suspension is also 24 hours.

Mr. Chairman, it would appear that in going to the 12 hour suspension we are one-half that of the period of suspension in the other three western provinces and in Ontario.

Part of the problem, Mr. Chairman, is that we have added into this Bill those persons who fail the breathalyzer test so that we are including — those people who are over generally the .8 or .1 limit.

**MR. CHAIRMAN:** The Honourable Member for Selkirk.

**MR. PAWLEY:** Well, Mr. Chairman, I then have a second concern. What the Attorney-General is in fact indicating is that there is a degree of discretion that can be exercised insofar as those motorists that register "Fail", those that register above one point, can in fact as well receive the suspension of the driving privileges for the 12-hour period.

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Mr. Chairman, I believe I am correct in indicating that previously there was no discretion in this respect, that insofar as that period of "Warn", then discretion was exercised, the license could be suspended. But where the test exceeds one point, then Mr. Chairman, I think the proper action should be the one that is in effect now where the police officer would charge that individual with either driving while impaired or drivin while lood alcohol content was in excess of .08.

That causes a second concern then as to the extent of discretion that might be exercised if in fact we are saying here that one who fails may, in the discretion of the police officer, only enjoy a 12—hour suspension rather than a charge under the provisions of the Criminal Code, which are there in order to deal with that very type of motorist that is driving in excess of .08.

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR. MERCIER:** There is no discretion, Mr. Chairman, when someone fails the alert test, they are required to take the breathalyzer test.

**MR. PAWLEY:** Mr. Chairman, I fail to see what the problem is then insofar as the use of six hours, if, in fact, fail means taking the test and if the person then is in excess of .08, then charges would be laid. The person would certainly not receive his/her licence back as a result of those charges until obviously the person had sobered up, as is the present situation.

So, why do we require the 12 hours for that group of motorists?

**MR. MERCIER:** Mr. Chairman, I indicated that in my own view the six hour period was probably sufficient, a sufficient period of suspension for those people who register warrant, that is between .05 and .01, but for those people who registered over and failed the alert machine test, the view of Dr. Penner is that that is not sufficient time for the person to necessarily drop below the .05 level and be in a satisfactory condition for driving.

**MR. PAWLEY:** Would they not be charged with either driving while impaired or driving while blood alcohol content was in excess of .08?

**MR. MERCIER:** Yes, but that does not take away their driver's licence.

**MR. PAWLEY:** I have never seen a motorist who has been charged with .08 or driving while impaired, by the police, that has had that driver's permit returned to him or her until such time as the motorist has sobered up, under the present provisions. I don't know of any situation where the police, in other words, have been what I would suggest that irresponsible as to hand back the licence until that person had clearly sobered up.

**MR. MERCIER:** My advice, Mr. Chairman, is virtually in all cases they are released in the care and custody of a friend or member of the family and their property is returned to them at that time.

**MR. PAWLEY:** But not the driver's licence?

**MR. MERCIER:** Yes, their driver's licence is returned.

**MR. PAWLEY:** Well, I have to say that I can't think of an incident where I've seen or experienced anyone who has been charged with driving in excess of .08, after taking the breathalyzer test, receiving his or her driver's licence when they leave the police station, to drive away in the motor vehicle.

**MR. CHAIRMAN:** 238.1(6)—pass; 238.1(7) An amendment. The Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move That the proposed Subsection 238.1(7) of the Highway Traffic Act, as set out in Section 1 of Bill 4, be amended by striking out the first two lines thereof, and substituting therefor, the words, "Where, under this section, the licence of a driver is suspended, the peace officer who requests the surrender of the licence under Subsection (1) or (2) shall."\$

**MR. CHAIRMAN:** Any questions as regarding the amendment? 238.1(7) as amended, (a)—pass; (b)—pass; (c)—pass; (d)—pass; 238.1(7)—pass. 238.1 Subsection (8)(a)—pass — the Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, we are still dealing with the 12-hour situation, and I don't believe that any of us want to use this legislation as punishment, but rather, as I indicated earlier, to keep the highways safe. In the case of a truck driver at a stopover, is there any provision for that truck driver to submit himself to a breathalyzer test at the end of three or four or five or six hours, and upon passing that breathalyzer test to receive the reinstatement of his driver's licence? In other words, to cut short the suspension of his driver's permit from the 12 hours to a lesser nut, er of hours upon passing a breathalyzer test voluntary submission to same in a police station. I'm asking that because again, 12 hours can mean that a truck driver could very well lose the greater part of the following day waiting for the return of his driver's permit, when, in fact, that truck driver may be able in a quite responsible manner to operate a vehicle.

**MR. MERCIER:** Mr. Chairman, that could occur under (b) of this clause by a driver obtaining and producing a certificate from a medical practitioner as stated in paragraph (b).

**MR. PAWLEY:** Well, it's not possible for the truck driver to request opportunity to submit himself to a breathalyzer, pass that breathalyzer and receive the reinstatement of the driver's permit? He has to have a blood test, is that what the Attorney-General is saying? Why could he not also, for a question of convenience, not involving medical people, be able to submit to a breathalyzer test and receive the reinstatement of his driver's permit in a shorter period than having to wait out the entire 12 hour period?

**MR. MERCIER:** One of the difficulties, Mr. Chairman, with respect to the previous legislation, from an administrative point of view, was that at any time the driver could request a test and, because of all the other duties that police officers have, the RCMP and the City of Winnipeg Police Department both felt that this could create problems and interference with all of their other duties that they do have. There is still the allowance in this legislation for the driver to obtain this certificate from a medical practitioner and present that to the police officer and obtain his licence in a period of time earlier than the 12 hours.

**MR. PAWLEY:** Well, Mr. Chairman, two items certainly concern me a great deal and the answer by the Attorney-General. One is the administrative. While certainly there may be some extra burden imposed upon a police officer to administer these tests, it seems to me we have to balance that against the need to assure ourselves that this particular law will not become punitive and rather will be aimed at the purpose for which it's originally geared.

Now, what the Attorney-General is stating is that there is going to be administrative difficulty. But what we are doing, Mr. Chairman, seems to me, is imposing upon the busy medical profession — we are saying it is okay if they have to arrange for these type of medical tests but not police officers.

It seems to me, Mr. Chairman, that if there is any group that is overworked and sometimes under pressure it's the medical profession in our hospitals. So I say that this question of administrative burden can be dealt with by reducing it to at one time, "at one time within that 12-hour period a motorist can insist upon a test." I'm not suggesting it should be at any time, or as many times as the motorist may desire, but at least once during that 12-hour period the motorist should be able to simply submit himself to a test. Certainly if that motorist is involved in livelihood, I would be prepared to even narrow it further that the driver's licence wouldn't be returned for purposes of pleasure driving. We're not concerned about that here. But where the motorist depends upon that licence to operate his truck, to get on with his route to the next city, then surely, rather than place an additional burden upon the medical profession to obtain a blood test, there is no reason that that truck driver shouldn't be able to appear down at the police station and say, "Look, give me a breathalyzer test. I know I'm okay; I want to get back on the highway. I don't want to wait for the next four or five hours before I can start on my trip."

I don't feel that narrowing it down once to a limited number, Mr. Chairman, of circumstances we would be creating an administrative burden. At least it wouldn't be as heavy as that inconvenience which we are creating, that expense we're creating, Mr. Chairman.

I'm not being critical of the Attorney-General insofar as this is concerned, because the Attorney-General could very well say, "Well, why didn't you put that in last year?" Mr. Chairman, I believe that we might very well have amended it further last year if that suggestion had been made in the same way.

In fact I believe, Mr. Chairman, that the nature of that was in last year's legislation but possibly it was too wide last year. But certainly there is, I think, need to provide that opportunity.

**MR. CHAIRMAN:** 238.1 — the Honourable Attorney-General.



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**MR. MERCIER:** Mr. Chairman, one of the difficulties certainly is, even in the City of Winnipeg, all of the people involved in these are not on duty all of the time and in rural Manitoba most of these checks will be made during routine traffic enforcement. The detachments do not certainly all have personnel on duty 24 hours a day to operate a breathalyzer. The fact of the matter is, I think, Mr. Chairman, if the honourable member is concerned about people's licences being suspended and particularly those who are in the process of driving to earn their income, then I don't really believe that that kind of person, whose job is that important, will be the kind of person that will be found certainly above the .5 reading.

**MR. PAWLEY:** Mr. Chairman, let me ask the Attorney-General whether he feels assured that there will be somebody available 24 hours a day in most of our hospitals to provide blood tests. I would suspect that you might be more likely to obtain somebody to administer the breathalyzer test in the police detachment in the small hours of the morning than a medical practitioner in the small hours of the morning to administer the blood test.

**MR. MERCIER:** Mr. Chairman, certainly there will not be medical practitioners on duty at the hospital in every instance available to carry out the blood test, but I think perhaps what the Honourable Member for Selkirk should do is think back and reconsider the purpose of the original legislation that he introduced into the Legislature at the last session. The purpose is to deal with a very real problem of drinking drivers. I don't think that we are in any way as hard on drinking drivers in the Province of Manitoba as a number of other provinces presently are, and as far as some would like to go, or certainly as hard on drinking drivers as in Europe.

It's a very real problem that we are all aware of. The number of accidents and injuries that are caused by drinking drivers is a real concern, and should be a real concern. I appreciate and I sympathize with the concerns that are expressed by the honourable member, I ask him to remember the original purpose of the legislation. Certainly legislation like this is always subject to review. It will have to be carefully monitored. It is going some distance to attempting to solve this problem and thus interfering in what some people would certainly consider to be their right to drive.

Previous legislation was simply impractical from a police officer's point of view and the administration of the legislation, and I would ask that we pass these sections, Mr. Chairman, and give them an opportunity to be put into effect, and they will have to be carefully monitored. If hardships do result we will certainly have to very carefully consider revisions to the legislation.

**MR. CHAIAN:** The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I certainly don't want the Attorney-General, and I don't believe that he is drawing that, I don't share his concern to deal with drinking drivers, for those that are in excess of .08, excess of those that are obviously impaired the highways. I certainly wish to see them not dealt with by this legislation, but to be dealt with by the provisions of the Code. So we have no problem there — be as hard and as tough as you wish to be. But what I am concerned about is where you don't have sufficient evidence in hand to charge under the provisions of the Criminal Code, and so we proceed by this route and then we create unnecessary inconvenience, and I feel that is what may be happening here under this particular provision if there is not some additional safeguard inserted.

I am not going to prolong this discussion except to indicate that I do feel that it creates an unnecessary inconvenience insofar as those motorists that are not so badly impaired as to warrant criminal charges beyond what is actually reasonable.

**MR. CHAIAN:** 238.1 (8)(a)—pass; (b)—pass. I'm sorry. 238.1 (8)(a) — the Honourable Member for Inkster.

**MR. GREEN:** 238.1 (6). Mr. Chairman, I was merely wanting to. . .

**MR. CHAIRMAN:** Oh (6), then we have to go back. We are on (8)(a).

**MR. GREEN:** Oh sorry. Okay, then continue.

**MR. CHAIRMAN:** I guess we have to get consent of the Committee.

**MR. GREEN:** No proceed.

**MR. CHAIRMAN:** 238.1 (8)(b)—pass; 238.1 (8)—pass; 238.1 (9)—pass; 238.1 (10) — the Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move that the proposed Subsection 238.1(10) of The Highway Traffic Act, as set out in Section 1 of Bill 4 be amended

(a) by striking out the words "a peace officer suspends" in the first line thereof,

(b) by adding thereto immediately after the word "driver" where it occurs for the first time in the second line thereof the words "is suspended" and

(c) by adding thereto immediately after the word "officer" in the third line thereof the words "who requested their surrender of the license."

**MR. CHAIRMAN:** Any discussion on the proposed amendment? Then 238.1(10) as amended, (a)—pass; (b)—pass; (c)—pass; 238.1(10)—pass; 238.1(11)—pass; 238.1(12)—pass; Section 1 of the Bill—pass; 2—pass; 3—pass; Preamble—pass; Title—pass — the Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, with regard to the validity of what we are doing, I have no doubt whatsoever, I think that it is necessary to have a means of suspending driving privileges when a person is in a position where he is either smashed, as my friend puts it, or is willing to give up his license even he is a little bit below and is unwilling to take a test, which I gather is what will happen. If he takes his test he can get his license back under Section 238.1(8).

Now, I do have one problem, Mr. Chairman, which I want to indicate before the Bill is reported, because I think that we will be dealing with it when it comes up in the House. The normal or many of the circumstances, if not the normal because I guess nothing can really be adjudicated as normal, but a probable situation is that around midnight or thereabouts or one o'clock, because people are coming from places where they may have had something to drink, such as the Lieutenant-Governor's house, they would be in this situation. I would think that they would likely want to drive their car the next morning at eight o'clock, and I do not know — somebody here will have to fill me in — of a person being in the condition in which his license would be suspended that he isn't fit to drive a car by eight o'clock the next morning.

I think that this provision of twelve hours is a deliberate bureaucratic imposition which is completely unnecessary, completely unnecessary, that a person should be able to go to the place where his license is at nine o'clock the next morning and be able to use his car to get to work that day or to use it that day. I do not believe that he is going to be in a condition where he is unfit to drive a vehicle.

Now, Mr. Chairman, I can only go by the experience of myself and by experience of people whom I know. The fact is that the next day at nine o'clock in the morning or thereabouts they may have some problems with their tongue and a headache, but they are in a condition where they can drive a vehicle. Therefore, Mr. Chairman, I want to indicate that it is very very likely that we will be introducing an amendment so that in a period which is reasonable, not twelve hours, which merely is to convenience people who want to be inconvenienced themselves, but to convenience the citizens, who may not be guilty of an offence at this stage. There is no conviction at this stage. There is no reason for necessarily a suspension and on the balance of convenience I would like that balance to go to the citizen, not to the bureaucracy.

Therefore, we would likely move a change to something like eight hours.

**MR. CHAIAN:** The Honourable Member for Lakeside.

**MR. ENNS:** Well, Mr. Chairman, I would just like to serve notice to the Attorney-General that I reserve any further comments on this Bill until third reading.

**MR. CHAIRMAN:** Title — the Honourable Member for Selkirk.

**MR. PAWLEY:** I would like to pose a question to the Attorney-General. Last year when we dealt with a bill similar to this Dr. Penner was present. Was Dr. Penner invited to attend this evening or was he aware of the proceedings this evening?

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR. MERCIER:** No, Mr. Chairman.

**MR. CHAIRMAN:** Title—pass; Bill be reported.

**BILL NO. 9 — AN ACT TO AMEND THE MORTGAGE BROKERS AND MORTGAGE DEALERS ACT**

**MR. CHAIRMAN:** Section (1)—pass.

**MR. PAWLEY:** What number is that?

**MR. CHAIRMAN:** No. 9, An Act to Amend the Mortgage Brokers and Mortgage Dealers Act. (Bill No. 9 was read clause by clause and passed.) Bill be reported.

**BILL NO. 11 — AN ACT TO AMEND THE RETAIL BUSINESS HOLIDAY CLOSING ACT**

**MR. CHAIRMAN:** Section 4. The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I would be curious to find out from the Minister of Labour, in view of the fact that there has been a change from both days, Saturday and Sunday, to Sunday only, whether she has obtained any legal opinion as to the constitutionality of the Bill in light of the change, because I remember last year cases being referred, if I can recall accurately, to my attention by Mr. Regier, which I was able to differentiate on the basis of, due to the fact that our legislation dealt with Saturday and Sunday, not Sunday only, as was the legislation that Mr. Regier was pointing to.

So is there an amendment dealing with that?

**MR. CHAIRMAN:** There are amendments being circulated. The Honourable Member for Inkster.

**MR. GREEN:** Then we are arguing about nothing.

**MRS. PRICE:** You are arguing about nothing, that is right.

**MR. GREEN:** Justice has triumphed. I can't understand the amendment, I have to take the Minister's word for it. What does it say?

**MR. CHAIRMAN:** The Honourable Minister of Labour.

**MRS. PRICE:** Well, Mr. Chairman, after speaking to some meers of the Jewish faith that came in to see us and listening to my honourable friend from Inkster, we are leaving Section 4 of Bill 18 as is. It is being left just like it was.

**MR. GEN:** Well, Mr. Chairman, let me say that I want to congratulate the Minister for changing her mind. Sometimes that doesn't happen, but this Minister has apparently changed her mind. Let me also say for her recollection and for her consideration, I am not going to make a big point of it now and I am not going to move another amendment, that there are Moslems who celebrate or who observe the Sabbath on Friday, there are atheists who might observe it on another day. I don't make the submission that I am making on behalf of any one group, as a matter of fact I have indicated that I believe that the best clause would be that you require any establishment of this kind to be closed one day per week and that the day be of their choosing. I think that that would be preferable legislation.

I am asking, since you have been so good as to give consideration to the other suggestions, that just because there are very few possibly Moslems in Winnipeg, that is not the point, the point is that this should be as far as possible, in my view, away from a religious piece of legislation. It should be a piece of Labour legislation, pure and simple. If you said, six days out of seven, that you can't stay open seven days a week, I think that you would be closer to having it as non-religious legislation.

So I want to say that we will be supporting this amendment and ask the Minister to consider the other points that have been made.

**MR. CHAIRMAN:** Well, maybe we should ask the Honourable Member for Rhineland to move the amendment first and then we will discuss it. The Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move that Section 1 of Bill 11 be repealed and Section 2 and 3 be renumbered as Section 1 and 2 respectively, and that renumbered Section 1 of Bill 11 be amended

(a) by striking out the words "the Act". . .

**MR. CHAIRMAN:** Can we deal with the first one? The Honourable Member for Inkster.

**MR. GREEN:** I agree with it.

**MR. CHAIRMAN:** Well then the amendment that Section 1 of Bill 11 be repealed and Sections 2 and 3 be renumbered 1 and 2. The Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move that renumbered Section 1 of Bill 11 be amended

(a) by striking out the words "the Act" in the first line thereof and substituting therefor the words and figures "The Retail Businesses Holiday Closing Act, being Chapter 26 of The Statutes of Manitoba, 1977 (Chapter R120 of the Continuing Consolidation of the Statutes of Manitoba);" and

(b) by striking out the word "a" in the third line thereof and substituting therefor the word "the".

**MR. CHAIRN:** Any ?" discussion on "the

**MRS. PRICE:** On "the" holiday.

**MR. CHAIRMAN:** Okay as amended "the" — Mr. Green.

**MR. GREEN:** Mr. Chairman, I'd like to know, and I would assume that this is Legislative Counsel, why this has to be done, because it's not mentioned elsewhere is it?

**MR. CHAIAN:** Mr. Balkaran.

**MR. BALKARAN:** Mr. Chairman, because Section 1 is repealed . . .

**MR. GREEN:** Oh, you don't have it there? Oh, I've got it. You don't identify it until . . .

**MR. BALKARAN:** That's right.

**MR. GEN:** Second, Mr. Chairman, I certainly don't feel as strongly about this point as I did on the other, although certainly there are strong representations being made particularly by the Retail Clerks on this issue. I think that we are now going to make it available to engage in much more subterfuges than can already be engaged in under the existing Act. I think it's an invitation to do that, and on that basis I would oppose the amendment, but I certainly have said all that I think that I want to say about that particular thing in the House. There may be others who wish to speak on it.

**MR. CHAIRMAN:** Okay. On the amendment, Section 1 of Bill 11 be repealed and Sections 2 and 3 be renumbered as Sections 1 and 2 respectively.

Section 1 of Bill 11 be amended (a)—pass; (b)—pass.

**MR' GREEN:** (a) Nay; (b) Okay.

**MR. CHAIRMAN:** Is the Honourable Member for Inkster calling for Yeas and Nays on Section (a)?

**MR. GREEN:** No, Mr. Chairman. I just want to be heard to say "nay".

**MR. CHAIRMAN:** Then Section 1 as amended—pass; Section 2 as amended— pass; Preamble—pass; Title—pass. Bill be reported.

### **BILL NO. 19 — AN ACT TO AMEND THE PUBLIC TRUSTEE ACT**

**MR. CHAIRMAN:** Section 5.1(a)1—pass; 5.1—pass — the Honourable Member for Selkirk.

**MR. PAWLEY:** Dealing with 5.1, we're providing for — the Public Trustee may make payments out of the estate of that person for the maintenance or benefit of any other person dependent upon him. My concern, Mr. Chairman, is clarification as to who will decide whether or not another person is dependent upon the person described in Subsection 79(1). Is it in the discretion of the Public

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Trustee to determine who is dependent? Will an application be required to the court in order to ascertain whether or not that person is dependent? Are there some other steps which would be necessary? I'm just a little concerned that the Section, as it now reads, is somewhat loose, giving to the Public Trustee pretty wide and general discretion, which could very well, Mr.Chairman, be abused in certain circumstances.

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR.:** I am advised that there are two forms of dependents, **MERCIER:** / one, statutory, being the wife and children, and the second group of dependents would require a court order. There are presently, this was at the beginning of May, 28 estates in which the Public Trustee was looking after dependents, and in all of those estates the only classes of dependents were wife in, I would say, 75 percent of the cases, and the other 25 were children. No one other than wives or children.

**MR. PAWLEY:** I see. Can the Attorney-General advise me whether there have been situations where there have been others that might be dependent and if so, how would the Public Trustee determine, in that type of situation — I'm thinking about just someone by relationship or by some other means has grown to become dependent upon the person for which the Trustee is handling the estate for.

**MR. MERCIER:** Mr.Chairman, I'm not aware of any, but if there were or have been, that would have to be determined by the court, whether someone other than a spouse or children were a dependent. It would have to be a court order determining that.

**MR. PAWLEY:** Okay. I'm satisfied.

**MR. CHAIRMAN:** 5.—pass; 1—pass; 2—pass; Preamble—pass; Title—pass. Bill be reported.

**BILLNO. 20 — AN ACT TO AND THE GARAGE KEEPERS ACT**

**MR. CHAIRMAN:** Bill 20, An Act to Amend The Garage Keepers Act, and apparently there's an amendment, the Clerk . . . Not until later.

(Section 1 to Section 5 were read clause by clause and passed.)  
Form 1 is repealed and Subsection 6—pass; Form 1—pass.

**MR. MERCIER:** There's an amendment.

**MR. CHAIRMAN:** The Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move, That paragraph numbered 4 and the first paragraph numbered 5 of the proposed Form 1 of the Schedule to The Garage Keepers Act as set out in Section 6 of Bill 20 be struck out and the following paragraph substituted therefor:

4. I have obtained from the owner of the motor vehicle (or farm vehicle or the part, accessory or equipment) described in the annexed financing statement, an acknowledgement of the debt by requiring the owner to sign an invoice or other statement of account for the service rendered, a copy of which is annexed hereto.

5. The property described in the annexed financing statement is now in the custody of the garage keeper.

**MR. CHAIRMAN:** Any questions?

**MOTION presented and carried.**

**MR. CHAIRMAN:** 6 Form 1—pass; 7—pass; Preamble—pass; Title—pass; Bill be reported.

**BILL 21 — AN ACT TO AMEND THE REAL PROPERTY ACT**

**MR. CHAIRMAN:** Bill 21, An Act to amend The Real Property Act.

Subsections 30(4), (5), (6), (7), (8) and (9) added, and 1—pass; 30 subsection (4)—pass; 30 subsection (5)—pass; 30 subsection (6)—pass. . . Order — the Clerk.

**MR. CLERK:** There is a typographical error in 30 Subsection (5) in the fifth line the word "given"

should be "give". Is it all right if we just correct that? (Agreed.)

**MR. CHAIRMAN:** Okay. (The remainder of Bill 21 was read clause by clause and passed.) Preamble—pass; Title—pass; Bill be reported.

**BILL 22 — AN ACT TO AMEND THE JURY ACT**

**MR. CHAIRMAN:** Bill 22, An Act to amend The Jury Act. There's an amendment apparently later on under 61(a). Okay.

(Section 1 to Section 11 were read clause by clause and passed.)

12 61(a) — the Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move, That the proposed clause 61(a) of The Jury Act, as set out in section 12 of Bill 22 be struck out and the following clause substituted therefor: (a) by causing to be delivered to him at his usual residence or place of employment, or if he is absent from his usual residence or place of employment by leaving with some person residing there or employed there, as the case may be, who appears to be at least 16 years of age; or.

**MR. CHAIRMAN:** Any questions on the amendment as proposed by the Honourable Member for Rhineland? The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I know that it's not an area of maybe minor concern, but I just wonder why 16 here if earlier reference was to adult, which the intention would have been 18 and over, and now the amendment provides for anyone 16 and over, that such document can be left with them; I don't know what sort of difficulty could be enjoyed under these changes. I don't know what practice in other provinces, whether there is the same degree of flexibility insofar as to servicing of such documents in other parts of Canada. I would like just a few comments from the Attorney-General.

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR. MERCIER:** Mr. Chairman, this amendment puts the section in line with the provisions of the Criminal Code dealing with the service of a summons. That section has been in effect for quite some time so it should be acceptable for service under this Act.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. GREEN:** What it means is that you can go down to 16 for receiving summonses but not for for drinking.

**MR. CHAIRMAN:** The Honourable Attorney-General.

**MR. MERCIER:** I'd like to believe that was a facetious remark.

**MR. CHAIRMAN:** 61(a) as amended—pass; 61—pass; Section 76 as amended, 13—pass; Section 79 repealed and subsection 14 — the Honourable Member for Selkirk.

**MR. PAWLEY:** Yes, I would like some indication from the Attorney-General in connection with jury fees. I certainly feel that for too long they have been too low. This contribution is made by people towards the justice system and here we are providing for exceptional circumstances in the discretion of the judge, in which the fee may be broadened. It's not far enough and I would like some expression as to intention on the part of the Attorney-General in this regard.

**MR. MERCIER:** Mr. Chairman, the Law Reform Commission recommended a few years ago that the juror fees be increased from \$18.00 to \$30.00 a day. This will allow us to consider an increase. Whether or not we go that far will be another thing. A review would appear to indicate that Manitoba is not that far behind other provinces. It may be that there would be justification for proceeding with increasing the mileage rates first. That would appear to be more of a necessity at this particular time, but certainly this will allow us to change them by regulation to keep up to date with current costs.\$

**MR. PAWLEY:** Mr. Chairman, I just want to say this. that I don't think it's good enough to depend upon the situation in other provinces. I think there are times that we should try to strike a lead,

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and if there is anything that brings the court justice system into disrepute is the fact that witnesses and jury members receive minimal allowances insofar as their attendance and their contribution to the justice system, and often losing a great deal of time from their place of work, inconvenience and not the most pleasant task.

I know that the Attorney-General has to deal with this with his colleagues, but I would sily like to say to the Attorney-General that I do believe that this is an area that is long in need of improvement, and each year that passes by I believe that the situation has been worsening. I would urge that steps be taken at the earliest opportunity.

**MR. CHAIRMAN:** 79(1)(a)—pass; (b)—pass; 79(1)—pass; 79(2)—pass; 79(3)— —pass; 79(4)—pass; 79(5)—pass; 14—pass; Schedule as amended, 15(a)—pass; (b)—pass; (p.1)—pass; 15—pass; 16—pass. Preamble—pass; Title—pass; Bill be reported.

**BILL NO. 23 — AN ACT TO AMEND THE SECURITIES ACT**

**MR. CHAIRMAN:** (Bill No. 23 was read clause by clause and passed.) Preamble—pass; Title—pass; Bill be reported.

**BILL NO. 24 — AN ACT TO AMEND THE REAL ESTATE BROKERS ACT**

**MR. CHAIRMAN:** (Bill No. 24 was read clause by clause and passed.) Preamble—pass; Title—pass; Bill be reported.

**BILL NO. 27 — AN ACT TO AMEND THE CLEAN ENVIRONMENT ACT**

Section 7 as amended, 1—pass; Subsection 14(13) as amended, 2—pass; Subsection 14(14) repealed, 3—pass; Sections 16.1 and 16.2, 4—pass; 16.1(1)(a)—pass; (b)—pass; 4—pass; 16.1(2)—pass; 16.2(1) (a)—pass; (b)—pass; 16.2(1)—pass; 16.2(2)—pass; 4—pass; Subsection 18(2), 5—pass — the Honourable Member for Inkster.

**MR. GREEN:** 18(2), yes, Mr. Chairman, my impression was and still is that where there is a regulation it supersedes a previous order of the Commission. That is what this provision is intended to enact as a legislative provision. Is that correct? Now, are we going to be sure that it applies to everything that has happened up until now or is it going to speak from today, or is it going to speak retroactively from May 15th, 1978? Because my impression is that the regulations made by the government are legislative in effect and therefore supersede an order of the Commission. But if we are going to put it into an Act now, thereby stating what I believe to be the law in any event but which others disagree, which they are entitled to, what happens to all of those that we were concerned with prior to the coming into force of this Act?

**MR. CHAIRMAN:** The Legislative Counsel, Mr. Tallin.

**MR. TALLIN:** I don't think you need to worry about the retroactivity. If those orders were still valid up until the time this Act receives Royal Assent, or this amendment comes into effect, the acts that they performed were offences and can be prosecuted. But the moment this comes into force, then the order would be superseded by any regulation even when both the order and the regulation had both been made prior to the coming into force of this Act. It says, "Where an order has been made by the Commission in respect of an operation or industry on which the order was made," — I'm sorry — "and after the date of the order was made, a regulation is made," and I think that applies whether the regulation is made now or made last year or two years ago.

**MR. GREEN:** Well, what he is telling me is that this will, in his view, mean that any regulation will supersede any orders.

**MR. TALLIN:** Yes, whether made before or after the coming into force of this Act.

**MR. GREEN:** Yes, are you satisfied then . . . Well, Mr. Chairman, I guess it's not a point worth arguing about. That's what is intended.

**MR. TALLIN:** Yes.

**MR. CHAIRMAN:** 18(2)—pass; 5—pass; 6—pass — the Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, I would like to know that this legislation that we are now enacting will deal with the situation whereby an attet was made to recover costs in Brandon as regard to

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a cleanup operation. The Clean Environment Commission made an order; the court ruled that the Clean Environment Commission did not have the power to make this order, therefore, we have never been able to collect the money. The company has not been prejudiced in any way and it seems to me that this legislation should take into account those circumstances which have existed from the date that the previous legislation was enacted to the present time. No company who has violated the spirit of this legislation will be prejudiced because all that we are doing now is making effective what was a problem with regard to the existing legislation. It's not only this particular problem, there are others which we had in the process and some paid. Why should the ones who paid be penalized as a result of the fact that they didn't challenge the order?

Now, Mr. Chairman, we make retroactive legislation. We've done it for citizens who have been involved in automobile accidents. I'm not suggesting that we do anything here other than give the Crown the right to sue for the recovery of those expenses, and therefore, May 15, 1978, is not a satisfactory date. I would suggest that those provisions of the Act which relate to recovery of the costs of clean up be made retroactive to the date on which the previous section, giving the Clean Environment Commission the right to assess that recovery, was enacted, so that any that the department are now working on which have this problem can be worked on under the legislation. Why should they be excused because there's a difference of opinion? After all, we never ever finally settled that difference of opinion.

When I was the Minister, the appeal was not taken from Mr. Justice Wilson's Order on the specific understanding that we would make the legislation retroactive, otherwise, it could have gone to the Court of Appeal of the Province of Manitoba, it could have gone to the Supreme Court of Canada. The instructions at that time were, we needn't appeal because we will make the legislation affect those particular matters, and I would strongly suggest that that's the way we do it, because, Mr. Chairman, you will find a memo, I am certain, that we were abandoning an appeal. I'm not certain that Mr. Justice Wilson was right, but when you have the power to rectify things, you don't have to appeal endlessly, and all that we are doing here is giving the province the right to recover what we thought we had the right to recover under the previous legislation. And, therefore, I would like to ask the Minister why he would not make this retroactive to the date of the previous legislation?

**MR. CHAIRMAN:** The Honourable Minister of Mines, Resources and Environmental Management.

**MR. RANSOM:** The appeal, I believe, was not abandoned prior to the 24th of October, it was abandoned subsequent to that on advice from the Attorney-General's Department, and the reason for not making the legislation retroactive to a time that would cover the situation referred to by the Honourable Member for Inkster is simply that that section of the legislation was declared *ultra vires* and we are not prepared to consider changing the rules of the game and going back to make a new section of the Act apply in a case where the previous one did not apply.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, the Honourable Minister may be technically right on the question of when the appeal was dropped. I know that both things were being done simultaneously and we said that we should launch an appeal pending the enactment of new legislation, but the intention of the department was, specifically, to proceed by way of an appeal and legislation and to recover. Now the fact is that what we are doing is abandoning both directions — we are abandoning the appeal, however remote the chances are of success, and I submit they can't have been that remote because originally counsel did advise that we should proceed with this legislation, so at one time there was an opinion that it wasn't *ultra vires*. We have a single Judge of the Court of Queen's Bench saying that it's *ultra vires* and on that basis we let this company get away with \$180,000 in Brandon — (Interjection) — that's right. \$180,000 clean-up expenses in Brandon, on the basis of a sheer technicality, and I think, Mr. Chairman, that that is reprehensible. We are not changing the rules in the middle of the game.

We have changed the rules in the middle of the game on numerous occasions, when there has been — with regard to Mr. Coulter's people, we changed the rules two years after the game was over. We made the entire Wage and Price Control retroactive for two years, because there was a five-four split on the Court of Appeal, and the government came in and made it retroactive. Now, in what way are these people being hurt? The only thing that we are doing is enabling us to go to Court to recover if they caused the damage, if they didn't cause the damage we won't recover a cent. So, Mr. Chairman, I would like to move, if necessary, that Clause 6 be amended by changing the words, "May 15, 1978" to — and in this, Mr. Chairman, I look for the assistance of Legislative Counsel — to the date when the previous legislation was given Royal Assent.



**MR. TALLIN:** It came into force November . . .

**MR. GREEN:** The date it came into force, yes.

**MR. CHAIRMAN:** Now, before we go any further, am I accepting now an amendment from the Honourable Member for Inkster on this matter or are you waiting for clarification.

**MR. GREEN:** I'm just asking for the date.

**MR. CHAIRMAN:** Yes.

**MR. BALKARAN:** November 1, 1972.

**MR. GREEN:** Well then, Mr. Chairman, I would move that the dates May 15, 1978, be amended to November 1, 1972.

**MR. CHAIRMAN:** The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I would just point out that during the short session in December, the Attorney-General introduced legislation in the House providing where there had been no Court Reporters and where cases had been thrown out as a result of that, that in fact a fine could be imposed — it was retroactive — so what the Member for Inkster is suggesting is consistent and is in line not only with the example that he provided, but certainly with the example which was established in the very last session.

**MR. CHAIRMAN:** The Honourable Member for Lakeside, the Minister of Highways.

**MR. ENNS:** Mr. Chairman, I'm prompted to enter the debate merely because of the extremely unfair example that the Member for Inkster cited with respect to retroactive legislation. Retroactive legislation, by and large, is not legislation which any of us prefer to deal with. From time to time exceptions are made, but the fact of the matter is that when something is being done that, at the time it's being done, is not against the law, and if then a group of 56 or 57 legislators get together and a year later, 12 months later, or 2 years later, decide it is against the law, that's one of the reasons why we don't like retroactive legislation.

Now, the Honourable Member for Inkster cites the case of the AIB legislation, with respect to the action taken by this government in bringing in a retroactive feature of some two-year standing, fails to recognize the fact that this was legislation introduced by our National Federal Government — good legal counsel, good legislative counsel, indicated to the government of the day, that the action that they were taking was suspect as to validity. Other jurisdiction, in fact, took the necessary steps that finally was taken retroactively by this administration with respect to that legislation, and I don't really believe that that is a valid case being made by the Member for Inkster for suggesting that retroactive legislation would be acceptable in this case.

The fact of the matter is that at the time of the particular situation that the Member for Inkster mentions, appropriate legislation was not in place. It was declared so by an Appeal Court Judge. Whether or not that was the final say, that was for the responsible authorities to determine at that particular time. We are doing what we think is appropriate at this time, and I don't think that retroactive legislation is the answer.

**MR. DEPUTY CHAIRMAN:** The Member for Inkster.

**MR. GREEN:** Mr. Chairman, the appropriate authority at the time said we would bring in legislation to cover this point, so let there be no misunderstanding about that. That I can be certain of, that legislation was going to be brought in. Furthermore, we are not changing the rules in the middle of the game. First of all, this is not a game, this is a company that caused — and it's happened in several instances, some have paid — in several instances, and in this particular case one Judge — not an Appeal Court Judge but a Judge of the Court of Queen's Bench — said it was *ultra vires*. We had the choice of either proceeding on the basis that we would appeal that decision as far as it should go, and if you're not bringing in legislation, then you should appeal as far as you can go. We have a single Judge now dealing with it, at least that should have been done.

But if my honourable friend doesn't like the example that I gave him, I'll give him the example of other retroactive legislation being introduced at this session, and that is The Payment of Wages Act. The Payment of Wages Act is being introduced for little people, small employers who may have

been successful in going to the Court of Appeal in this —(Interjection)— no, Mr. Justice Hewak, but commented on by the Court of Appeal, that there is no such thing as the division of the Department of Labour, or words to that effect. We have made it retroactive to cover every order that the division of the Department of Labour has made in this session, by this Legislature. Now, if we can do it for those small employers, why can't we do it for — who was it, Shell or Imperial Oil — whoever it was, we have it at this session of the Legislature. There was a Payment of Wages Act which said that the division can make an order. The Courts have held there can be no such order, and there's no such thing as a division. It wasn't even as clear as our particular legislation which said that there would be a debt between the province and the company.

We have passed on second reading, I don't know if it's gone to committee yet, but The Payment of Wages Act makes all of those orders legal — retroactively. And, Mr. Chairman, there's no reason in this case — the Crown would still have to sue, they would still have to find that somebody caused the damage, they would still have to say that that damage should be repaid to the province. Why should they get away with it? There's absolutely no reason for it, Mr. Chairman.

I would urge the members of the committee to adopt this amendment, which merely puts the company in the position that they always knew that they were in from and after November 2, 1972.

**MR. CHAIRMAN:** The Honourable Member for Selkirk.

**MR. PAWLEY:** Mr. Chairman, I just want to elaborate on what I mentioned before, that in the last session, December, we saw fit to introduce retroactive legislation that would affect the potential right of one to launch a successful appeal, due to the fact that a defect in legislation was being remedied insofar as those that were appealing certain offences involving the The Highway Traffic Act. So, Mr. Chairman, I suggest we are witnessing here a double standard. No problem with the principle of retroactivity, insofar as that was concerned, with other examples that have been provided, so I say to the Minister that I can't understand why there is such nervousness in view of the instances and examples that have already been proceeded with in providing for retroactivity pertaining to this individual case where, because, and let me say because others saw fit to pay their fines and to try to meet their obligations, have paid. In this particular case, there appears to be a great deal of kindness being demonstrated — unusual kindness.

**MR. CHAIRMAN:** The Honourable Member for Inkster.

**MR. GREEN:** Mr. Chairman, we are overlooking another fact. This legislation is retroactive. The bill that the Minister is introducing is retroactive. If it happened on May 16th, and the Crown had to recover, and who knows when we will be out of here, it will be changing the rules after — as he put it — in the middle of the game, although I don't like that term, because I don't think it's a game, and I don't think we're changing the rules.

This legislation makes it retroactive to May 15, 1978, so the principle, if one can talk about the principle, is already being violated. You cannot be a little bit pregnant. This legislation is already pregnant, and we may as well have it conceived a little bit longer, that's all that we're asking, to cover people who knew what the law was — were able to, on a procedural question, avoid responsibility. We say that we're not even foisting them with responsibility. We're merely permitting the Crown to sue them to recover the damages as a result of the fact that the legislation was held by one Judge — let me remind the Court — one Judge to be not eff tive.

**MR. CHAIRMAN:** Are there any more members of the committee prepared to deal with the proposed amendment from the Honourable Member for Inkster, that Clause 6, the retroactive Clause be amended to read, November 1, 1972, instead of May 15, 1978.

**MOTION presented and lost.**

**MR. CHAIRMAN:** (The remainder of Bill No. 27 was read and passed.) Preamble—pass; Title—pass; Bill be reported.

### **BILL NO. 36 — AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT (3)**

**MR. CHAIRMAN:** The honourable members have the amendments before them. 1—pass; Subsection 64(4)(ii)—pass; Subclause 63 — yes; there's an amendment under this section. The Honourable Member for Rhineland.

**MR. BROWN:** I move that proposed new Subsection 63(3)(b)(iii) to The Highway Traffic Act as set

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out in Section 3 of Bill 36 be amended by striking out the word "centimetre" in the first line thereof and substituting therefor the figures and word "10 millimetres."

**MR. CHAIRMAN:** The Honourable Minister of Highways.

**MR. ENNS:** Pass.

**MR. CHAIRMAN:** The Honourable Member for St. Vital.

**MR. WALDING:** Mr. Chairman, I want an explanation for this because I cannot see any change being made. Can the Minister or someone explain to me what is being changed here?

**MR. CHAIRMAN:** The Honourable Minister of Highways.

**MR. ENNS:** Mr. Chairman, all I can say is somebody obviously is taking an exception to the word "centimetre" and has a preference for the word "millimetres," and we're changing it from centimetres to 10 millimetres. The measurement is the same, I am assured by the department, and that is what this amendment does.

**MR. CHAIRMAN:** The legal counsel maybe can advise the Committee —(Interjection)— the legal counsel of the Committee, Mr. Balkaran.

**MR. BALKARAN:** Mr. Chairman, Mr. Dygala, Registrar of Motor Vehicles, phoned to say that this is simply being consistent with the other jurisdictions, that they have all gone to millimetres rather than staying with centimetres, so that's the reason for the change.

**MR. ENNS:** Mr. Chairman, just perhap by general explanation, there has been an attempt made by the Motor Vehicles Branch to make this legislation in the conversion to the metric system consistent with other jurisdictions, and I take it — I have not been personally advised of these amendments — but I take it that these amendments are of that nature, that do precisely that, simply make it consistent language-wise and term-wise with other jurisdictions.

**MR. CHAIRMAN:** Sub-clause 63(3)(b)(iii) as amended—pass; 63(3.1) (d) as amended, 4—pass; Section 4—pass; 5, Sub-clause 63(4)(b)(iii) repealed and Subsection 5(iii)—pass. Again, with the

**MR. ENNS:** This is the legislative highlight in my career and nobody recognizes it.

**MR. CHAIRMAN:** And 5—pass; Sub-clause 63(5)(b)(ii) repealed and Subsection 6(ii) as amended under the same conditions as the amendment — the Honourable Member for Rhineland.

**MR. BROWN:** Mr. Chairman, I move that proposed new Sub-clause 63(5)(b)(ii) of Bill 36 as set out in Section 6 be amended by striking out the word "centimetre" in the first line thereof and substituting therefor the figures and the word "10 millimetres." - - - .

**MR. CHAIRMAN:** 8(The remainder of Bill 36 was read clause by clause and passed.) Preamble—pass; Title—pass; Bill be reported.

Bill No. 40 — the Honourable Attorney-General.

**MR. MERCIER:** Mr. Chairman, could I ask that Bill No. 40 be held for the time being? It's really part of the Family Law legislation and bills and there may be some amendments at a later date.

**MR. CHAIRMAN:** The Honourable Member for Selkirk.

**MR. PAWLEY:** In view of the fact that I know the Attorney-General is seriously reconsidering his entire position on the Family Law bills, I would be glad to . . .

**MR. CHAIRMAN:** Agreed by members of the Committee that Bill 40 be held till the next time the Committee meets. (Agreed)

**MR. CHAIRMAN:** (Bill No. 50 was read clause by clause and passed.) Preamble—pass; Title— pass; Bill be reported.

Members of the Committee, that is all the bills that we have before us tonight. Will somebody move that the Committee rise?  
Committee rise.