Legislative Assembly of Manitoba

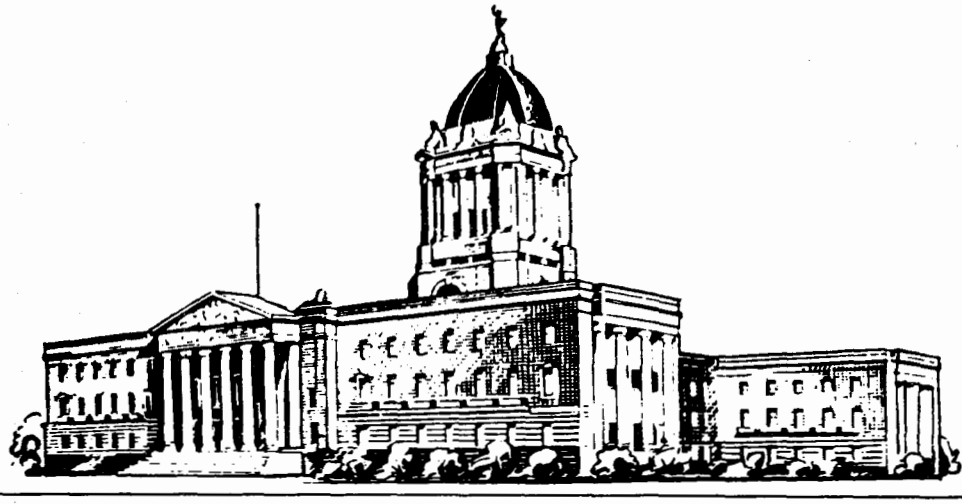
STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman

Mr. J. Wally McKenzie
Constituency of Roblin



Thursday, April 5, 1979 10:00 A.M.

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Hearing Of The Standing Committee
On
Law Amendments

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Time: 10:00 a.m.

CHAIRMAN, Mr. J. Wally McKenzie.

MR. CHAIRMAN: Committee will come to order. We are dealing with Bills Nos. 4, 5, 7, 8, 9, 11, 12, 13, 15, 17, and 21. Are there any members from the public who would like to make presentations to any of these bills this morning? If so, would they come forth and leave their names; if not, we will deal with Bill No. 4, An Act to amend The Testators Family Maintenance Act.

BILL NO. 4 — AN ACT TO AMEND THE TESTATORS FAMILY MAINTENANCE ACT

MR. CHAIRMAN: Section 1(a)(i)—pass; 1(a)(ii)—pass; 1(a)(iii)—pass — the Honourable Member for St. Johns.

MR. SAUL CHERNIACK: When we dealt with this bill in the House on second reading, I referred to the fact that several people had objected to the use of the word "illegitimate" as being not an acceptable description in terms of social views, although there's no doubt that it's not only acceptable, but legally understandable in the courts, and the Honourable the Attorney-General said that he would be looking into the use of that term, and I would like to ask him if he has any comments?

MR. CHAIRMAN: The Honourable Minister.

HON. GERALD W.J. MERCIER: Well, Mr. Chairman, we have looked at it and considered the terminology, and I appreciate the motives and the objects of the Member for St. Johns, I think they're very admirable. What the problem is, is that we have a terminology here that has been used for, as he will very much appreciate it, a terminology that has been used in the legal system for a very long time.

There are other statutes in the province of Manitoba that use the terminology "illegitimate child". There is concern by the people involved in this department that a change in this Act itself might create problems. What I would propose to do is to refer to the Law Reform Commission the terminology that we will be using in this Act, and ask them to review, not only this terminology but similar terminology that is used in other legislation and provincial statutes, and review the total area and ask them to make some recommendations for consideration by the Legislature in future years.

MR. CHERNIACK: Well, Mr. Chairman, I must admit that I was not all fired up about the use of this word; I guess I'm not now either, but it was drawn to my attention by others and it's an interesting problem as to whether or not one uses words that are offensive to people, because they are legally correct and hope that people will stop being sensitive about it or adapt to the fact that there is a feeling in society about offensive words, and peculiar enough I listened to and watched two programs on T.V. of interviews conducted by Dick Cavett. One was a number of months ago, where a man who was a homosexual said, "Well, I wish people would accept the fact that there are such people in society and should not reject descriptive words that are used, and if we don't reject them then people will begin to recognize that there are such people as we are and therefore, it won't be a dirty word to refer to us that way."

I found that was interesting, and yesterday, the same program I heard the introduction saying, We warn you in advance that there may be words and expressions used on this program that will not be acceptable to some people," and then listening to the program the only word that was used that might be thought to be unacceptable, was the word "bastard" which is one of the oldest and most accepted legal words in the English language, I suppose. That's really what we're talking

about here. Here, we're calling them illeqitimate, and I'm not sure I know just what the difference is, but I suppose the legal authorities do.

It's an interesting problem; I'm glad the Attorney-General has stated that he will refer this question to the Law Reform Commission. I'm not sure that in a time of restraint that there should be very much time spent by a body which is paid to look into law reform to be involved in what is probably a social problem.

I discussed this matter with the Legislative Counsel and at my request he prepared an amendment with a different definition which may sound awkward, but which is, I think, fully descriptive and limiting as it ought to be of the same phrase and — I'll read it, Mr. Chairman, that is to replace the words "an illegitimate child of the testator", with the words "a child of whom the testator and another person to whom the testator was not married, are the natural parents", and that is the definition. Therefore, I don't think that it is difficult and I don't think that it would be in any way legally harmful to replace it, therefore, as a sort of a gesture of recognition of the sensitivity of people and the fact that words are used in many ways by many people, I would like to ask one of the members of the Committee, since I'm not a member, to move this if he or she is so inclined . The motion I think has been distributed, has it? Well then, I'll just leave it there.

If I were a member of the Committee I would move it, Mr. Chairman, as I say, just as a gesture to those who are sensitive about it, nnowing that the Legislative Counsel has drafted it and therefore, I'm assuming — and he's here to confirm that it is a phrase which clearly can replace the one on the bill without any damage to legal interpretation, which is the important thing.

MR. CHAIRMAN: The Honourable Member for Flin Flon.

MR. BARROW: I would make that motion, seconded by my colleague . . . be adopted.

MR. CHAIRMAN: The Honourable Minister.

MR. MERCIER: For the reasons I've stated, Mr. Chairman, I again reiterate — I acknowledge the good intentions of the Member for St. Johns and the mover of the motion — for the reasons stated, I would not be prepared to accept the amendment. I would refer it as a part of the problem to the Law Reform Commission.

MR. CHAIRMAN: Questions? All in favour of the motion please signify. The amendment, I'm sorry.

MR. CLERK: One, two, three, four.

MR. CHAIRMAN: Those opposed to the motion please signify by raising your hands.

MR. CLERK: One, two, three, four, five, six, seven, eight.

MR. CHAIRMAN: I declare the motion lost. 1.(a)(iii)—pass; (a)—pass; 1—pass. Section 2—pass; 3—pass; preamble—pass; title—pass. Bill be reported.

BILL NO 5 — AN ACT TO AMEND THE CRIMINAL INJURIES COMPENSATION ACT

MR. CHAIRMAN: Clause 6(2)(a) as amended. 1—pass. Subsection 6(3) as amended ; 2—pass. The Honourable Member for St. Johns.

MR. CHERNIACK: I thought you said Subsection 2.

MR. CHAIRMAN: 6(3) as amended, then 2.

MR. CHERNIACK: Mr. Chairman, I was expecting you to say Section 1— pass, Section 2—pass. and that's what confused me. Sorry.

MR. CHAIRMAN: 3—pass. The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, at the committee, I raised the question of the original section which I think was passed by the former government, which said that the character of the applican may be a consideration in determining compensation, and I questioned the validity or the logic

of that. I ask now if the Attorney-General could explain or justify the validity and possibly tell us of the experience of the board in connection with that.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, I wasn't here when the original bill was passed. I can't go back to that particular time. I think, in general, it was a good bill though. The experience of the Criminal Injuries Compensation Board is that character of the applicant is not being used as a justification for rejecting any application for compensation since the Board commenced. However, in discussing it with the Board, one can possibly envisage some circumstances in which it might become appropriate, because it has not been used as a justification in rejecting any application and because of the possibility that it might be used in the future; probably a very rare possibility. I think the amendment is an appropriate one.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I do not question the amendment, because what the amendment does is to clarify, there are cases where the applicant might not be the victim. But, I am questioning the validity, and there's no reason why one shouldn't question the validity, of a qualification that is in the existing legislation with which we are now dealing, and the Minister says that although it has never been brought into use since the inception, one can envisage occasions when it could be used. And I would like to ask him to envision them for us, because I have had difficulty thinking of any occasion when it would be used.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: The one possibility that has been suggested where this might be used is a situation where you might have a violent act committed upon someone, for example, involved in the drug trade — actively involved in the sale of drugs — where known criminals in a . . . being assaulted might be called a gang war. In those circumstances, there might very well be a great deal of criticism if such people were to receive compensation.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, that is probably . . . well, I hadn't thought of any, so that now that the Attorney-General has presented one, I'm trying to think of what is the purpose of compensation? It is certainly not a reward, nor is it a recognition for pain and suffering — we know that. It is there to recognize the damages caused to a person because of a breach of the law — innocent victims of crime.

Now, I don't know, in the case described by the Minister, whether you're going to call them not innocent victims of crime, if they are attacked there is a crime, there has to be a crime. There's no question about it that this drug traffi er, or this terrible crimick nal, is a person who is a victim of crime. Now is the question whether or not he is innocent? If he were walking down the street and were hit by a car, there would be no question about it. If he were walking down the street and was mugged, then his character could be brought into question. If he is a notorious criminal and he ss mugged, would society say "Well, that's good. It's all right, because he himself is a bad actor, bad character, therefore he should not receive compensation".

Let us remember that the term "compensation" under this legislation means the recognition that his earning ability, or that his financial ability to support himself, has been damaged. And, . Mr. Chairman, I don't think there is anything morally wrong with taking a person against whom a crime was committed and compensating him for the damages that he suffers as a result of the fact that the crime was committed on him, regardless of whether he was a drug trafficker or worse than that.

I don't understand just why it is that society would deny him that compensation to which he is entitled as an innocent victim. If he has provoked the crime then I think the legislation takes care of that. If, by his action he has invited the crime to be committed than I think that there is protection regardless of his character. But for society to say we deny you what would otherwise be your entitlement, would carry with the connotations that could go right say to the Worker's Compensation Board.

Suppose this drug trafficker who trafficked in drugs in the place where he works is injured in the course of his work, should he be denied Workeers' Compensation because he's a bad character or is someone going to tell me that The Workers' Compensation Act includes that kind of a

because I can't say that it doesn't. It's just that I don't think that that explanation is one that satisfie me as long as he is the innocent victim of a crime committed on him. I don't think his characte should play a role, and this an opportunity we have to correct what I think might be a prejudic without justification. If there is justification, I'm sure that that can be protected. If it's a prejudice I don't think we should cater to that prejudice and I think that since we cannot justify his bein there except in the remote description given by the Attorney-General and since compensation i limited, very very limited, then I don't think that harm will be done by removing from the Boar that kind of discretion which attracts to it a valued judgment as to what is the character of a persor I think it has dangerous connotations and I think we all would have no difficulty thinking of unfa conclusions or inferences drawn from the character of a person.

We can always think of people who are bigots, people who are themselves criminals, peopl who are of a different colour — and now I'm going to the bad use of discrimination as compare to good use and there are, of course, both kinds — and where it relates to character you ca manufacture in your mind the justification because you simply don't want to do it.

I don't think it's right to deny to a criminal the benefits of this Act just because he's a crimina If he suffers as an innocent victim without provocation of a crime against him, the person wh commits the crime should be punished. No question about that. Therefore the person suffering a a result of it should be compensated because of the injury he suffers.

And again, Mr. Chairman, I would like to think that enough people have been persuaded b this suggestion that the deletion of the entire 11(1) as it applies to the character would be proposec But I would invite some more discussion on this. When I spoke on Second Reading I indicate that I would want to raise this at this time and therefore I would like to know what other member of the Committee think about it.

MR. CHAIRMAN: 3 — The Honourable Minister.

MR. MERCIER: Mr. Chairman, as I have said there would be literally hundreds of orders that hav been made by the Criminal Injuries Compensation Board since the beginning of this legislation i 1970. Not once has the character been used as a justification for preventing compensation. I'v indicated that obviously it would only be used in a very rare and extraordinary situation and o that basis, Mr. Chairman, I would suggest that we leave the legislation as it stands with thi amendment which will clarify the reference to the applicant.

MR. CHERNIACK: Mr. Chairman, when you have something that in all the years — and I don remember when this was passed but it was probably 8 years . . . Oh, good, I was going to sa about 8 years ago, but 9 years ago — it has not been used at all, then one gets rid of a useles appendage as one does an appendix when there's any irritation involved. I'm suggesting there' irritation and that this appendix should be removed.

The fact that it has never been used is justification for . removal. If something has not in years had any impact on the intent of the legislation then when you review it as we are now doin to me that is the time to do so.

Now, Mr. Chairman, I have not discussed this with anyone other than when I spoke on it o Second Reading. I don't know how my colleagues feel about it. I don't know how other membe of the Committee feel about it. And, Mr. Chairman, this is not a political issue, it's not a matte of party policy. The Attorney-General has indicated his reluctance to change it. But I really wa to invite other members of the Committee to tell me that I'm too petty about it or my attitud is wrong. I would like to be convinced that I am wrong rather than just have the Attorney-Gener say he doesn't see any reason to remove it which is in effect what he did, saying that it had neve been used.

Now in the legislative process, it is only at this Committee level that one can discuss matte of this nature without getting involved and taking sides or standing on principle or questions confidence of the government. There's no question here except what's the use of bringing in th character of an applicant in deciding how much compensation or whether or not he should g any, especially in view of the fact that it has never been used in 9 years. So what's the sense keeping it and having it available? If I can't provoke any discussion on this, I don't intend to t any more than what I've just done, then go ahead, Mr. Chairman.

MR. CHAIRMAN: Section 3—pass. The Honourable Member for St. Vital.

MR. WALDING: Just before we leave this, my colleague from St. Johns raised a question wit the Minister as to whether this sort of provision was in the Workers' Compensation Board, give the very similiarity of The Criminal Injuries Compensation Act to the Workers' Compensatic

The amounts are paid out similiar to circumstances for getting compensation as similiar on the method of assessing it as similiar. Can we find out now from the Minister whether this provision is in The Workeers' Compensation Act?

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, perhaps the Legislative Counsel could answer that question.

MR. CHAIRMAN: The Legislative Counsel.

MR. ISAAC SILVERS: I'm not aware of any such provision in The Workers' Compensation Act. As far as I am aware the only thing they might consider is whether or not the injury under the Workers' Compensation Act was self-inflicted, willfully self-inflicted.

MR. WALDING: Yes. Leading from that I suppose the next question to the Minister is whether the provision for self-inflicted injury under The Criminal Injuries Compensation Act would deny the applicant from receiving a benefit — and I presume it would.

It raises the next question as to why there is a provision in one Act where the character of the applicant is involved, but not in the other. Since the Acts are two parallel with each other, would it not make sense to have similar provision in both of them. Why is the difference?

MR. MERCIER: Well, Mr. Chairman, I would presume that there is a difference, because in the one instance you're dealing with accidents which occur at work, involved in some form of employment. In this case you're dealing with a more unusual situation where a person is injured as a result of a crime.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, the Associate or Assistant Attorney-General was kind enough to lend me his copy of the Act itself, and I'd like to read into the record the section as it exists.

11.(1) "The Board in making or in declining to make an order for the payment of compensation shall consider and take into account all such circumstances as it considers relevant to the making of the order, and without limiting the generality of the foregoing, the Board shall consider and take into account the character of the applicant, and any behaviour that directly or indirectly contributed to the injury or death of the victim."

Mr. Chairman, it says it shall take into account the character of the applicant. Now, Mr. Mercier says it's never been used. Well, I assumed the Board always took into account the character of the applicant, because that's the law, it shall take it into account, and has decided that the character had no relevance. Now, if you deleted the phrase "the character of the applicant and"; then the section would read "shall consider and take into account all such circumstances as it considers relevant, and without limiting the generality of the foregoing, the Board shall consider and take into account any behaviour that directly or indirectly contributed to the injury or death of the victim".

Now that makes sense. I think that that is a factor. Now, if we have that drug addict, who has behaved in such a way as to invite retaliation, the Board could consider that his behaviour directly or indirectly contributed to his injury. But that has nothing to do with his character, and that's what bothers me, because character is such a subjective decision.

I'd like to suggest that instead of adding the words as proposed here, "and the victim" after the word "applicant", it would be better to remove the phrase "the character of the applicant," and that then gives to the Board the authority to deal with all circumstances it considers relevant, and shall also take into account any behaviour that directly or indirectly contributed to the injury or death. And that does not in any way take away any power from the Board, even to consider the character, but I would think that the Board should not take into account, or be required to take into account, the character. And I would think that the deletion of of the phrase "the character of the applicant, and" would be the best way of improving this section. I would be strongly influenced, Mr. Chairman, by the Legislative Counsel pointing out any dangers inherent in carrying out my suggestion.

MR. MERCIER: Mr. Chairman, I would suggest that in the rare and unusual case in which this might be used, you could have a situation, situations which have occurred in Winnipeg, where there might occur a gangland slaying where all that you'd find is the victim dead in the gravel pits at

Birds Hill, for example, which has occurred; where there is no evidence of behavior, but there is knowledge with respect of character in that the person may have been involved in the illicit distribution of drugs, and in those rare and unusual circumstances, this part of the section might be used by the Criminal Injuries Compensation Board.

MR. CHERNIACK: Mr. Chairman, I just want to carry this out. Firstly, I'm not aware that in Manitoba we have gangland slayings that take place. If we have, then the Attorney-General shouldn't be sitting here calmly with us, he should out fighting the gang wars that take place.

Mr. Chairman, suppose under the same circumstances you find two gravel pits — each with a dead body — one is a known and notorious drug distributor who has been convicted of that in the past, so we know his past record, and the other is a person with a similar record of character. One has been picked up on the street, dragged into a car, robbed of all his possessions, killed. The other one is the victim of an internal gang slaying. Who's going to know the difference? And the invitation is here, don't look at whether their behavior has directly or indirectly contributed to the injury, but just assume that his character may be such that, in both cases, that they are involved because of their character.

And it may well be you would say, "Well, a person that carries that kind of money on him that invites people to rob him and kill him because of the money he carries, is the kind of a character that shouldn't have the protection of The Compensation Act, he should be carrying credit cards not cash," or something like that. Mr. Chairman, I don't know why the Attorney-General is trying to fight to protect legislation which he stated initially was not his responsibility and he didn't even participate in passing it. And bringing up such kinds of references that I think endanger the rights of the family of that person he described, who because of the fact that he's a known drug pusher may yet be innocently killed, and the Attorney-General has described a situation where it could be assumed that because he was a "pusher", he was killed by internal gang warfare, and therefore his character was such as to disentitle his family to protection.

That is one of the dangers, that because he has a "bad character", that it is assumed that he should not have the protection of this Act. I would rather err on the side of saying that unless it could be shown that he has directly or indirectly contributed to his injury, that his past record is not held against him under this Act, especially in circumstances where he may be dead and be unable to prove that his character had nothing to do with the Act passed against him.

MR. CHAIRMAN: The Honourable Member for Burrows.

MR. HANUSCHAK: Mr. Chairman, another question that comes to my mind is the way this section presently reads, it would penalize a claimant with an unblemished character who may have been the victim of a crime, perhaps because the — I believe the applicant — or let me ask the Attorney-General this: the applicant need not necessarily be the victim of a crime —(Interjection)—

MR. HANUSCHAK: Very well, he could be a dependant of a victim, because the victim could be dead, so has no way of making application under this. Now, the Honourable Minister, in speaking about the phrase "the character of the applicant", he was referring to the character of the victim and now I'm somewhat confused in my own mind. You know, the Minister used the example a gangland slaying. Well, the person slain is not going to be the applicant. The applicant may have an unblemished character, so is the Minister suggesting that in cases of that kind the Board will consider both the character of the applicant and the character of the victim?

MR. MERCIER: Mr. Chairman, the Member for Burrows has expressed complete understanding of the purpose of the amendment, which would be used, I suggest, in very rare and unusual circumstances, if at all.

MR. CHAIRMAN: The Honourable Member for Burrows.

MR. HANUSCHAK: I still do feel, Mr. Chairman, that if this section would be amended in the manner suggested by my colleague, the Member for St. Johns, that the same purpose would be accomplished. In fact, I would think it would be accomplished more effectively and in a more meaningful fashion.

MR. CHAIRMAN: 3.—pass; 4.(b)—pass; 4.—pass; 5.—pass; 6.— pass; preamble—pass; title—pass. Bill be reported. Bill No. 7, an Act to amend the Jury Act. The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, that bill wasn't on the notice that I received. It was passed yesterday, I think, it passed second reading yesterday. Could we defer that to the next meeting of the committee?

MR. CHAIRMAN: Is the committee agreed to defer bill No. 7 until we meet again? (Agreed.)

BILL NO. 8 — AN ACT TO AMEND THE MENTAL HEALTH ACT

MR. CHAIRMAN: 1.—pass; 2.(a)—pass; (b)—pass. The Honourable Member for Burrows.

MR. HANUSCHAK: I'm sorry. I just simply wanted to note, Mr. Chairman, that there's an expression "mentally disordered person" which seems to have found its way into our vocabulary, and it would seem to me that there was no difficulty in bringing that expression in or other similar expressions, or other expressions which are acceptable to the public to replace the old expression of lunatic, insane and so forth, which was common legal terminology, but we found a way to introduce a more acceptable expression. I'm simply making a note of that, Mr. Chairman, I'm not asking the Minister to do anything but I want that point to go on the record. As a further comment to a previous comment that the Attorney-General made that it's a considerable problem to change terminology that's generally acceptable in legal circles.

MR. CHAIRMAN: 2.(b)—pass. The Honourable Member for St. Johns.

MR. CHERNIACK: I just wanted to make sure — Mr. Chairman, I was just looking for this — I'd like the Attorney-General to elaborate. He called it a procedural matter, this section 2., but I'd like him to eaaborate on just what it is that he is intending to accomplish.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, the present subsection 89(1), which I believe the Member for St. Johns has, permits the Lieutenant-Governor-in-Council to appoint a public trustee of another province to be committee of the estate of a mentally disordered person in Manitoba, where that mentally disordered person is detained in hospital or other public institutions in that other province. Under recent mental health reforms, a public trustee becomes committee of persons residing in nursing homes, foster homes and on occasion, even in their own homes. The words to be deleted "who is detained in hospital or other institutions" are unnecessarily restrictive and have created some procedural difficulties where mentally disordered persons are not in some form of detention.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I'm concerned with knowing how one confirms that this is a mentally disordered person. If, as the present law reads, it is a person who is detained in hospital or other public institution, then apparently, or I'm guessing, there would have been some kind of an order made to confirm that he is mentally disordered. But now we're saying if he was in his own home, how do we know? How does the Lieutenant-Governor-in-Council know that he was a mentally disordered person?

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, that advice would come from the public trustee of another province.

MR. CHERNIACK: Well, Mr. Chairman, if that person is not in a mental institution or in hospital, does the public trustee come in to activity in this regard when there is an heir or an executor of the estate of that person?

MR. MERCIER: Mr. Chairman, the public trustee advises me that 80 percent of the people that he is appointed to look after their estates now are not in a mental hospital.

MR. CHERNIACK: Are they people without heirs or estates of any consequenee?

MR. MERCIER: The Public Trustee advised me, generally under supervision, orders of supervision.

MR. CHERNIACK: Mr. Chairman, that's too abbreviated for me; I don't know what they mean by an Order of Supervision.

MR. MERCIER: Mr. Chairman, by deleting the words in this particular section, it's merely pointing out that as a result of reforms to Mental Health Acts in other jurisdictions as well as ours, that many people are not confined to hospitals or other public institutions in other provinces, as in Manitoba they are not confined to hospital or other public institutions. And that's why I made reference to the 80 percent of the cases our Public Trustee has; and that's why the amendment is being made to this section to recognize the fact that in other provinces, similar reforms have taken place, and many people are not in hospital or other public institutions in other provinces.

MR. CHAIRMAN: The Honourable Member for Burrows.

MR. HANUSCHAK: Mr. Chairman, I don't believe that that still answers the question — at least if it does, I missed it — of those people who are not in institutions, how does the Public Trustee know who is and who is not mentally disordered?

MR. MERCIER: Because he receives advice from Public Trustees in other provinces that there is an order of some kind, of supervision or whatever, appointing the Public Trustee in another province to be the trustee of that estate.

MR. HANUSCHAK: Then perhaps this is going a bit beyond this amendment, but nevertheless I think it's relevant, how does a public trustee know who is and who is not mentally disordered in the province of Manitoba?

MR. MERCIER: Mr. Chairman, what this amendment deals with is mentally disordered persons in provinces outside of Manitoba, who have assets in Manitoba, and when he receives documentation from another public trustee in another province, then he takes charge of the assets in Manitoba.

MR. HANUSCHAK: That's right, yes, but the reason why I'm asking, how does a public trustee determine who is and who is not disordered in the province of Manitoba, it's because I would suspect that whatever method he uses to make that decision in the province of Manitoba, his counterparts in other provinces may use a somewhat similar method, so that's why I put the question. I realize that this deals with assets of mentally disordered outside the province.

I'm simply interested in knowing, how do public trustees determine who is and who is not mentally disordered regardless of whether they are in the province of Manitoba or not, or beyond it's boundaries?

MR. MERCIER: . . . are really not making reference at all to this section.

MR. HANUSCHAK: Yes I am.

MR. MERCIER: Well, the procedure is set out in the whole Mental Health Act, as to the procedure . . .

MR. HANUSCHAK: To determine who is and who is not mentally disordered?

MR. MERCIER: Yes, right.

MR. HANUSCHAK: Well, very well then, if the Minister would have told me that, I will read the Act for myself then.

MR. MERCIER: Yes, sure.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I would just like to hear, what is today's problem? What failure do we now see in connection with the administration of the estates of some out-of-province people, that will be corrected by this change? What is the experience, not what is the theory?

MR. MERCIER: Mr. Chairman, apparently there is one case involving a person who was kept in a nursing home in British Columbia, who had assets in the province of Manitoba, but because he was not detained in hospital or another public institution in another province, the public trustee here did not have jurisdiction under this section.

A MEMBER: So what happened?

MR. MERCIER: That's why we're amending the legislation, so that he can take charge of the assets, on the request of the public trustee from British Columbia.

MR. CHERNIACK: Mr. Chairman, if this change were not enacted, what would happen? And let me ask, whether what wouldn't happen is that the committee or the trustee in British Columbia would come here and get an order from the courts — now, am I wrong about that?

MR. MERCIER: That's right.

MR. CHERNIACK: So that the once instance that the Attorney-General referred to could be accommodated by a review, by a court having authority to act with all the authority to look into the question, to give notice of motion, to have a hearing, to consider the rights of various people, and the court could then make an order. To obviate that, apparently, there is this change being proposed, and the concern I have is, the change is a person who is in a nursing home or is in other than a public institution — and if one starts dreaming as one did earlier about gangland murders taking place in Manitoba, one can more easily start conceiving of people who have influence over others in nursing homes, who can persuade others to act improperly and unfairly, and not in a public institution — and so many great horror stories are told about what can take place in private nursing homes to benefit avaricious operators. I'm saying all that to take the other extreme.

If there is the procedure now, where the court is enabled to make the order, why should the Cabinet take unto itself that kind of authority away from the courts? Now, I'm not one who feels the courts have to be protected from government, but I don't know . . . the problem I see, and I've been in Cabinet on often enough occasions, to see that . Cabinets may make many decisions based on bureaucratic advice, as they do and as they should. But where there is another process which involves the protection of rights of various people through the open activity of the courts and not through the private Chamber of a Cabinet, then I'm wondering whether we shouldn't stick to the court procedure rather than Orders-in-Council, which are passed in Cabinet. And, therefore, I would like some feeling of comfort that this isn't a proposal just to make it a little easier to act without judicial review; and I saytthat to people who probably have a greater respect for private property than I have.

But now we are dealing with the property of an individual, who presumably is mentally disordered in another province. I'm not sure that the court should not retain its authority, because now I think we have zeroed in in on the intent of this, and that is that to do through . Order-in-Council what is now and can be done through a court process. Now, if I'm wrong about that I want to be corrected, because I think this is bringing in a method whereby one can avoid having to go through all the red tape of court procedure and get what one wants through an order of the Cabinet. Is that a correct interpretation of what is desired?

MR. MERCIER: No, Mr. Chairman, it's not. If you look at the section now where a mentally disordered person who is detained in hospital or another public institution in another province, in that situation the Lieutenant-Governor-in-Council can appoint a public trustee to look after the assets in Manitoba. That has gone on for, well it would appear at least since 1974. What we're recognizing

here, is that the great majority of people now, who were mentally disordered are not detained in hospital or other public institutions, but are in nursing home situations, as the public trustee has indicated in Manitoba — 80 percent of the mentally disordered persons are kept in nursing homes, so that we're just recognizing in this amendment where the great majority of mentally disordered persons are kept, and recognizing the jurisdiction of other provinces and the orders in favour of public trustees and eliminating the expense that would be involved in applications to court. Just recognizing in this case, that as a result of the reforms in mental health, most people are living in nursing homes rather than hospitals or public institutions and we, in Manitoba are going to recognize that and the jurisdiction of the other provinces.

MR. CHAIRMAN: The Honourable Member for Elmwood.

MR. RUSSELL DOERN: Mr. Chairman, just a question to the Attorney-General. He indicated that most mentally disordered persons are kept in nursing homes or many are.

MR. MERCIER: Well, what I said was those who are under orders of supervision in Manitoba the Public Trustee advises me that 80 percent of them are kept in nursing homes or foster homes.

MR. DOERN: I was just wondering if he could comment on how order is maintained under those circumstances. My own suspicion being that they would be heavily drugged.

MR. MERCIER: It's totally irrelevant to this particular amendment. If you have a concern abou that, take it up with the appropriate minister.

MR. DOERN: Well, I'm asking you a question and I intend to . . .

MR. MERCIER: I'm giving you an answer.

MR. DOERN: I do intend to follow it up if the Attorney-General can control himself , maybe h needs a pill. I do intend to pursue this with the Minister of Health , but I'm asking him if he i aware, or if he can comment on whether or not these people are heavily drugged in order to contro them under those circumstances. If he doesn't care to answer that, that's fine but I'm asking hir if he is aware of how they are controlled under those circumstances.

MR. MERCIER: No, I'm not aware, Mr. Chairman.

MR. CHAIRMAN: 2(b)—pass; 2(c)—pass; 2—pass; 3—pass; Preamble—pass; Title—pass; Bill b reported.

BILL NO. 9 — THE CROWN LANDS AND REAL PROPERTY ACTS AMENDMENT

MR. CHAIRMAN: 1—pass; 24.1—pass; 2—pass; 50.1 (1)—pass; the Honourable Member for S Johns.

MR. CHERNIACK: I'd like to know, I'd like the Attorney-General to describe the procedure tha will actually take place under this amendment, what will happen, what proof will be required c offered to show that land has become liable for accretion and what will influence him, becaus it's the minister apparently who has to be satisfied about that and that all precautions have bee taken to protect the rights of Crown lands and of the owners of adjoining land. What procedu is being proposed and what is the present procedure?

MR. MERCIER: Mr. Chairman, presently you have to obtain a court order; the procedure und this amendment in Section 1 would be that a certificate would have to be obtained from the Minist of Renewable Resources.

MR. CHERNIACK: I'm sorry, Mr. Chairman, we're into another Act which takes something th the courts now have the power to deal with and takes it into bureaucratic control. In effect it that, because no minister himself goes into these things; he relies on the bureaucracy and proper so, I'm not saying that in any criticism. I do not understand, let me first say, I don't know wh takes place now when one has to apply to court. I assume one has to serve Notice of Motion c somebody, the court then reviews the procedure and the evidence that is submitted in suppc

ınd the court makes a decision. What will the minister do, what procedure will he undertake to ıave, what is he bound to do that will provide a better management of this decision than the courts? \nd again, as I said earlier, I am not one to fight to protect the rights of the courts, but the courts ıre there for a purpose to protect individuals against other individuals and indeed, against the Crown.

Now, I'm just concerned about the trend to take into the bureaucratic process, into government, ıowers which the government didn't have. You know, I'm addressing myself to Conservatives who ıave been claiming all along that government plays too big a role in the lives of individuals, and ıere these Conservatives, and now I'm making this a sort of political thing by saying, do you know vhat you're doing, or do you just blindly accept the fact that if one of you says, let's take it away rom the courts and put it into government, that's okay.

I guess I'm assuming, as one has the right to assume that the caucus has been through all his and knows exactly that they are correct in deciding to take away from the courts certain powers ınd turn it over to a minister of the Crown.

So, you see, a member, and I won't name him says, we have a lot of faith in that minister. .et me tell that member that for all I know, he may become that minister in due course, and worse han that, Mr. Chairman, somebody else may and will become the minister. So, you're not passing aws for that minister. —(Interjection)— Right. Okay. The point then is that you don't deal on the ıasis of that minister, whoever he is, you deal with the fact that the government is taking unto tself authority or power which is now vested in the court, and as I'm saying, I'm not fighting that n principle, although I would have thought Conservatives would have fought it much more in principle han I am. I want to know what is the justification and what are the procedures that will make t cheaper or fairer or more protective of the rights of others, than the present system.

MR. MERCIER: Mr. Chairman, in essence the procedure removes the requirement for a court order vhere there is a certificate from the minister with respect to the Crown lands and consents by he adjoining owners and Section 2 of the Bill points that out, that the alternative is to either have ın order of the court or a certificate together with the consents of the adjoining owners. The intention ıf the amendment is simply to remove the requirement for an application to court to establish a ight to title in those cases where the minister is prepared to issue a certificate the adjoining owners consent. If they don't consent, there will have to be an application for a court order.

MR. CHERNIACK: The Attorney-General is saying that it is only Crown lands which come under ıuthority of a minister of the Crown that will be given to other owners.

MR. MERCIER: Right, Mr. Chairman.

MR. CHERNIACK: And that would be done and there's no compensation involved, I assume and he minister will have discretion whether or not to give that land to the adjoining owner.

MR. CHERNIACK: Well, I heard somebody say here on the Conservative side, "Let justice be done", ıut the understanding I get is that in this case the courts will not decide whether or not it should ıe done, but we'll leave it to a minister of the Crown to have the authority to give away without compensation, something that formerly belonged to the Crown.

MR. MERCIER: Well, the courts now under those circumstances wouldn't make an order for compensation.

MR. CHERNIACK: But the courts would reserve the right not to exceed to that request, would hey not? Are the courts rubber-stamping something or does the court make a judicial decision?

MR. MERCIER: But it's simply a matter of proving the accretion has existed — has taken place, ınd no doubt, the same evidence that the minister will have.

MR. CHERNIACK: I want to say that I think that one should not give to ministers great discretionary ıowers which I think are better left with the courts. I think politicians should be making policy decisions which are subject to review in the open legislative process, and this kind of administrative decision, I don't really think that it should beong in the purview of politicians, I think it should belong in the arena of the independent, objective, impartial judge, who is not subject to pressures of any kind. I just think this is wrong in principle and I think that if it's a question of procedures being too awkward in court, there should be an effort made to make it more routine.

I think courts should make decisions of this kind or they should be such that have regulatio defining the limits to which a minister can go. I say this, considering that ministers change an governments change and all sorts of pressures take place, and we know they do and we kno that people come to ministers, knocking on doors, asking for things that may be unfair or wron and ministers have to make decisions and I think that policy decisions, decisions on governmer should be kept to the government, to politicians, but administrative decisions such as this, are bette left where they are. But if there is any difficulty of getting it through or if there are procedure in the court which make it costly, then we should correct those, but all I see here is that now we'r giving to the minister the right to give Crown lands away. In effect, that's what it is and I thin that there are connotations to that which should not be accepted, but if the Attorney-General take full responsibility for that kind of a decision, then he has the support of the majority of this Committe and he'll do it, but I personally don't agree with the method in which it is attempted to accomplis what may be a perfectly justifiable intent.

MR. MERCIER: Just concluding, Mr. Chairman, the purpose of the amendment is to eliminate th expense and trouble of a court action where the minister certifies the accretion is taking place i the adjoining owner's consent.

MR. CHAIRMAN: Pass; 50.1 Subsection 2(a)—pass; (b)—pass; 2—pass; 50.1 Subsection (3)- pass; 50.1 Subsection (4)—pass; 50.1 Subsection (5)(a)—pass; (b)— pass; Subsection (5)—pas 50.1 Subsection (6)—pass; 50.1 Subsection (7)—pass; 50.1 Subsection (8)—pass; 3—pas Preamble—pass; Title—pass; Bill be reported—pass.

BILL NO. 11 — AN ACT TO AMEND THE PROVINCIAL JUDGES ACT

MR. CHAIRMAN: Section 1—pass; 29.1—pass. The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, I wonder if the Attorney-General undertook to consider th concerns I expressed on Second Reading? I wonder what he can tell us about what the judge want and what will be the impact of this? What are the benefits now available and not availabl that will become available with the passing of this legislation.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, currently the provisions for severance pay for bargaining un employees in the collective agreement grant one week's pay for each year of service, up to maximum of 15 weeks pay following 10 years of continuous service. This is payable in the eve of retirement, permanent layoff or death, and would not apply on a normal resignation of tempora layoff or dismissal. The amendment would simply make provincial judges eligible for these severanc pay benefits equivalent to those applicable under The Civil Service Act.

MR. CHERNIACK: I ask, what are the present rights of judges?

MR. MERCIER: They have no right to severance pay. Judges at the present time have no rig to severance pay, Mr. Chairman.

MR. CHERNIACK: As I understand it, since we passed legislation, judges are no longer subje to arbitrary dismissal, and therefore do have tenure. Is that correct?

MR. MERCIER: I think that's generally correct, yes.

MR. CHERNIACK: I mean, as compared to the Deputy Minister, or even a high ranking offici of lower status who can be fired outright, as we have learned, and have no rights apparently, judge is now being given rights that they get severance pay. Is that correct, or does this not app for dismissal?

MR. MERCIER: It would not apply to dismissal.

MR. CHERNIACK: I think the Minister said that they would not have the right und dismissal.

MR. MERCIER: Right.

IR. CHERNIACK: Would the Minister please repeat under what circumstances they do acquire everance pay rights that they didn't have them before.

IR. MERCIER: At the present time, the member of the Civil Service, the bargaining units of the mployees, severance pay is only payable in the event of retirement, permanent layoff, or death. does not apply in resignation, temporary layoff or dismissal.

IR. CHERNIACK: Mr. Chairman, does that mean that a person who retires and goes on pension ets severance pay in addition to that, and that permanent layoff is different from dismissal? Is iat correct?

IR. MERCIER: Yes. This is what the Agreement provides.

IR. CHERNIACK: What is the difference between permanent layoff and dismissal?

IR. MERCIER: When we're talking about dismissal, we're probably talking about dismissal for ause. As for permanent layoff, I would think is a function when it's decided that government will liminate some form of service.

IR. CHERNIACK: Well, that's interesting, Mr. Chairman, because this government has shown that ne can dismiss people without cause, without giving cause, and they're called "dismissed"; like iey're told "Get out of here, empty your desk, you have two hours in which to be out of your ffice." The Minister of Education knows how that's done better than I do. So that would not be ismissal according to the Attorney-General, because no cause is shown. Is that permanent layoff? i the case that the Minister of Education must know about, I think there wasn't even a job that ecame redundant, I think there was just a dismissal. But then it's not a dismissal, because there's o cause, so would that be a permanent layoff?

I'm trying to really see whether a judge, appointed by the uovernment, should have any greater ghts than does a Civil Servant who is not a member of the MGEA to be booted out of office ithout severance pay or anything else. I coare that, also, with people who are in the MGEA who re active in the union, and who negotiate, and who concede things and give up certain things o bargain for others, which is part of the bargaining process, and I did suggest that at least the udges, if they're going to benefit from the bargaining of others, should be paying dues under the land Formula if they don't want to belong. But at least they should be paying for those people ho do the bargaining for them. That seems to make sense to me. Does the Attorney-General see ny fault in my reasoning?

IR. MERCIER: Unfortunately, I always find some fault in the reasoning of the Member for St. Johns, s he does with me.

IR. CHERNIACK: No, that's not true, Mr. Chairman. Point of order. .

IR. CHAIRMAN: Point of order, the Honourable Member for St. Johns.

IR. CHERNIACK: On occasion.

IR. MERCIER: Mr. Chairman, what we are trying to do here with this Amendment is give to rovincial judges the same benefits, or severance pay benefits, equivalent to those under The Civil ervice Act. He's raised a number of questions I think which would be more appropriately put to ie Minister of Labour responsible for the Civil Service Commission with respect to the benefits hich some people have or have not received.

IR. CHERNIACK: Well, the Attorney-General is giving this kind of benefit to the judges, the rovincial judges — I'm trying to think of other boards or commissions that come under his irisdiction. I'd like to know whether he's giving the same kind of benefits to people in that category? low about the Ombudsman? Or how about the Chairman of the Liquor Commission? The mbudsman, the Chairman of Law Reform, any other full time . . . oh, Law Reform, well, I don't now whether or not he is full time now, but there must be other people in the same exalted position s a provincial judge who could be entitled to the same kind of consideration. I'm speaking to ie AttorneyGeneral, who has people under his authority.

For example, does Legislative Counsel have that kind of benefit?

MR. MERCIER: Mr. Chairman, the Legislative Counsel advises me that he does have those benefit under the Civil Service Regulations, but many of the persons that the Member for St. Johns ha referred to have been people who have been appointed for specific terms, not as full time member of the Civil Service. I think there's quite a difference there.

MR. CHERNIACK: Well, I'm surprised. I didn't know the Legislative Counsel had that benefit. would have thought he'd be in the same category as a deputy minister. Oh, he says that deput ministers also have that.

MR. MERCIER: I wanted to raise that point earlier, Mr. Chairman. My information was that deput ministers have received severance pay, those that have been released for various reasons.

MR. CHERNIACK: That's very important for me to know, because that was not my impressior I thought that when a deputy minister was fired out-of-hand without cause, and that has happenec we can admit that — we can debate the method in which it was done, but that's not the poir — the point is there have been deputy ministers discharged, dismissed, without cause being showr And, according to the Minister's definition, dismissal does not entitle them to severance. But h also said that a dismissal would be with cause. Now he says he believes other deputy minister did have severance pay, and I believe they only had that as a result of a threatened action an an offer to settle, but not in accordance with the formula already suggested of, what is it, on week per year up to 15 years, something like that.

MR. MERCIER: Mr. Chairman, Legislative Counsel advise that under the regulations, these onl come into effect following ten years continuous service. I can't cite whether or not there's any specifi provision that required severance pay to deputy ministers who were released, all I can say to hir is that I know they did receive severance pay from the government. And the amount varied, I thinl with respect to each one, depending upon years of service.

MR. CHERNIACK: Now that I've learned that the Legislative Counsel, whom I not only have affectio for and respect, but I revere his knowledge and his service to Manitoba, that he has these right: I'm inclined to find out whether or not he pays dues to MGEA, because he benefits from it, bu I don't think I'll ask him that publicly. I may do it privately. I'll just point out that since there' a 10-year requirement, the Attorney-General will nevrr have cause to come to me and say "Loo at the great benefits I can give you if you'll become a judge." On that basis, it's fortunate I hav no vote anyway in this committee.

MR. CHAIRMAN: 29.1—pass; 2—pass; Preamble—pass; Title—pass; Bill be reported.

Bill No. 12 — I inform the members of the Committee that the Honourable Minister is tied u with the weather and can't be here this morning, but Mr. Mason is here and will deal with an questions that the members of the Committee may rise regarding this Bill. Is that okay? Or sha we set it aside — whatever you wish? The Honourable Member for Crescentwood.

MR. WARREN STEEN (Crescentwood): Mr. Chairman, I have been told that there's two membei sitting in the public that came, not to make representation, but as a watching brief while this B was being discussed. So for that reason, I would suggest that we proceed and the Deputy Ministe can answer questions through another member of Cabinet, if that is the procedure that required.

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

MR. WALDING: Can I enquire, Mr. Chairman, as to whether there are any proposed amendmen from the government side on this Bill?

MR. CHAIRMAN: Apparently none. Proceed? (Agreed) Bill No. 12.

BILL NO. 12 — AN ACT TO AMEND THE CORPORATIONS ACT

MR. CHAIRMAN: Section 1—pass; 2—pass; 26 Subsection (1.2)(a)—pass; (b)—pas 26(1.2)—pass. The Honourable Attorney-General.

MR. MERCIER: I wonder if I might ask if we might vary the procedure and just deal with the B

s a whole, and ask if there are any questions on any parts . of the Bill, rather than proceed section y section.

MR. CHAIRMAN: Page by page. Agreed. Page No. 2—pass; Page No. 3— -pass; Page No. 4—pass; age No. 5— pass; Page No. 6—pass; Page No. 7—pass; Page No. 8—pass; Preamble—pass; itle—pass; Bill be Reported.

Bill No. 13 - An Act to amend The Highway Traffic Act, and apparently the same provisions pply, that the Minister is tied up with the weather. Shall we set it aside or do you wish to roceed?

LL MEMBERS: Proceed.

MR. CHAIRMAN: Bill No. 13 — An Act to amend the Highway Traffic Act . . .

MR. MERCIER: That wasn't on the original notice that I received and I wonder why don't we just et that aside till the next meeting? That was just passed yesterday.

MR. CHAIRMAN: Set it aside.

BILL NO. 15 — AN ACT TO AMEND THE GARNISHMENT ACT

MR. CHAIRMAN: Section 1—pass; Section 2(a)—pass; (b)—pass; 2—pass; Section 3— -pass; Section 4—pass — the Honourable Attorney-General.

MR. MERCIER: Legislative Counsel have prepared an amendment to Section 1.

MR. CHAIRMAN: Okay, revert back to Section 1 and distribute the amendment. The Honourable Attorney-General.

MR. MERCIER: The purpose of the amendment, Mr. Chairman, is simply to distinguish in (a) and b) between debts due and then in (b) wages that are due, simply to clarify the legislation.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Could we have Section 5 read in, or if you want to wait long enough for me o read it — I won't bother other members, but I would like to see it. Possibly it could be read n.

MR. SILVER: The present Section 5 of the Garnishment Act reads as follows:

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

MR. WALDING: Mr. Chairman, on a point of order . . . could we have the amendment moved irst, before it's explained or debated.

MR. CHAIRMAN: Right. Okay, the Honourable Member for Rhineland. Read it into the record, lease.

MR. BROWN: MOTION:

THAT section 1 of Bill 15, An Act to amend The Garnishment Act, be struck out and the following section substituted therefor:

Section 5 repealed and substituted. (1) Section 5 of

The Garnishment Act, being chapter G20 of the Revised Statutes, is repealed and the following section is substituted therefor;

Debts bound by garnishment process.

(5) Subject as herein provided, service of garnishment process on a garnishee binds

(a) any debt due or accruing due, at the time of service, from the garnishee to the defendant or judgment debtor other than wages; and

(b) all wages that become due or payable from the garnishee to the judgment debtor within 1 month commencing on the day after service.

MR. CHAIRMAN: The seconder. We don't need one. Okay.

MR. CHAIRMAN: Agreed. The Honourable Member for St. Johns.

MR. CHERNIACK: I'm going to read into the record the section that purports to replace so we can understand what is being changed.

MR. CHAIRMAN: Okay. The Executive Counsel.

MR. SILVER: The present Section 5 reads as follows:

Subject is herein provided service of garnishment process on a garnishee binds

(a) any debt due or accruing due, from the garnishee to the defendant or judgment debtor and

(b) all wages that become due or payable at any tim within 7 days after the service of the process.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, does that mean that the garnishing order binds any debt tha will become due within 7 days after the service of the garnishing order?

MR. SILVER: Well that was the reason why we were attempting to separate (a) and (b) in this because there was some ambiguity as to whether the 7 day provision applied to the ordinary debts due and accruing due, or whether it applied only to the wages. I think because of some of the judgments that have been made respecting ordinary debts, all of which depend on the questio of whether or not the debt was due or accruing due on the date of the service, the judges seem to have given the intent to the section that 7-day limitation applied only to the wages.

MR. CHAIRMAN: Agreed? amended—pass. Revert back to now to Section 5 (b)—pass; 5—pass 6(c)(i)—pass; (ii)—pass; (iii)—pass; (iv)—pass; (c)—pass; 6—pass; 7—pass; Preamble—pass Title—pass; Bill be Reported—pass.

MR. CHAIRMAN: Bill No. 17 - An Act to amend The Public Printing Act. The Honourable Membe for St. Johns.

MR. CHERNIACK: Mr. Doern was here earlier; I think he was the one who was interested in thi . . .

MR. CHAIRMAN: Well, we can set it aside.

MR. CHERNIACK: Yes, I think it would be . . .

BILL NO. 21 — AN ACT TO AMEND THE REAL PROPERTY ACT(2)

MR. CHAIRMAN: Bill No. 21 - An Act to amend The Real Property Act (2). 1—pass — Th Honourable Member for St. Johns.

MR. CHERNIACK: May I ask if they found the book yet?

A MEMBER: Mr. Evans is down there. It's been brought to my attention that the book has bee found.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Mr. Chairman, during the Second Reading debate, I asked the question as t what absolute certainty we have that persons that might be adversely affected by some failure tha the copy of the certificate may not be exactly as the original, would have some protection. I wonde if the Minister's considered that and can give us a response.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: Mr. Chairman, I've satisfied myself through consulting with Legislative Counsel tha any person who suffers any loss as a result of the procedure we've been implementing in this Bi

hrough substituting certificates of Title, would be able to make a claim against the Assurance Fund ınder The Real Property Act. More particularly it's, I believe, Section 167 which provides that a ›erson who sustains loss or damage through an omission or mistake or misfeasance of the District Registrar in the execution of his duties under this Act may bring action against the District Registrar herefor.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Well that's helpful, Mr. Chairman. That would override — I'm directing my ıuestion to the Legislative Counsel — what I read into proposed 22(9) which says that for all purposes :ertificate of title shall have the same force and effect as the original certificate of title.

MR. SILVER: Yes, because even an original certificate of title binds the public, but a person who ıas lost some rights because of some original certificate of title being wrongly prepared is entitled o sue the District Registrar.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: May I also ask the Legislative Counsel whether this section 22 amendment is :onfined to the Land Titles Office copy of any document and does not cover any document which s deposited at the Land Titles Office but is not part of the Land Titles Office record. I'm thinking ›f a certificate of title that is incumbent.

MR. CHAIRMAN: The Executive Council.

MR. SILVER: I would think it would apply only to the certificates of title that are bound in the egisters, not the ones that are deposited either voluntarily by the owner or are required to be leposited with an incumbent.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: The reason I raise that is that on a superficial reading of this I did not draw hat conclusion. And I am not saying I was right, of course, I believe I was wrong. I believe, also, hat it should apply and is meant to apply only to the bound certificates. But I sort of thought hat this applied to anything, any title, in the . . . I'm sorry, it does says that — certificates of itle bound in the title register has been destroyed. And that's the limitation, is it, for the entire ımendment?

MR. CHAIRMAN: The Executive Counsel.

MR. SILVER: Subsection 10 deals with instruments but I don't think a title is an instrument.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: I believe, Mr. Chairman, that an instrument is a mortgage or a lease . . .

MR. SILVER: Something that conveys rights, usually.

MR. CHERNIACK: So that this covers not only bound titles, it covers, let's say a mortgage?

MR. SILVER: Yes.

MR. CHERNIACK: And what happens then if it has not been microfilmed? Well I suppose the ›roblem is not improved. I mean it's still a problem which this can't correct.

MR. SILVER: That's right.

MR. CHERNIACK: Okay, Mr. Chairman. Oh, one other question. About the assurance fund, is there ıny limitation on the amount that a person can claim from the Land Titles office?

MR. SILVER: I'm not aware of it.

MR. CHERNIACK: Is there an actual assurance fund set aside in a trust . . .

MR. CHAIRMAN: The Honourable Attorney-General.

MR. MERCIER: $75,000.00.

MR. CHAIRMAN: The Honourable Member for St. Johns.

MR. CHERNIACK: Is the only assurance fund there is to protect individuals from errors in tl the Land Titles office, the assurance fund which is referred in Bill No. 16? Is that the only assuran fund there is?

MR. MERCIER: That's the only separate fund.

MR. CHEIACK: Now I'm confused by the word separate.

MR. MERCIER: If the assurance fund is not sufficient to satisfy a claim then the general fun of the government would have to be used to pay the claimant.

MR. CHERNIACK: Then my question, why bother with an assurance fund and the bookkeepi involved therein, and the annual reporting of it?

MR. MERCIER: That raises a good point. In the absence of the Member for St. Johns yesterd Mr. Chairman, he would be pleased to note that I, with leave of the House, withdrew Bill No. . I think what he's now suggesting is something that we have under consideration and there does seem to be any necessity for the establishment of an assurance fund at all. It will be eliminat and if a claim is made the government will pay it.

MR. CHAIRMAN: The Member for St. Johns.

MR. CHERNIACK: I'm sure the Minister of Finance will gleefully accept and convert into incor for the year that which was accumulated in the tremendous reserve by previous governments a in that way do that. That certainly seems to make sense that if there is no limitation then there no purpose in having an assurance fund as long as the Legislative Counsel will lay his job on t line and guarantee that by eliminating the assurance fund, we will not be threatening the rig of any potential claimants. Does that make sense? But that is not before us now, I just used tl opportunity to discuss that.

MR. CHAIRMAN: 1—pass; 22(5)—pass; 22(6)—pass; 22(7)—pass; 22(8)— -pass; 22(9)—pa 22(10)—pass; Preamble—pass; Title—pass; Oh, 2—pass; I'm sorry at the end, I apologize. Bill Reported.

Now these other Bills, is it the wish of the Committee, for them to be held over?

MR. CHERNIACK: I mentioned Mr. Doern had an interest, or at least an overview of this Pub Printing Act. I believe our secretary is checking to see whether she can locate him and if you c to wait for two or three — either lay it over, but there may not be any reason to. If you w to wait long enough for me to go to our caucus room and see if he has been located or not, come right back and tell you.

MR. CHAIRMAN: Is there is an amendment or . . . oh, well then if there's an amendment, may in the Minister's absence, we maybe should just leave it until another committee meets.

A MEMBER: Why don't we just leave it?

MR. CHAIRMAN: Committee rise then. The Honourable Member for Pembina.

MR. ORCHARD: Mr. Chairman, was it not the intention of the Member for St. Johns to find if there was in fact an amendment, and if there wasn't, that the bill could be proceeded today?

MR. CHAIRMAN: The government has an amendment.

l. **ORCHARD:** Oh the government has an amendment. Oh, sorry, sorry.

l. **CHAIRMAN:** Committee rise.