

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Tuesday, 19 May, 1981

Time — 8:00 p.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood)

MR. CHAIRMAN: Committee come to order, please. We have some nine bills before us tonight, to members of the committee, and people from the public.

**BILL NO. 19 — THE VETERINARY
MEDICAL ACT**

MR. CHAIRMAN: Bill 19, An Act to amend The Veterinary Medical Act was dealt with the other night and public representation was made Thursday night last at the Agriculture Committee and members of that committee, I am told, because I am not a member of that committee, insisted that it be dealt with here and because representation has been concluded from various persons interested in that bill, I have been asked if we could deal with that bill first and then we'll go back and we'll hear from persons wanting to make representation on the other bills. Can we deal with Bill 19 first.

Mr. Cherniack.

MR. SAUL CHERNIACK (St. Johns): Mr. Chairman, some of us did not have the benefit of . . . I looked in my desk and I found it just now that the Agriculture Committee Hansard is in my desk, but I haven't read it.

MR. CHAIRMAN: Well, I am told that the parties that did make representation, Mr. Cherniack, did so the other night and are not present tonight and they were informed at that time that public representations were concluded.

Now, Mr. Uruski, I believe, was a part of that committee; I know Mr. Ferguson was and Mr. Downey, so perhaps one of the three could shed some light on the situation.

Mr. Cherniack.

MR. CHERNIACK: I'm sure you didn't want to stop me from concluding my remarks. Since there are no further representations, wouldn't it make sense that we have time to read the Hansard as to what went on and then deal with it, and what's the rush to deal with it if indeed there is not going to be any representations given, but all the people present, surely they should be heard anyway before we start considering bills.

MR. CHAIRMAN: Well, I'm of the opinion that the bill should go through fairly quickly and the sponsor of the bill is not a member of the committee and asked me if I would consider it first and I said yes, I would.

Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, you may have said yes you would and that's fine. If the majority of the

committee decides we will, then of course we will, but I must tell you, Mr. Chairman, not having seen it or heard the representations, but being a member of this committee, I would certainly feel that — if you want to proceed with it now, okay, but I will want to go into it in some detail to understand what is being done. The fact that the Mover of the bill happens to be here and is not a member of the committee doesn't mean he can't come back at a time when we do deal with it. Look at all the people we have here waiting to make representations.

MR. CHAIRMAN: Mr. Downey.

HON. JAMES E. DOWNEY, Minister of Agriculture (Arthur): Mr. Chairman, the purpose for not passing it clause-by-clause in Agriculture Committee, there was a concern by the members of the Opposition at that particular committee that there was a matter of a principle on the collection that could be dealt with collectively on the professional bills that was agreed to by the committee to hear the presentation which was really not a formal presentation. The questions were asked of the individual and there appeared to be very little concern by the committee on content of the bill, plus the fact that this bill, Mr. Chairman, was before the Members of the Legislative Assembly last year, and was withdrawn by the sponsoring member, so it isn't brand new to the members of any committee or the House and I would suggest, Mr. Chairman, that we proceed with the bill and then we could get to the people who are waiting to make their presentations and I think we could move fairly quickly with it.

MR. CHAIRMAN: Mr. Uruski.

MR. BILLIE URUSKI (St. George): Mr. Chairman, during the committee, the presentations that were agreed to by members of the Agriculture Committee to hear the representations on Bill 19, The Veterinary Medical Act, there were a number of questions that were raised by myself during Debate, they were addressed, they were spoken to by the representative from the Veterinary Medical Association. Some of the differences still occur in terms of principles that are annunciated in other Acts and my colleagues have not had a chance to look at the transcripts. I believe that some of those principles will come out as well in other bills that we will be looking at and I would suggest, although I asked questions of the representatives who came there, there was still disagreement on some of the points that were made and it may be to our advantage to hear representations on all the other bills and then go into all the bills, clause-by-clause, as would normally would be undertaken; if I could suggest that, Mr. Chairman.

MR. CHAIRMAN: I suggested that perhaps we could deal with this bill first. Is it agreed to by the members of the committee? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't quite understand what is behind this effort to get this done

immediately. Last year, we had a large number of professional bills presented to us and it was obvious that we'd be well into August or September if we dealt with them all and we dealt by the choice of the government with three bills, all Nursing bills, and the procedure followed there, I thought, worked fairly well. We heard all the representations by all three. We tried to see whether there was a possibility of a uniformity amongst the three. We found that it was not only possible but desirable. We then dealt with each separately but in the presence of representatives from each of the three organizations and consulted with them as we went along so that we had an understanding with them of what they were aiming at and what we as a committee were aiming at. We ended up with, I think, fairly good legislation. Now the benefit that we could have as mentioned by Mr. Uruski, is that if we hear them all and consider them all they're in effect all similar. The fact that one deals with agricultural society doesn't make it different from other professional societies in principle and I suggest that it would be much better. Now I would like to know just what is this desire to, may I use the expression "railroad" it through, what's the urgency?

MR. CHAIRMAN: I don't think anyone said "railroad" it through. I said out of courtesy to the sponsor of the bill who asked me, it's in his opinion a fairly simple bill, and asked could it be dealt with first since public representation had concluded. I said, yes, I would bring it to the attention of the committee. I asked committee members if we could proceed under those bases. Can we proceed under those bases?

MR. CHERNIACK: No.

MR. CHAIRMAN: All right.

MR. CHERNIACK: Mr. Chairman, I think it's peculiar. I don't know what the need is. As I say, look at all the people that are here that came to make their presentation, and what you are going to do is make them all wait while we plod through this bill, and just because Mr. Ferguson has asked it be dealt with now doesn't really mean that he won't be here tomorrow or the next day to be able to deal with it, and it seems to me that it should be in the best interests of good legislation to deal with them all in a sensible manner.

I would suggest very strongly that it makes more sense to hear all the briefs, discuss it all with them, and give some of us — I don't know how many of us on this committee have had an opportunity to either be present at the agricultural committee or to read Hansard, but I assure, Mr. Chairman, I for one have not read Hansard. It apparently arrived late this afternoon. (Interjection)— Well it's in my desk, I have one copy in my desk. I assume that's the one that dealt with it. I for one will want to read it and I think it is poor practise to proceed without even reading what went on in the committee.

MR. CHAIRMAN: Mr. Ferguson.

MR. FERGUSON: Mr. Chairman, I think we would have to look at the fact that this bill was introduced last year in the same form that it's introduced now

with no exception or maybe one very small one. At that time it was withdrawn because we had too many bills on the Order Paper and some of the Private Members' bills were withdrawn. We went through this bill the other night in committee, clause-by-clause, and I would quote from the Hansard: "Thank you, Dr. Thompson. Are there any other members of the committee who wish to question Dr. Thompson? There appears to be none. Thank you for your presentations, Dr. Thompson."

To you, Mr. Chairman, I would suggest if there are other presentations to be presented on Bill 19, as it is number one, let them be heard; otherwise we would move this bill along. It has been on the Order Paper for two years. I cannot understand the Member for St. Johns saying that he hasn't had an opportunity to peruse it. As I say, it was on the Order Paper last year. It came under some limited discussion, so I don't think that there's any great problem and this bill has gone through clause-by-clause through the Agricultural Committee of the Opposition.

MR. CHAIRMAN: Mr. Walding.

MR. D. WALDING: Mr. Chairman, it seems there are two points here. One of them, the fact that many members of the committee did not hear the presentation at a different committee and so far, we have not yet had time to read Hansard to consider the points that were raised. The second matter here . . . Can I proceed, Mr. Chairman?

MR. CHAIRMAN: Order please. Mr. Walding has the floor.

MR. WALDING: Mr. Chairman, the second point has to do with the convenience of people that are here. Mr. Ferguson is asking that we accommodate his convenience and deal with this matter now. If we were to proceed with it, it could easily take us an hour or two hours and we have perhaps 50 people sitting here. If it becomes a choice between Mr. Ferguson's convenience and the convenience of the 50 people that are here this evening, I personally would rather accommodate the 50 people that are here.

MR. LEN DOMINO (St. Matthews): Mr. Chairman, we seem to have a difference of opinion as to how we should proceed.

Mr. Cherniack, Mr. Ferguson, and Mr. Downey have repeated themselves already and I know they've tried not to but in their arguments they have. We've got a difference of opinion. I suggest we bring it to a vote. We decide how we're going to proceed and then we proceed. Because if we are indeed concerned about all the people who are here tonight, then we should get down to the business of considering the bills because they've come to consider the bills, not to hear us wrangle over some procedural matter and not to have us display our foolishness this evening. So I would suggest we bring it to a vote. We decide how we're going to proceed and we proceed.

MR. URUSKI: Mr. Chairman, for the benefit of the committee. The reason that the delegations were agreed to hear the delegations that were there on

Bill 19 at the other committee, it was certainly not our understanding that the professional bill on Veterinary Medical Act would be brought to the Agricultural Committee. It was; representations came. There was a discussion at that committee at the time as to whether or not the representations should or should not be heard. The committee agreed that those representations should be heard primarily because the people who were sponsoring the bill, to speak on the concerns that were raised in the Legislature, came from a long way.

So those representations were heard and the Hansard now is out in terms of the questions that were raised. There was still disagreement, I can tell you, Mr. Chairman, there's still disagreement on some of the matters in the legislation that is brought forward as it relates to other professional bills that have been passed by this Legislature.

The reason that it may be beneficial for this committee to hear all those presentations, because there will be a number of points made with respect to this legislation which may take some discussion as some points that may be brought out by the other groups that are here to speak on the other professional bills, same matters of principle questions will be raised.

So, Mr. Chairman, if you wish to go into a bill, clause-by-clause now, without even hearing having the benefit of representations and questions on other bills where similar principles are being questioned or may be questioned then, Mr. Chairman, you're really going to have your audience and the people who are here tonight will really be caught in a dilemma, Mr. Chairman, because they'll be here waiting to make a representation on their own bills while we will be debating clause-by-clause legislation of the Veterinary Medical Act, which we would do collectively once all the questions are raised and all the presentations are heard, Mr. Chairman. That would be normal procedure.

MR. CHERNIACK: Just to answer Mr. Ferguson in regard to the fact that the bill has been in a similar form on the Legislative Order Paper for two years, is just the fact that it's been on the Order Paper. It was not discussed last year. It was moved in committee — I'm not even sure that it was carried. (Interjection)— It wasn't carried on Second Reading, then.

No, you see, Mr. Chairman. I have here a copy of last year's Hansard. On July 11th, 1980, Mr. Ferguson moved Second Reading and I guess I am correct, it was carried, but it never moved to committee, it was not discussed and as far as I am concerned I have no feeling of any responsibility for the fact that I am not familiar with the terms of the bill because of the fact that it was brought in last year doesn't help. I still say that it would be much more orderly and make good sense to do it in with the others, together.

Now, I don't want to repeat the argument. If that doesn't persuade anyone, then you can force us to deal with this bill now, at a time when some of us feel ill-prepared, because we haven't even had an opportunity to read Hansard and that means we'll have to rehash the whole thing and I think it's foolish, but, Mr. Chairman, I guess you're going to take it to a vote and we'll see whether the government majority carries, in which case I will ask

that the Clerk be instructed to bring copies of Hansard, Agriculture Committee Hansard, so we'll have it before us and plod our way through it, all because Mr. Ferguson is present and would like it dealt with.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, don't let it be left on the record that there was any forcing done by anyone. If we were going to have forced this bill through any committee, it would have been done the other night at Agriculture Committee when it should have been dealt with, when it was on that Order Paper. We, Mr. Chairman, have to keep reminding the honourable member that it was in fact the majority government who backed away from putting any force. We accommodated them by coming to this committee tonight and I think the public should know that we have accommodated them not only last year, but again this year and if you are talking about giving them an opportunity, we didn't put it through last year, Mr. Chairman. It was available to them. Mr. Chairman, I am saying we have accommodated — we haven't forced. The Member for St. George was at the committee the other night and if there was anything that was alarming to him, he could have talked to his colleague in caucus and come forward with their position.

I suggest, Mr. Chairman, we go ahead with Bill 19 and if the members have their concerns, that they register them. We'll get to the other bills and the people that are here with their presentations can make them. We have got the evening ahead of us; let us proceed to deal with them and if there . . .

MR. CHAIRMAN: Can we put the question now?
Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the word "accommodate" just doesn't belong in the context of what this committee is doing. I'm not aware that there is a great important political philosophy that separates Conservatives from members of the Opposition in terms of what is wanted in professional legislation. The fact last year that the bill wasn't dealt with is only because of the way the government handled its Order Paper and by the end of July there were some eight bills, I think, presented by the government which just couldn't be dealt with, and they dropped it. Now any accommodation there is a ridiculous suggestion.

There was no need to accommodate the Opposition because we were there, we had to be there. It's the government that fell out; fell short of time and just couldn't manage it and withdrew it, sensibly, and they were sensible last year and they are not being very sensible right now if they insist on dealing with a bill that has had a brief presented, which was heard by some members. I'm not sure how many members of this committee present today are familiar with the brief. It may be that several or just a few and therefore it still sounds as if we are being forced to deal with a bill whilst keeping other people waiting. If the Conservative majority wants to do it, let them vote it in, and then as I say, I would like that we get copies of Hansard of the Agricultural Committee and then we'll deal with it. (Interjection)— Now look, they arrived late this afternoon . . .

MR. CHAIRMAN: Order please. Mr. Cherniack, are you through addressing yourself through the Chair? Mr. Cherniack are you finished addressing yourself through the Chair?

MR. CHERNIACK: I have finished addressing myself to the Chair . . .

MR. CHAIRMAN: Mr. Ferguson.

MR. FERGUSON: Mr. Chairman, I would like to read off the names of the Agricultural Committee from the Opposition: Mr. Adam, Mr. Uruski and Mr. Uski. All the three were present the other night when we went through Bill 19; reviewed the whole bill; we spent considerable time in discussion. At the conclusion of that we felt that the bill had been discussed.

This is not a matter of forcing anything. If we were not going to discuss it, accommodate it, or whatever word we may use — I won't use the word accommodating. The Honourable Member for St. Johns doesn't like that word but we did go through the bill completely with the members of their Agricultural Committee. Let it be known, Mr. Chairman, that in my knowledge and my time in this House when we have held committee meetings, those that are responsible for either government or opposition have been there to present their views; to bring down their amendments or whatever the case may be. We did not receive one amendment the other night. We did have ample discussion as we went through the bill.

Consequently, Mr. Chairman, I would suggest that this bill be moved along. We certainly have no inclination at all to hold up the people that are here to represent other people and other bills that are on the Order Paper or before this committee, but it would seem to me that the exercise that we went through the other night then would be in vain. If we are not going to move that bill along, why did we go through it the other night, and why is there such a hang-up about it now.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Chairman, it just seems that we would have wasted our time the other night in terms of this legislation if we do not hear the presentations on the other professional bills. The whole argument that was made prior to hearing the representations from Dr. Thompson on Bill 19 the other night was so that we could have the benefit of those representations with respect and in tandem to the representations we hear tonight to the other professional bills. That was the whole discussion prior to hearing the representation. When we realized that Dr. Thompson was from Morden, he was from out of town; we said, look, fine, we will hear the presentations but we would like this bill moved to this committee primarily so it could be dealt with in this committee so that the principles that we had questioned in the legislation could be raised and could be also discussed and dealt with other people who were presenting their views and their representations on their own professional bills.

Now to deal with this piece of legislation before we've even heard from the other groups, we actually should have by the arguments that are being made

here tonight, should have passed the bill clause-by-clause in that committee. We felt that the members of committee were accommodating to the group so that we could bring this bill here, and we agreed. In effect, if we go clause-by-clause now and not hear the other presentations in the other bills, we'd have done exactly what the committee members the other night wanted to do, is to go through it holus-bolus without having the benefit of —(Interjection)— Well, of course, that's really what it's all about.

I mean we can go into it but then we're back into the same points that I've raised and we will not have the benefit of the discussions of the same matters of principle or some of them which may be the same in the other bills that we wish to raise, some of the questions that I've raised at that time. And, we'll be getting into the whole hassle and the whole question of matters of hearings; of matters where there was some disagreement between Dr. Thompson and ourselves; and they will come up, they may come up in the other bills. That's the very point I'm making. Hear the presentations and then those matters that we differ on then we discuss when we deal with all the bills and get them through the committee.

MR. CHAIRMAN: Any further discussion. Mr. Downey.

MR. DOWNEY: Just a brief comment, Mr. Chairman, on those same concerns. There aren't any people to hear from on this particular bill; those same concerns can be brought forward at this particular time. I don't believe that the people that are here making their presentations would be held up at any length. If the members Opposite don't feel comfortable they can vote against the particular item in the bill and we can proceed onto the next hearing.

MR. CHAIRMAN: Mr. Domino.

MR. DOMINO: Mr. Chairman, I'm repeating myself but nothing much has been said in the last five minutes. I don't take away from any of the arguments that have been presented but we've heard them. I don't perceive that there'll be a lot of persuading taking place at the table. We now seem to be wasting time. There seems to be an agreement that we should proceed so, Mr. Chairman, I move that we now proceed to deal with Bill 19 immediately.

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

Yeas, 5; Nays, 3.

MR. CHAIRMAN: Motion is carried. Let's deal with Bill 19. I am told, to members of the Committee, that there are no amendments to the bill. Page by page? —(Interjection)— Well, I meant the sponsor of the bill has no amendments to the bill. What is the rule of the Committee, to deal with it clause-by-clause or page by page? Okay.

Clause 1 — Mr. Cherniack.

MR. CHERNIACK: I'd like the Mover of the bill to explain why it is that the definition is deleted, Definition of gross negligence. I see reference to gross negligence in proposed 14(7) but I don't see a definition of it. Why are they deleting the definition?

MR. CHAIRMAN: Do you want to ask the sponsor of the bill or legal counsel? Mr. Tallin.

MR. CHERNIACK: Well, the sponsor of the bill? It's his bill.

MR. CHAIRMAN: We're going to finish these tonight then.

MR. CHERNIACK: If he can't deal with it, that's different.

MR. CHAIRMAN: Mr. Tallin, then.

MR. RAE TALLIN: I haven't been asked yet.

MR. CHAIRMAN: Mr. Ferguson, do you want Mr. Tallin, the draftsman.

MR. FERGUSON: Yes, thank you, Mr. Chairman. Yes, and the sponsor of the bill, of course, I went through it with the veterinary people, through legal counsel and I would ask legal counsel to carry on from there.

MR. TALLIN: It was on my suggestion that they deleted their Definition of gross negligence and incompetence because the definition doesn't fit normally either the expression "gross negligence" or "incompetence" in the normal sense of the language. I've suggested to the organization that they would be better off to have the normal meaning of gross negligence and incompetence apply.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: The normal one then is not expressed in the Act at all. It's the one that . . .

MR. TALLIN: Not in definition, no.

MR. CHERNIACK: . . . the common law definition or do you mean just a dictionary definition.

MR. TALLIN: No, the common law, the common law.

MR. CHERNIACK: The common one.

MR. TALLIN: They're both defined in the same way and obviously gross negligence and incompetence are not the same thing.

MR. CHAIRMAN: Clause 1 — pass; Clause 2 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I see that there's removal of an annual election. What is now proposed? Is it that there's a continuity desired here where you cannot have a new board elected? Why is it that they are not prepared to have a new change; that is, to alternate the members in such a way that you cannot change the board on one occasion? I think that's somewhat unusual and I'm wondering why it is that in this case they are not prepared to hold an election for the entire association or the council at one time. Wouldn't it be desirable that if the organization wants to change the council, for whatever reason, that they should have a right to do

so? The proposal here does not give them that right; it said, well you're going to be tied to half the council living for an extra year. Frankly I don't agree with it and I'm wondering why they want to do it in particular.

MR. TALLIN: This has got nothing to do with the board. This was just the wish of the organization, presumably the question was asked of them the other night.

MR. CHAIRMAN: Clause 2 — pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm sorry. We were not given an opportunity to read Hansard. I'm now told the question was asked; I didn't know it was asked but I'd like to hear the answer.

MR. CHAIRMAN: Mr. Ferguson.

MR. FERGUSON: Mr. Chairman, this is the desire of the organization.

MR. CHERNIACK: I want to make the point that The Veterinary Medical Act, if it were just a private organization, wouldn't have to go through the Legislature, it could be incorporated like any other corporate entity. The reason it has this kind of legislation is that it is given certain powers. The powers that are given to it are those which, I believe, must reflect the public good and that means not what is good for the veterinarians but rather what is good for the public to be served by the veterinarians. So the fact that they want it does not necessarily make it right.

I see they had something like that before but I am questioning why that is done now. I frankly don't know any other professional organization which does have that kind of provision and I'm wondering what is the justification in the eyes of the public protection to do it that way. —(Interjection)— Now I'm told that this question was not asked.

MR. CHAIRMAN: Can we pass Clause 2?
Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I asked why it is desirable in the public interest to make it impossible for the association to elect a new council on the assumption that they feel the old council didn't serve well. Since I believe it's a matter that we are here to protect the public interest — that's the only reason we are here — that we should have an answer to that. I give you my own reaction and I think it would be better to have a possibility of a new election to elect an entirely new board if the association so wants and I believe — well, I don't know of any other association that has this kind of a provision which only elects half the board at any time — I am asking, why is it in the public good for this to be different from the others?

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, my understanding of the approach would be that it affects the elected people or those people who are directing the association from within and does not have a direct

implication or effect on the public at large, would be my answer for that.

MR. CHERNIACK: Mr. Chairman, the point I made was the only reason that they are before us to obtain an Act of their own is because they're asking for certain powers which they could not achieve through incorporating under The Corporations Act, and if those powers are granted to them by the Legislature it's the Legislature's obligation to ensure that not only are they fair but that they are in the public interest. I think one of the important features in the public interest is to make sure that people who want to be admitted to the association, who have qualifications and want to become members, should have that opportunity.

It is also necessary for people who may be later disciplined — and we'll be coming to that later — by the organization, even kicked out, that they have protection. One of the protections I think they should have is just like any government which is subject to submitting their record to the electorate, is to say this is what we have done; we ask now that you re-elect us or elect another council.

I believe it's in the interest of democratic principle that an election should be held for the entire council. As I say, I don't know any other professional body which has this kind of provision — it may be so — but I don't understand the justification. The fact that they want it does not mean that it's in the public interest; it only means that they want it and maybe one reason they want it is to perpetuate themselves and that's not a good idea.

MR. CHAIRMAN: 2. pass — Mr. Walding.

MR. WALDING: Mr. Chairman, I wanted to ask the sponsor of the bill about the matter of lay representation on their council. I'm sure the member is aware from other professional bills and probably we'll hear more about that later this evening, that more provision is being made; it's a trend in professional associations. I see no provision for it to be made in this bill and there is no section of a definition section which would define what a lay person is. Perhaps Mr. Ferguson can tell the committee why that has been left out of this change.

MR. CHAIRMAN: Perhaps for the benefit of members of the committee, this is a bill to amend a bill that was brought in in 1974 and sponsored by an NDP Member of the Legislature. So this is a bill amending one.

MR. WALDING: That does invalidate the question and I would still like an answer to it.

MR. CHAIRMAN: Mr. Ferguson.

MR. FERGUSON: Mr. Chairman, here again of course I would have to say we did have a member of the Veterinary Association in to discuss the bill. I am quite aware of what our friends in the Opposition are trying to get at; I certainly am not a legal person. I certainly do know what the veterinary people are trying to accomplish.

As the Chairman has already stated, this is not a new bill. It's amendments to some of The Veterinary Medical Act so consequently I would think that, on

behalf of the Veterinary Association, we would carry on. I don't think this is anything of any great magnitude with the exception that possibly there is an attempt on the part of the Opposition to embarrass myself and the fact that we had a bit of an assurance the other night from members of their committee when the Veterinary Association were represented, to ask their questions with the understanding that the bill would probably move quickly through this committee. I don't mind admitting that I am not, as I say, a legal person. I am sponsoring the bill on behalf of the veterinarians in the province. I am an agricultural person; I am certainly not a lawyer of the calibre of the Member for St. Johns.

So, Mr. Chairman, I would hope that we would move along and what advice we can get from legal counsel as to what amendments are to the existing Act; I would hope they would be able to supply the answers. If they cannot and if this becomes such a big issue that we have to bring the Veterinary Association back in again, I guess we would have to be prepared to do that.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, I'm not a legal type either, as the Member for Gladstone says and it's not an attempt to embarrass him that I asked the question. Now he may not be able to speak for the government but surely the government does have a policy on this matter. If the Member for Gladstone is not able to speak for the government I see three members of the Treasury Bench here who ought to be able to do so.

I look particularly to the Minister of Health who, as it has been explained before, piloted three nursing bills through the session last time and surely what went into those bills and the common thread that went through them must have been government policy. They obviously wouldn't have gone through in contravention with government policy. Now if it was the policy of the government as of a year ago to have lay representation on the council of professional bodies — and it would seem to be in just looking over the other professional bills that we will be discussing later — in fact we will probably be learning more about this matter once we hear representation from the various associations before us this evening.

So if the Member for Gladstone is not able to give us government policy and it's not a matter of legal opinion advising the Member for Gladstone what government policy is, we have three members of the Treasury Bench and perhaps they can tell us the government's policy on this matter, and really that's what the question is about, Mr. Chairman.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, on the point that the honourable member makes, whether there should be lay representation on the Board of the Veterinary Medical Association, is one which I am not aware of. Any other associations that have lay persons who are on it —(Interjection)— Well, Mr. Chairman, the member says read my bills. He at this particular point hasn't made a case why there should be. If in fact the member proceeds with the argument that

there should be, I think this committee and members of this, particularly as far as I'm concerned, would be prepared to consider it. The Minister of Health, I see is here, and if he was involved in the committee that had this particular principle introduced into it, that there be a lay person on the association, then possibly he would like to speak to it.

I haven't got, Mr. Chairman, a particularly strong opposition to that particular approach. If that principle applies to the other professional bills and there is room for a lay person to be selected, maybe the member could indicate how those particular selections are made or representations are made from the public at large to the association.

MR. CHAIRMAN: Mr. Green.

MR. SYDNEY GREEN: Mr. Chairman, I would like to indicate that ordinarily I am not wanting to interfere with a body that wants to set up and even get a special act if they are only getting to themselves the power that any organization wants and not taking upon themselves state powers; therefore it would be of complete irrelevance to me as to how they are elected and whether they use a secret ballot, that every organization as far as I'm concerned can have their own laws in that respect and I don't want to pretend to force laws on them. But I want to indicate, Mr. Chairman, that is not what we are dealing with. That seems to be a problem and I don't lay the problem at the feet of the Member for Gladstone. I certainly don't ask him to start explaining the sections.

I am quite aware that's not the way legislation is drawn and that members of the New Democratic party Cabinet were just as sometimes, incapable — and I admit myself of explaining my legislation and it needed legal advice to deal with it — so I don't want you to be intimidated to thinking somebody is trying to make something out of it. But, Mr. Chairman, that's not what this legislation deals with and that's not what the professional legislation deals with.

This legislation gives the people the power to ruin a man for life, to ruin a man, to fine him, to virtually wipe him out financially and if we took those provisions out I would not be concerned with the other provisions, but those provisions are in here; that's the only thing that is vital to the legislation. Otherwise they could sit around and create a Constitution, like any organization and they wouldn't even have to become registered. The fact is that this could be done, that it has been done, and that is the way organizations have existed in the past.

But we are getting to my knowledge, input from anybody. Nobody has asked me as an MLA to do some of the things that are for instance wanted in the College of Physicians and Surgeons legislation. The only ones who have asked for it is the college and they are asking for things and you people, the veterinaries are asking for things, the other professional associations are asking for things that could wipe a person out for life on the basis of the opinion of the committee, therefore I think it should be stated here what Mr. Boyce was stating this afternoon in the Legislature, that we are looking at these bills from the point of view as to where is the public desirous of having these things done — that the association wants them done, I know very well — but what impetus has there been from the public that

these things are necessary in order that they are properly served and that's the way we will regard the bill.

I am not concerned, Mr. Chairman, with the way in which they elect their members or things of that nature. I am concerned as to whether I am making them an exclusive organization which requires a fee as to what their requirements for admittance are, what they can do to somebody who has been admitted and who the peers happen to think is close, in their opinion unfit to practise veterinary medicine — because maybe they don't like the colour of his hair, maybe they don't like the way he bills people — that's veterinary medicine?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I think there must be a misunderstanding about this somewhere. The association does not discipline its members in the same way as other societies do. There is a publicly appointed Veterinary Board under the Act which does the discipline and it's appointed by the Lieutenant-Governor-in-Council. So that doesn't give it reason why there should be a lay member on the board, therefore, because it's not the same kind of an association board as other professional boards.

MR. GREEN: Well, I thank the Legislative Council for bringing that to my attention. It still doesn't change the reasons for discipline but I'm glad to know that it's not the association itself and maybe that's a good leaf, Mr. Chairman, to put into some of the other legislation.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, I would like to also inform the committee that last year, of three of the professional Acts or bills that were put through, two of them did not make provisions for lay persons on the particular councils.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm glad Mr. Sherman is here because we can have the benefit of his experience of last year. I'm a little surprised to hear Mr. Downey's statement that two out of the three, my impression was that one out of three did not have lay representation and two did; but that's not as important as the fact I believe that last year in steering those three bills through we did set a sort of a standard. We did arrive at an understanding of what was expected in the legislation and I would have thought that it would have been the advantage, as it will appear to be in the other bills that will come before us, but some of the people in drawing their bills used — it's pretty obvious in the number of cases — that they used that legislation that was passed last year as a guide to what they drafted this year and that's the reason why I have and some of us had thought it would be better to deal with all of them at the same time.

But since the committee has decided to deal with this right away then maybe we can get the benefit of Mr. Sherman to indicate how it is that we arrived at certain provisions in The Nurses Bill which would be applicable. Now it's important of course, as Mr. Tallin

pointed out, that the Board which he says I gather, has all the powers as appointed and not elected and it would appear therefore, that there is a difference of attitude here. I'm not sure now just what powers the association or the council has. If they have powers as to admission into the association then that is a factor. Possibly we can get clarification on what are the powers of the council as compared to the powers of the board?

MR. CHAIRMAN: Mr. Green.

MR. GREEN: I would thank Legislative Counsel for giving me a copy of the Act. I believe it's not exactly as I would have understood it from his response because the Act says that "the Association submit the names of 12 persons to the Minister who shall recommend six of those 12 to the Lieutenant-Governor-in-Council. So the vets still appoint the 12 people. —(Interjection)— Excuse me, but what I'm suggesting, Mr. Chairman, is that the Association is submitting 12 names; the Minister shall recommend six so it's not far removed from the members of the Association appointing their own Discipline Committee, which is what I referred to before. I would be much happier — and perhaps that's the direction I would like to go — if these people, who have the right to fine and destroy the livelihood of a person, are appointed by the public rather than appointed by the members of the Association. I'll deal with specifically why when we get to the sections which deal with what they can do and on what evidence.

MR. CHAIRMAN: Mr. Sherman.

HON. L. R. (Bud) SHERMAN (Fort Garry): Mr. Chairman, the question has come up as to where the Minister of Health stands on this issue and also where the professional bills in the health field took us in terms of approach and principle last year. Let me answer the second question first. I believe there is a double misunderstanding as to what the professional health bills provided last year. It's my understanding that we made provision in all three of them, The R.N.'s Act, The R.P.N.'s Act and The L.P.N.'s Act for lay representation on the Council. Certainly it's our intention to pursue that principle with respect to health bills, human health bills that will be before this Committee and other components of this Legislature this session.

With respect to the first part of the question, where does the Minister of Health stand on this principle vis-a-vis Bill 19, I can say that I stand with my colleague, the Minister of Agriculture. I have no particular position as to whether the principle that we've embodied and are attempting to pursue in our health legislation should be applied in this case. I think the point raised by Legislative Counsel is the salient point; it's not an interesting point, that's an understatement, Mr. Chairman, it's the salient point; it's the point of differentiation between the kind of legislation that is being dealt with under The Veterinary Medical Act and the kind of legislation that is being dealt with under our health Acts. But if the Minister of Agriculture has no objection to lay representation on Council, in this case, certainly I can confirm that has been the principle pursued in the health bills.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, the Member for Inkster raises an interesting approach to control of the Association and the members who make up the Committee who govern and may be able to make a decision on the rights and the future of a person. I think it would be well advised and I'm not critical of him for it, this bill was brought in when he was a member of government in 1974 so it was the New Democratic party who, in principle, introduced the principle of not having a lay person, or a representative of the lay person at large, on the particular committee representing an association. I appreciate that he does not belong to the New Democratic party any longer and maybe it is a change in direction, he's introducing a new line of thought with his new political party. I think he's to be commended for it because he's leaving some of those old ideas behind and that's why I suggest that I would have no great difficulty if a majority of the members were to decide to introduce an amendment but I haven't heard a case being made for it, particularly when the members of the Committee last year had two; The Registered Nurses Act did not, in their interpretations or definitions, define a lay person or include a lay person, as well as, The Registered Psychiatric Nurses Act did not, Mr. Chairman. There was one that did define a lay person; that was the Licensed Practical Nurses, Mr. Chairman.

MR. CHAIRMAN: Mr. Downey, are you finished for now?

MR. DOWNEY: I'll have to relook at this, Mr. Chairman. The information I had provided to me was that there were two that didn't, but possibly — I'm sorry, I didn't clearly understand it. They didn't define a lay person in the Acts.

MR. GREEN: Mr. Chairman, without in any way trying to ignore the fact that everybody learns something as time goes by and I hope the honourable member will learn something, I'm not pushing for lay people on this Board; I never said that. The set-up, I've indicated, I'm not really that concerned with; that wasn't my problem. I was concerned with what they then can do. The fact is that what they can do is, first of all, considerably amplified under the Section 14(7) of the Act; secondly, I become more fearful of what they can do by what I have learned. I have learned, for instance, yesterday that the government of the Province of Manitoba, through the Minister of Health, says that he wants the medical profession to be able to try people for criminal offences and he will not exclude from their powers the power to discipline somebody for having committed an offence, even though he has never been found guilty of that offence. I am concerned with that. The reason he says he is going to let them do it is because the College wants that right. He didn't come in and say the public needs that right.

He said, in answer to our bill — which by the way I discussed with the College and they told me there was nothing really serious about it — they didn't like the idea of the three practitioners. But the first section of the bill which said that the College should

not have the right to discipline for something which does not involve the practice of medicine and which constitutes a criminal offence, unless a person has been found guilty of that offence; he says no, the college needs that, they want it, they can't operate without it. Well, I don't want to give it to them. I don't know what they need it for. And if I am told these professional associations need that kind of rights, then I am much more jealous; I am much more concerned; I have learned something and I want to have protection against that kind of abuse because I think it is an abuse.

When I look at 14(7) and I've not made any complaint about whether they rotate elections or whether there should be lay members; that's not my problem. I am starting to think these things should not be done by the representatives themselves but by appointed people, people who are responsible to the state, not to the doctors. I'm going to deal with that when we get to what they can do, not to how the Board is composed.

MR. CHERNIACK: Mr. Chairman, I think the Minister will now find that the Minister of Health was correct about lay representation on the boards. I have here a copy of The Registered Nurses Act which he thought did not provide for lay people. Section 3(1) clearly provides that "25 percent of the board shall be persons who are not members of the association and of the 25 percent who are not members one-half shall be appointed by the Lieutenant-Governor-in-Council". So you've got 25 percent. —(Interjection)— They're not members of the association so they are not veterinarians in this case; they're not registered nurses in the other. We can quibble about it, Mr. Chairman, but there's a principle involved and the Minister indicated that he's prepared to accept the principle. Now I don't know whether he is going to make the decision or Mr. Ferguson or if they have to refer it elsewhere, that's for them. But I think the principle is important.

Now more important to me is Mr. Tallin's pointing out that the board is appointed by the Lieutenant-Governor-in-Council and apparently all six members of the board are appointed from a list of 12 people submitted by the association, four of whom are members and two of whom are "reputable citizens of familiar experience" — I'm not sure I know what that means, I hope we'll get an explanation of what familiar means — but the powers of the association, not the council but the association are to prescribe the requirements for membership and registration, to prescribe the standards of practice, to prescribe a code of ethics, to institute and provide the means of increasing knowledge and skill of the members and of maintaining a high standard, to prescribe the conditions under which students may work, to prescribe standards of employment of technicians, all these are the kinds of powers that Mr. Green has already referred to. They are powers that deal with admission into the association. I'm not yet clear on how that differs from the board but the board has powers to —(Interjection)— That's the proposed new 14(7) which deal with I believe disciplinary measures and — now I mislaid it for the moment — so it might be helpful if we have an understanding of the difference between the board's powers and the association's powers to better understand what they're asking for, but yes the board has power to

suspend, to cancel and to look into the conduct of members.

So I'm not quite sure why there's that difference. It may well be a matter of a useful separation of powers as between the body that may subsequently be the investigating and prosecuting body and the judicial body like we now have in The Law Society Act where there is a difference. The investigators and prosecutors do not sit on the Judicial Committee. I think the medical profession is going in the same direction, I'm not sure now, but possibly that could be clarified as to the direction in which they want to go.

I go back to saying I still believe that there ought to be an opportunity for a new election so that the members can substitute a council entirely if they so choose. I do believe the powers of the association are such that give a great deal of control over who shall be members and who shall continue to be members; therefore I think we have to protect the rights not only of the public but of the members who may be adversely dealt with.

So since we have not yet passed on this I'd like to know whether the Minister is prepared to reconsider the manner in which the council is appointed and who is represented on it.

MR. DOWNEY: Mr. Chairman, we would proceed with it as it is right at this particular point unless they have an amendment that they would like us to consider, otherwise I would suggest you put the question on this particular section.

MR. CHAIRMAN: Clause (2) — pass — Mr. Cherniack.

MR. CHERNIACK: If the Minister insists on having amendments I would like to provide one.

Looking at proposed 3(4), I would move to delete the words "one-half of" in the first line. That's all I guess.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: If you're going to make an amendment I think you have to redo the whole thing. Do you want a biennial?

MR. CHERNIACK: I agree, Mr. Chairman, but the Minister is not giving us much time. I would by all means like to have Mr. Tallin draw the proper amendment which would provide for the entire council to be elected at the meeting.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: It would appear that it's not a major difficulty with the members of the committee and the Opposition are not prepared. I would suggest in this particular case it is not going to affect anyone in any great sense of the word and put the question on the clause as it is.

MR. CHAIRMAN: Mr. Cherniack is prepared to move an amendment?

MR. CHERNIACK: Mr. Chairman, I moved an amendment and Mr. Tallin pointed out quite rightly that it ought to be extended in order to be balanced,

I want to do that and we have the right to ask Legislative Counsel to do it.

MR. CHAIRMAN: That's why I'm turning back to you.

MR. CHERNIACK: Yes, and I would like to do it but Mr. Downey is now in such a hurry he won't even permit that to be done.

MR. DOWNEY: Mr. Chairman, I misunderstood what the purpose was. I understood that the member introduced the removal of "one-half". He was told by legal counsel that was not correct. I didn't think that it was an acceptable amendment to the bill. Now if he's prepared to stay with that "one-half" then we can deal with it, the removal of the "one-half".

MR. CHAIRMAN: Mr. Tallin, please.

MR. TALLIN: In preparing the amendment, Mr. Cherniack, could I ask you whether you had in mind that there be a two-year term or annual elections? Because as it is now there's annual elections with a two-year term and that's why I said that the two won't fit.

MR. CHERNIACK: I would not quibble about a one-year term or a two-year term. I would like to see that the council is elected afresh at every election. Whether it be one year or two year I would be glad to accede to the Minister's suggestion as to the length of the term but I think that it should be one election for the entire council at one time. I would appreciate having the proper amendment prepared with Mr. Tallin's . . .

MR. CHAIRMAN: Could you give Mr. Tallin some direction as to one or two year?

MR. CHERNIACK: He's just received it.

MR. TALLIN: That's okay. Would you suggest then that it be changed to read: "The elected members of council shall be elected each year at the Annual General Meeting of the Association and shall hold office until the next General Meeting thereafter". That would be an annual thing.

MR. CHERNIACK: Then what Mr. Tallin is suggesting is deletion of the words "one-half of" in the first line and the words "second annual" in the third line and replace the words second annual with the word "next". I'll move that.

MR. TALLIN: All right.

MR. CHAIRMAN: Would you right it out though for the Clerks' purposes. Is everybody who is a voting member of the Committee aware of Mr. Cherniack's amendment? Are you ready for the question?

MR. CHERNIACK: I'm sorry, do you want me to write it out? I'd better write it out.

MR. CHAIRMAN: Mr. Tallin is writing it out for you.

MR. CHERNIACK: That's fine.

MR. CHAIRMAN: Can I put the question, Mr. Cherniack? Is it understood by members of the Committee?

A DELEGATE: Would you read the amendment being passed?

MR. CHAIRMAN: All right, you will have to wait a minute.

All right, Members of the Committee, Legal Counsel has written out what he believes is Mr. Cherniack's amendment. Would you listen to him, please?

MR. TALLIN: That the proposed subsection 3(4) of The Veterinary Medical Act set out in Section 2 of Bill 19 be amended by striking out "one-half of" in the first line and (b), by striking out "2nd" in the third line thereof and substituting therefor the word "next".

MR. CHAIRMAN: Is that clear?

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

Yeas, 3; Nays, 5.

MR. CHAIRMAN: The amendment is defeated.
Clause 2 — Mr. Walding.

MR. WALDING: I'd like to go back to the matter that I raised a few minutes ago on the matter of lay representation on the council of The VMA and ask Mr. Tallin if he would draw up an amendment for me that would permit the present wording plus two lay persons to be named by the Lieutenant-Governor-in-Council. In 3(1).

MR. CHAIRMAN: At the end of 3(1)?

MR. WALDING: 3(1) of B-30.

MR. CHAIRMAN: All right, Mr. Walding, can we deal with Section No. 2? Your amendment is in Clause 3, is it not?

MR. TALLIN: It would be Section 1.1, actually.

MR. CHAIRMAN: Mr. Walding, Legal Counsel suggests that your amendment would go in after 1 and before Clause 2.

MR. WALDING: Is that 19?

MR. CHAIRMAN: Yes, your amendment. So therefore we will hold that in abeyance. Can we deal with Section 2 as it is now? 2 — pass. We will deal with Section 3 — pass; Section 4 — pass; Section 5.

Can we proceed to Clause 5 now, Mr. Cherniack? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we were just having a discussion, looking at Section 4(1)(a) of the Act where it provides that counsel shall pass by-laws respecting a number of things. It is the aims and objectives of the association — we're wondering whether that's available and if it has to do with the membership, as such, or the purpose from the standpoint of the public or of the consuming public. I wonder if that's available. It's not available?

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Not to my knowledge, Mr. Chairman. That is the Act which was passed when he was a member of the government and when it was passed, he may be able to recall or have some notes on that from when he was a member in 1974, when they passed it but I don't have a copy of their objectives or by-laws.

MR. CHERNIACK: Mr. Chairman, I want to tell the Minister that if he wants to play games we can do it all he likes. The fact is we have a professional bill before us; we are trying to deal with it sensibly. Whenever it was passed it's before us now and if members present can assist in this Committee to improve legislation they should do without making irritable comments or to pick nitty thoughts as to who should know what. If we don't know we don't know, that suffices.

MR. DOWNEY: Well, that's exactly what I said. If the member would have listened, Mr. Chairman, I suggested we did not have the copy of them, that possibly he may have in his notes. I wasn't nitty picking; I don't know what his skin is so thin about. We want to proceed on this bill. I indicated to him that we didn't have a copy of them, that he may have in his records and that's what I said. — (Interjection)— Well, Mr. Chairman, that is what I said and if he wants to pick it up and play his little game, let him go ahead; I can sit here all night too.

MR. CHAIRMAN: Mr. Cherniack, can we finish with Clause 4 and then we'll revert back to Mr. Walding's amendment? Are you satisfied with 4?

MR. CHERNIACK: Yes.

MR. CHAIRMAN: Clause 4 — pass. All right, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Bill 19 be amended by adding thereto, immediately after Section 1 thereof, the following sections.

Subsection 3(1) amended.

1.1, Subsection 3(1) of the Act is amended by adding thereto at the end thereof the words and figures "and 2 persons who are not members of the association appointed by the Lieutenant-Governor-in-Council".

MR. CHAIRMAN: Any discussion on Mr. Walding's amendment? Do you all understand it? Are you ready for the question?

MR. WALDING: It's modelled, Mr. Chairman, very much on a number of other professionals bills, both existing and proposed to the Committee. The proportion to 2 out of 9 would seem reasonable in our opinion.

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

Yeas, 3; Nays, 4.

MR. CHAIRMAN: Okay, it's 4 to 3; it's defeated. (Clauses 5 to 9 were each read and passed.) Clause 10, Mr. Uruski.

MR. URUSKI: We raise the question: the intent is the same and I ask Legal Counsel that as of the same 12(5) yet it's the same section. Could he explain why, is it just drafting style that has been changed here? The intent seems to be the same but yet it's a new amendment.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I think the only difference is that under this they may order that it be withheld subject to terms, upon certain terms and as soon as the terms are met then he would be allowed to grant it. I think that's the only new addition.

MR. GREEN: Mr. Chairman, this is one of the clauses, the nature of which I'm concerned with, I don't care if the Minister will remind me that perhaps this is the kind of thing that happened in the past. That is of no consequence to me and I'm certain that it was never argued in the past.

Now, as I understand this, a member is practising veterinary medicine; he has not had an inquiry; he has not been disciplined; he has not been struck rolls but the next year when his certificate comes up the association says, no certificate; you're deficient. Unless you do the following things you are not going to get your certificate now. If I'm wrong I'd be delighted to be told so but that's the way I read it; "Refusal to renew. Notwithstanding subsection (4) where the board has reason to believe the registered member is professionally deficient".

Now, does that mean an annual renewal, a regular renewal or if it's somebody who has gone out of the profession and come back ten years later — I know that the society is worried about such a person because they don't regard his qualifications as being current. Let's say what the Law Society says. I had sort of good reason to be faced with this because when I came back in '72 when I resigned from the Cabinet, I came back and I applied and they said it has to go to a committee. I thought, my God, maybe they'll say no and then they could because there is a break in your practice and they are entitled to say, does this person still have the qualifications? But is this a simple renewal like one year to the other?

MR. TALLIN: I would think so; it would include any renewal whether it's the annual renewal or . . .

MR. GREEN: Well, Mr. Chairman, this is a horrendous power because now we don't have a trial; we don't have an enquiry; we don't even have the nebulous findings that they find that he is unfit to practice. He sends in his Certificate of Renewal and they say, no, we don't think that you could practise veterinary medicine; you are deficient and therefore unless you make up these deficiencies you don't have a licence to practice. Now, if it's in other Acts I'd be worried too but certainly this is a new section, is it not, this is being proposed? —(Interjection)— It's in the Act and now it's merely being reworded somewhat.

MR. TALLIN: The addition is that they can fix terms.

MR. GREEN: They can fix terms.

MR. TALLI: Yes.

MR. GREEN: Well, notwithstanding that, Mr. Chairman; and I acknowledge that perhaps it slipped by last time, I don't see why a person should be, on a renewal, be put in a position which is tantamount to a suspension because it is tantamount. Can he practice without this certificate? No. Well, if they don't like what a guy is doing the way this is going they don't have to hold an enquiry. They wait two months till the end of the year, then they don't reissue the certificate and that's it; he's finished. Or they say to him that you are deficient — and I don't even know that that is appealable. At least this other business, 15(1) makes it appealable — “has made an order under section 12 or 14 in respect of a member, the member may appeal to the order”.

Notwithstanding that, Mr. Chairman, it seems to me that a person should not be removed from the rolls unless he is being disciplined and had an enquiry under 14(7) because that takes care of deficiency as well. If you look at 14(7) it says, “has committed any act or omitted to do anything which, in the opinion of the board constitutes incompetence or gross negligence in the practice of veterinary medicine; or is unfit to practise veterinary medicine.

So, if they can say that he is unfit and they have an enquiry and he is entitled to at least give evidence why do they have this power to fail to renew a certificate if they deem him to be professionally deficient, whatever that means. Now, I'm probably to be told that this has never been done. But if it has never been done and it's there why would one have the power to do that. This is a public issue! This is now no longer an issue of the practitioners themselves; this is an issue as to whether the public is going to give somebody the power to cut off a person's licence at the end of the year because “they regard him as being professionally deficient”. I can't, since I'm not a member of the committee, Mr. Chairman, I can't move, but I don't see what the necessity of the section is and I say that they've got more than enough power under 14(7) rather than tell a guy at the end of the year that his licence will not be renewed. I can't move anything, Mr. Chairman. If it bothers nobody else then . . .

MR. CHAIRMAN: Mr. Ferguson was indicating, did you wish to speak to this matter?
Mr. Ferguson.

MR. FERGUSON: Well, just for a moment, Mr. Chairman, and I guess I'd have to say to the Honourable Member for Inkster that professional deficiency would mean, in the veterinary business, that if you went out to a feed lot 12 times and 12 animals died you would be proved, as by the board, that you were professionally deficient; but if you lost 12 cases of law no one would ever know about it. So that would be the difference.

MR. GREEN: Mr. Chairman, I would be very pleased to put that in just the way the member said it, “where the board has reason to believe that a man has attended 12 times and the cow died 12 times, that he not be given renewal of the licence”. Provided it was a healthy cow before he went there, that's right.

MR. DOWNEY: Mr. Chairman, I think we've indicated that there is within the Act the right of the

individual who is being judged to appeal to the courts of the land and I think we should proceed with this section.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, here we have a principle which is in the old legislation, which provides that a person may be convicted in his absence without a hearing, without an investigation. He is convicted and he is suspended or he is just put out of business and then he has a right to go to the court and to appeal and he doesn't even necessarily have to know the reason or the argument or anything. If anything is really contrary to the entire principle of justice, as we have learned it, it is a conviction without a hearing, without an investigation, without a charge being laid, without an opportunity to object to the charge, to give answers. The fact that it was there it's only valuable to know that we have an opportunity to correct these things. You will find in almost any of the legislation that has been dealt with recently that there has to be an investigation; that the investigating authority has certain powers to obtain information, to make inquiries. But in the end there has to be a hearing with representation by counsel; with a right to cross examine; with a right to know the charge; with all the basic principles and this is the time when an Act is opened up and we find a deficiency in the Act; this is the time that we have to correct the deficiency. To say that a person has the right to appeal means that you convict first and you sentence and then you say, well you can appeal it and go through the court process. That is not the way it ought to be done.

Now, as I recall it, the medical bills have a provision that under exceptional circumstances a person may be suspended for a very brief period of time. If it is found that a professional is drunk and he is about to operate with a knife in his hand he's got to be stopped. But this isn't the case here at all. Here it is an arbitrary decision by the board when, in its wisdom, it believes that the registered owner is professionally deficient it may order the registrar to withhold renewal and then they proceed to give them the power to appeal. This is a very serious provision which really must be changed and that's the whole purpose of legislative review is to find out what it is. Now, it so happens that this particular section is before us. It's not just the Act that's before us, this section is before us, and to vote it out is really not sufficient, Mr. Chairman.

There is an occasion, as Mr. Ferguson points out, when a person should not have a licence. Now whether it should just be refused on the renewal opportunity or withdrawn after a proper hearing is a matter I think we ought to be discussing. I don't think anybody should arbitrarily, as Mr. Green said, they wait until the renewal period comes and then they don't renew. When there is a complaint which is registered with the board then the board should have a proper inquiry, with proper notice, proper representation and then it can make its decision — subject to appeal. But this is wrong, Mr. Chairman, it's just wrong and the proper way, I think, is to revamp this entire section to deal with a manner in which the Board may conduct an investigation and arrive at a decision.

MR. GREEN: Mr. Chairman, I think that other than in an emergency, Section 14(7) covers everything.

This 12(5) is not intended to deal with an emergency. It's almost like exactly the opposite, is that you wait till the licence lapses and then you fail to renew it. It's the same thing as striking a person off the rolls. So I think 12(5) should come out and that 14(7) looks after all of the problems that can be embodied within the term "professionally deficient". There is no doubt about that, because unfit to practice veterinary medicine would constitute professional deficiency.

If there was a need for a section, that if the board is aware of circumstances whereby the continuance of a member on the rolls would be an immediate hazard or danger to the consuming public, they may make a suspension immediately without an inquiry, pending an inquiry and subject to appeal. The Medical Association has the right to do that and I wouldn't say there was anything wrong with putting it in here but this section has nothing to do with that. I asked the Legislative Counsel whether the Law Society has this right too, he says no. I don't know whether the college has the right but the Legislative Counsel is again shaking his head. I don't think they need this; I don't think they want this; I don't think they'd use this but I am now becoming oversensitive, Mr. Chairman, to what I see in legislation and I say, if it's not needed, take it out of there; you don't need it.

MR. CHERNIACK: Mr. Downey has The Registered Nurses Act in front of him. Part 5, Page 322 provides for an investigation chairman; provides for a reference with an investigation; an ex parte order for production of documents; further investigation; action by the person conducting the preliminary investigation; appeal to the Discipline Committee and it does have a section for suspension of member, which says, "Notwithstanding any other provision herein the investigation chairman may, at her discretion, direct the Registrar to suspend a member from practice pending or following completion of the preliminary investigation and thereupon the member is suspended from practice until the suspension is lifted, superseded or annulled by the Board of the Court of Queen's Bench". So there is an opportunity to suspend when there is imminent danger of malpractice. But that is referable to the court or to the Board itself which may reverse it, meanwhile the major hearing is conducted by a discipline committee after the investigation committee has dealt with it. That's the point I was making, Mr. Chairman. We worked on this Registered Nurses Act, I think, in the hope that it would be used as a guide for others, not compulsory but suggestions. I would like to think we can still work in this Act to better it and improve it.

MR. DOWNEY: Mr. Chairman, I think the comments the Member for Inkster makes are quite legitimate. I think we should agree to remove that section of the Act that could automatically allow the Board to not renew a licence and therefore remove someone from the . . .

MR. CHAIRMAN: Mr. Downey, Mr. Green isn't in the position to make such an amendment; would you do it?

MR. DOWNEY: I wouldn't make an amendment, Mr. Chairman, but I am recommending that I agree we could do that if some member of our side would like to proceed to.

MR. CHAIRMAN: You're a voting member.

MR. DOWNEY: I would proceed to have that section deleted.

MR. CHAIRMAN: That would be 12(5).

MR. TALLIN: I think the motion would be that Section 10 of Bill 19 be amended by striking out all the words therein after the word "repealed" in the first line thereof.

MR. DOWNEY: Right.

? ? —

MR. CHAIRMAN: Understood by all members? Mr. Cherniack.

MR. CHERNIACK: I'm just looking to see if there are other implications in the section.

MR. CHAIRMAN: It has to be written out anyway so we have half-a-moment.

MR. CHERNIACK: All right.

MR. CHAIRMAN: Are we ready to consider Mr. Downey's amendment? Mr. Downey made the amendment; he's a member of the Committee. Are you all familiar with the amendment?

A COUNTED VOTE\$ was taken, the results being as follows:

Yeas, 8; Nays, 0.

MR. CHAIRMAN: The amendment carries. Section 10 as amended — pass; Clause 11. Mr. Uruski.

MR. URUSKI: Clause 11 seems to be, at least my reading of it, as in the old Act but could we have a clarification on this?

MR. TALLIN: Are you asking about the change?

MR. URUSKI: Yes.

MR. TALLIN: The Canadian Veterinary Medical Association has ceased to accredit colleges but they will approve them. They don't want to be in the accreditation business because they think that's a matter for other universities to give accreditation to schools so all they do is approve now; they don't accredit.

MR. CHAIRMAN: Any further comment? Clause 11 — pass; Clause 12. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Clause 12 just on a superficial reading makes it appear as if the Board conducts the investigation of a complaint; the Board then decides whether or not it's frivolous. If it's not frivolous or vexatious then the Board proceeds to hold an inquiry; in which case, and contrary to the other Acts we have passed and contrary to some of the Acts we have yet to deal with, it is the Board that does both the investigating, the prosecuting and conducts the hearing and makes the decision. I would like to suggest — I don't know the extent to which it can be done — that the other procedure is

much the fairer one, where there is an investigation made on a complaint; the investigation is either dropped as being frivolous or is proceeded with, but then another body hears the complaint and makes the adjudication. That is the principle the Law Society has; I think The Medical Association bill that's coming up will have it; certainly the nurses' bills have it. Again, it's a principle I would commend to members of the Committee as being the fair one. Then it should spell out the rights — I think it does — submit evidence, cross examine. There's no reference here, as I see it, I may be wrong, as to the way the hearing shall be conducted, whether or not it is to be recorded, whether a transcript is made, I don't know I can't read it that quickly, whether there has been a transcript made of the hearings so it can be appealed based on what was heard. I'm just wondering whether the Committee would not consider the advisability of just picking up the legislation that was passed last year and adopting it.

MR. CHAIRMAN: Any further comments, questions, concerns? Mr. Uruski.

MR. URUSKI: Mr. Chairman, in this section I questioned also the representation in Clause 14(6), the Procedure in absentia, where I said I indicated I would want to move an amendment of the words "without adequate or justifiable reason" after the word "inquiry", so a member, in respect to whom an inquiry is being held, if he wanted to attend a hearing and could not make the hearing and if he had a justifiable reason and called the Board, that the hearing would be held off because he wanted to make it but it had to be an adequate or justifiable reason. I raised that with the Association; they indicated they would have no objections to such an amendment. Their problem was the reverse; they indicated that members did not answer their mail when they wrote them there was an inquiry; members about whom an inquiry was being held were more or less delinquent. So, Mr. Chairman, before we pass that section, I would propose to move that amendment to 14(6) as well.

MR. CHERNIACK: Mr. Chairman, I point out that I made the point about the Board conducting the investigation, deciding to receive the complaint, to conduct an inquiry and then if you look at its powers — which are again where I would term capital punishment because they can throw out this person from being able to continue to practice and may "impose a fine of not more than \$500 on the registered member to be paid to the Minister of Finance". Now we have a penalty involved. Then the point Mr. Green has referred to in other legislation: "Expenses of the inquiry: The Board may order", that's 14(8), "the member to pay all or any of the costs". Now I'm not objecting in principle to the feature of the costs, I'm objecting in principle now, to the Board conducting the preliminary investigation, deciding to hold a hearing and then being able to make an order to such an extent. I suggest very strongly, and I'm going to continue to suggest, there ought to be a separation between the investigation, prosecution and the judicial function and that is the principle we did establish only last year in The Nurses Acts which were the three presented. I see no reason why a nurse should have

greater protection than a veterinarian should have under this Act. The principle is the same; it's important and I think we ought to deal with it. I could make a suggestion and that is that we take the whole section out of The Registered Nurses Act and have Mr. Tallin translate it into this Act. I really think it's very important. The nature of the hearings and all that.

MR. URUSKI: Yes, Mr. Chairman, there's another item which I raised with the representative dealing with the hearings to be in private under The Nurses Act, Section I believe, 36(6), the hearings of the Board or the Committee would be in private in terms of the membership; unless the person wants the hearing to be in public, the hearing would be in private. There was a difference of interpretation as to Mr. Thompson and myself. He indicated the hearings would be in private but of course the Act did not spell that out so, Mr. Chairman, we would hope that same type of principle be carried on, as we passed last year in The Registered Nurses Act, be carried on in The Veterinary Medical Act unless there is some legal difference that the same principle could not be enshrined. I'd like to hear if there is some difference of opinion.

MR. CHERNIACK: I'd like to suggest to the Minister of Agriculture who is monitoring this bill, that we could just take the entire section out of The Registered Nurses Act — I believe the other health Acts do have them as well, the ones we're going to deal with — just take out Part 6 the Discipline Committee; Part 7, the Appeals Provision. We debated at length; we didn't agree on everything last year but in the main we arrived at a consensus that was acceptable to the entire committee and I think that this is a basic right that should be recognized and would accept the principle. I'd like to suggest the whole thing can be just taken right out.

Now it may be advisable to review it to see how it applies to this particular association but since this committee is not going to complete its hearings today possibly it would be in the best interests of the committee to set aside the Act now to give the Minister and Mr. Ferguson an opportunity to talk to the people who would be affected by it — the Veterinary Association itself will have to be able to work with their own legislation — but to see whether there's any objection to what was accepted for the Health Services last year and incorporate the whole thing. It seems to me it makes a lot of sense and I'd like to suggest that specifically.

MR. DOWNEY: Not discrediting what the member suggested, Mr. Chairman, the Veterinary Medical Organization or representatives of that organization came before the Agriculture Committee. They were questioned. I cannot find where they specifically agreed to any change. I don't think we would accomplish anything by further reviewing it and would like to proceed with the Act as it is prepared by the Veterinary Medical Association along with the Member for Gladstone who has prepared it because I do not know of any specific situations where there has been a difficulty with this section of the Act.

If the Veterinary Medical Association in the pursuing months want to review this particular part, I think that could be accomplished when the

Legislature of this province sits again and everything doesn't stop at this committee meeting. It has worked, I think it can continue to work where before a committee hearing, they did not want a change and I feel we could proceed, Mr. Chairman.

MR. CHERNIACK: Mr. Chairman, the point that Mr. Downey makes is the one that I really can't agree with. He says it's up to the Veterinary Medical Association to decide how their legislation shall be and I say no, it's up to us to decide. The only reason we're here to look at it is to protect the public and to protect the individual as against the association. All these people who are sitting and listening to what we're dealing with, who have similar bills coming up, should know that they are here because they're asking for extraordinary powers.

In our giving extraordinary powers we must make sure that we are protecting the public and the individual and therefore it's not the association that should have the final say — I think it should be consulted because they have to work with the legislation — but the final say should be on behalf of the people whom we represent, not the association that comes here to ask for legislation. I hope the people who will be coming to present other bills will accept the fact that that is why they're coming and that our duty is to protect the public and to protect the individual member; that's the point I wanted to get across.

MR. DOWNEY: I appreciate the point the member makes. The point that I want to continue putting before us is, we're not giving the association any more power than they already have in their current Act. We aren't adding any power as I understand it. As I understand it, Mr. Chairman, they already have that power. What he is suggesting it's a possibility that it should be changed; it wasn't and I appreciate the work that was done on the other Act.

The Member for Gladstone has agreed to proceed with the Act as it was presented at the last Agriculture Committee and I agree that the committee is a time for change in the Acts but, Mr. Chairman, it wasn't recommended by the last committee. The Member for St. George I believe did ask the member a question and I, because we are not giving any further power than the association already have, don't see any problem with us passing it at this particular time.

MR. CHERNIACK: Mr. Chairman, it's not a question of giving them further power, it's a question of seeing that the power is too great and cutting back on the power because the power is extraordinary; it is exceptional. The fact they had it doesn't mean they should continue to have it, that's why the Act is reopened.

I think it would be a terrible precedent to accept the principle that just because they had it and they don't want to give it up they should be entitled to keep it up because we're going to deal with eight other bills — this Committee will — and I wouldn't like any of them, of the people that come along and say, we have that power, don't take it away from us because we want to continue to have it.

If it's an arbitrary power, an improper power, an unjust power we have an obligation to change it and I'm sorry but I really feel that we must deal with this

issue; not because it was in the Act and therefore we keep it up; not because they're not asking for more; we should cut back on their power if we think it's wrong. I'd like to hear members of this committee say that they think the argument presented is wrong; that they think they should have these powers; that these arbitrary powers to refuse reregistration without a hearing, without a proper review, without notice but just by the snap of a finger to put them out of business and say, well you can always appeal, I'd like them to justify it if they're not going to accept the change because I think it needs a good deal of justification, not a historical one, not because it is there or was there but one on principle, is it right? Should they have that power?

I'm suggesting that it is an exceptional power that we do not grant to the police. We do not grant it in general legislation, arbitrary powers like that and we shouldn't continue it if it exists in private organizations which have power to control the livelihood of other people.

MR. CHAIRMAN: Are we ready for the question on Clause 12?

MR. CHERNIACK: No, Mr. Chairman, we're not.

MR. CHAIRMAN: Have you an amendment, Mr. Cherniack?

MR. CHERNIACK: I want to debate it first.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Chairman, we get back to the same argument that we really posed with respect to discussing this piece of legislation at the beginning. We understood and asked the government members that this legislation be modelled on other professional bills that we passed last session and we felt that there was some agreement, Mr. Chairman; yet when we discussed there would be changes and differences of opinion in principle it appeared that there was no problem with the government.

My colleague has asked that consideration be given to bring in the area of discipline as it's been put forward in The Registered Nurses Act — the principles therein be transferred over into this Act — where there was a lot of debate last session and it was generally accepted although some of the areas of concern or difference of opinion that our members had were not included yet, Mr. Chairman, we're now not prepared to have a standard or a more standard feature. So, Mr. Chairman, I don't know. Are we now in the position that we're going to move the entire section? If there is, I'd like to move an amendment to 14(6), Mr. Chairman, and the words after the word "inquiry" in the second line thereof be added the words "without adequate or justifiable reason", Mr. Chairman.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Might I suggest that if you're going to add the words put in, "communicated to the board before the time fixed for the inquiry", otherwise the board will never be able to proceed with the inquiry because they'll have to make investigation as to the . . . Might I suggest that the words be "without

reasonable excuse communicated to the board before the time fixed for the inquiry”?

MR. CHAIRMAN: Is that acceptable?

MR. URUSKI: So moved.

MR. CHAIRMAN: Are all members of the committee aware of the amendment? It's been moved by Mr. Uruski that the proposed Section 14(6) of The Veterinarian Medical Act as set out in Section 12 of Bill 19 be amended by adding thereto immediately after the word inquiry in the second line the words "without reasonable excuse communicated to the board before the time fixed for the inquiry". Does everyone understand it? Moved by Mr. Uruski. All in favour of the Motion please indicate.

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

Yeas, 8.

MR. CHAIRMAN: The amendment is passed.
Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we've not dealt with the major issue about the right of the board to investigate, to prosecute, to hear, to judge, to fine, to find the member liable for all the costs and expenses of the board in the investigation and inquiry. I feel that the persons who want to support the present bill before us and grant to the Board of Veterinarians, powers greatly in excess of those which the nursing association has, that we spent an awful lot of time last year — hours and hours, days — preparing that legislation and hammering it out on the basis of what we thought was fair. I think if members of this committee are not going to consider that procedure outlined in the Registered Nurses they ought to be prepared to justify the fact that they are now treating the people who deal with animals differently than they're treating people who deal with human beings, who are given greater protection than people under The Veterinarians Act. I really think it's important enough to hear a justification for refusal to take away from the board all these powers, to investigate, to prosecute, etc.

MR. CHAIRMAN: Mr. Downey, then Mr. Green.

MR. DOWNEY: Just in reference to the Act that the member is referring to — to The Registered Nurses' Act last year — are the investigating team, the individuals who are doing the investigating, the individuals who are making the decisions not made up of the committee of Registered Nurses?

MR. CHERNIACK: Not necessarily.

MR. DOWNEY: Not necessarily.

MR. CHERNIACK: 34(1) — the board establishes a Discipline Committee. It goes on to say if I may answer, Mr. Chairman.

MR. DOWNEY: I just asked the question.

MR. CHERNIACK: As I recall it, it goes on to say that those members who are on the Discipline

Committee are not allowed to participate in the judicial side at all. Once they've acquired knowledge in their investigation then they no longer have anything to do with the judicial function but indeed the committee that does the hearing — I'm sorry, the investigating chairman is 20(5), it's from among the directors — an investigating chairman who refuses it and then brings it to the Discipline Committee. The Discipline Committee is not part of the investigative process. There is a lot of language in here, all of which was hammered out at great length and I think with unanimity. I think Mr. Sherman will support that although we had certain small differences, in the main, we arrived at this on the basis of what we thought was fair and we worked with the nurses and they agreed that it was a proper control on them. I wish Mr. Sherman would confirm that I'm not just talking but that indeed we acquired a great deal of understanding last year of the functions of the Complaints Committee, of the Investigating and the Discipline Committee.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, I take it we are dealing with 14(7). (Interjection)— Well, I thought that we had passed an amendment to 14(6).

MR. CHAIRMAN: 14(6), yes.

MR. GREEN: So that we have come up to, I gather, 14(7).

MR. CHAIRMAN: No, we haven't passed anything within Clause 12.

MR. GREEN: Mr. Chairman, I sort of have gathered that we are dealing generally with it but I'm going to wait until we deal specifically with 14(7).

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, I think the principle that's in The Nurses Act maybe should be considered by the Veterinary Medical Association — the members — and would suggest, in the best interests of the people that are here to present their briefs, that maybe we could delay this particular bill till the Committee sits again and hear the briefs so that we could get on with the other bills. I'm sure we would agree to it because we are into an area that —(Interjection)— Well, Mr. Chairman, if the member wants to make those kinds of comments we could have pushed this thing at Agriculture Committee and he's being smart. We're trying to accommodate the public now and I don't take too kindly to those kind of snide remarks but I do suggest, Mr. Chairman, we could hold this till the principle of The Nurses Act was looked at by the the Veterinary Association.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just one comment. Mr. Cherniack has said that he wishes that I would confirm that what he says about the nursing legislation last year did in fact take place. I do confirm that for the record; we reached eventual consensus and agreement; there's no question about that. I think that my colleague, the Minister of

Agriculture, makes an eminently reasonable and responsible suggestion under the circumstances and I would like to see it adopted by the Committee.

MR. CHAIRMAN: Mr. Downey has a suggestion that we stop dealing with this bill at this point and we'll deal with it after he and Mr. Ferguson have been able to consult with the Veterinarian Medical Association as to whether they would like that section written into their bill. Is it agreed by Committee?

Mr. Walding.

MR. WALDING: Mr. Chairman, Mr. Downey is now making a suggestion that this bill be put on one side until we have heard the representations from a number of associations, all of whom have concerns about professional bills. As I spoke, perhaps out of turn, this was exactly what we were saying two hours ago when the suggestion was first made to us. Now the Minister says that they could have rammed it through at Agricultural Committee a few days ago and that's true, they could have done, Mr. Chairman, and that would have been their second error. The first error was sending it to Agricultural Committee in the first place because it is not an agricultural bill; this is a professional bill. The House Leader made that suggestion to send it there, obviously without realizing the content of the bill or the fact that there were other bills of a similar nature. So I will concur with Mr. Downey that we put aside this bill and we get on with the rest of the business of the Committee.

MR. CHAIRMAN: All right, we will lay the bill over until another meeting and go to public representation regarding a number of bills. The bills that are before us are Bill 17, The Medical Act; Bill 18, The Pharmaceutical Act; Bill 20, The Registered Dietitians Act; Bill 21, The Physiotherapists Act; Bill 22, An Act to amend The Architects Act; Bill 25, The Registered Respiratory Technologists Act; Bill 40, The Chartered Accountants Act; and Bill 47, The Interior Designers Act.

The Clerk has, earlier in the evening, some two hours ago, obtained names of a number of persons who had indicated to her that they wished to make representation regarding various bills. We will go in order.

BILL NO. 17 — THE MEDICAL ACT

MR. CHAIRMAN: I have Mr. Cherniack.

MR. CHERNIACK: Could we get copies of the list so we will have them before us; we will know who will be speaking on whatever?

MR. CHAIRMAN: All right. On Bill 17 there were four persons that had indicated via telephone to the Clerk's Office that they would like to be notified of the meeting. The College of Physicians and Surgeons, Dr. Ewart, Dr. P.W. Aitchison; the Manitoba Association for Rights and Liberties, Sybil Shack; the Manitoba Health Organization, Shirley Seidel. Then again the College of Physicians and Surgeons, Dr. J. Morison.

Dr. Ewart, you are first on my list. Would you like to address the Committee? If there are other

persons in attendance that wish to speak regarding this bill, would you make your way to the front of the room and see the lady to my right and have your name added to the list but we will start with Dr. Ewart.

Mr. Walding.

MR. WALDING: Mr. Chairman, did you indicate in reading out those names that the college was making two presentations?

MR. CHAIRMAN: There's one check mark here but there are two persons listed on the sheet but perhaps Dr. Ewart can clarify that.

Dr. Ewart.

DR. W. B. EWART: Yes, as an elected representative, I was going to speak and then as a final rebuttal, if necessary or anything that's needed, somebody that could speak more for the administrative standpoint would be able to speak. This is merely to satisfy perhaps the questions that may arise that I am unable to answer, that's all.

MR. WALDING: Mr. Chairman, I don't object to one or two or any number of persons appearing for a particular association but the matter of appearing later down on the program in rebuttal is something that has been raised with the Committee before and has been refused by the Committee before, because if you give one person or one group the opportunity to rebut then why should not the second speaker have the opportunity to rebut again? You can go on with a dialogue or an argument or debate going on before the Committee. So I would suggest if the college wishes to have one or more speakers on its behalf I have no objection to that; when it comes to rebuttal, I suggest that's a dangerous precedent to set, Mr. Chairman.

MR. CHAIRMAN: Perhaps the best way to get around it is to let Dr. Ewart go last and let the other persons go ahead of him and then we'll have one spokesman for the College of Physicians.

Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the College is the one that brought the bill. Surely they ought to be the first to make their presentation and then I suppose any member can call on them at a later date to deal with any issue that comes up.

MR. CHAIRMAN: Mr. Brown.

MR. ARNOLD BROWN (Rhineland): Mr. Chairman, I would say that we have a Dr. Ewart on our list as the first one to speak and I suggest that we go ahead and proceed the way that they are on the list. I don't have the list over here, so I'm sorry.

MR. CHAIRMAN: All right, are we ready to proceed with Dr. Ewart?

MR. CHERNIACK: Can we have the spelling of that name?

MR. CHAIRMAN: E-w-a-r-t.

MR. CHERNIACK: Just for clarification, Mr. Chairman, the list shows Dr. Brown and Dr. Aitchison. Are they also going to . . .

MR. CHAIRMAN: No, Dr. Ewart is, on my list anyway, replacing Dr. Brown.

MR. CHERNIACK: Oh, and Dr. Acheson is a separate . . .

MR. CHAIRMAN: That's a separate name.

MR. CHERNIACK: And Dr. Morison, I'm sure he's here as a technical administrator help . . .

MR. CHAIRMAN: Yes. Are we ready to proceed or do we wish to continue to agree to disagree? Dr. Ewart, please proceed.

DR. EWART: Mr. Chairman, and members of the Legislative Assembly, I will attempt to be very brief. What the Act is that we're presenting to you is to really restructure the original Act that was brought in about 1964, at least that the last revised portion of the Act. What we have attempted to do basically are a number of things: one is to provide lay membership on the council, this is the governing body of the profession; we have increased and emphasized the appeal provisions under the Act, broadening them to allow for appeals against refusal to register or against any decision of the Complaints Committee, almost anywhere in which we think that it will fit to assist the public good and also, justice in our particular areas; we've also, with the further involvement of medical students and interns, have them more involved and they are presently governed only by the rules passed by council and this is being moved to The Medical Act and regulations by the Lieutenant-Governor-in-Council.

The present Act refers to registration and annual dues. Most doctors think of these annual dues as a current licence and this is a common usage. The new Act will provide for registration which indicates that the person is entitled to take out an annual licence if they wish to practice medicine. In cases of suspension only the licence is suspended. Membership would only be revoked as a decision of a formal inquiry indicating the person has committed an offence so serious that they should not continue to be registered as a member.

Now, as with the members of the Legislative Assembly here, one of the primary responsibilities of the college is to assure that the public, that the licensed practitioners practice in an ethical, honest and competent manner and a series of committees are established in this new Act to make this function we think even more effective.

Part VIII, we've now established — I'll forget the numbers for brevity — a Complaints Committee with lay membership which presently exists under Rules is established under the Act to attempt to informally resolve complaints from members of the public. The complainant has the right to appeal decisions of this Committee. This Committee now exists under the rules that we have today.

We're recommending in this Act the establishment of a new officer of the college to be known as the Investigative Chairman. This officer shall be appointed among the elected councillors and oversee the investigation of any matter referred to him from any source, including the Complaints Committee, and also including a matter referred by a complainant who has been unsatisfied with the decisions of the

Complaints Committee. This is appeals back and forth and at the same time attempting to separate this individual from the Investigative Committee and also from the rest of the council, trying to make him as independent as possible. This officer would have the authority to seek subpoenas — I hope I have the right word there — to obtain pertinent data for the appropriate investigation of any complaints and, at the end of the investigation, the investigation chairman will make a recommendation in writing that either no further action be taken or that a formal inquiry be conducted. He may recommend the suspension of the member pending inquiry if it is so indicated. There is no provision in the present Act for such an investigation and therefore the college is often hampered in the investigation of the complaints and often we believe there is not the protection to the individuals and the general public. Matters can only be subpoenaed after formal charges have been laid and frequently without opportunity to review this evidence.

Now, the next part of this that we've established is the Standards Committee and this is an attempt to improve the standards of medicine in our province. This is a professional audit committee protected under Section 2 of The Manitoba Evidence Act which presently exists under the Rules of the College. We believe it's absolutely essential that this Committee be completely separated from any investigative or disciplinary arm of the college. This Committee does have access to considerable information throughout the province and this information is for audit purposes only. It may interview and recommend refresher training to doctors but does not have the power to enforce such actions. It would not pass on any of its information or considerations to any other arm of the college. I'm sorry if I'm reading this, gentlemen, I just want to be very specific on some of these legal determinations, if you wish.

The Standards Committee could however, if the review warrants it, suggest that the practice of a specific doctor be investigated through the arm of the investigative Chairman who would carry out the review and then it would move into this other area and then back into discipline. We would be, at all times, attempting to keep these areas separate.

Finally, the part of the new Act, Part 10 provides for formal enquiries and it is essentially the same as the present but adds a clause defining the composition of the committee, including lay membership — and by the way there is a definition of lay membership in the Act. The committee presently has such a composition but it is not required by legislation, we're trying to formalize it. This is the full legal due process which is required to enforce the decision of the college upon any member. This has come about through a great deal of experience in attempting to build up, through legal advice and so on, the best type of investigative group that we can in order to continue or to even improve what we think are relatively high standards of medicine in this province.

I'll be pleased to answer any questions, gentlemen.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I think there's a great deal of work has gone into the preparation of this bill and I think it's rather exhaustive and

embodies very important principles. I'm wondering, Mr. Chairman, whether we should not follow — I may harken back to last year in the nurses' legislation but to me that was a benchmark way of dealing with legislation — that we could have the representatives of the council present, and any other delegation on this bill, to be present when we deal with the sections in detail; and have the opportunity to discuss any particular section or provision with them in order to arrive at a better understanding of why it is worded that way and how it could be improved, if at all.

I have a number of notes on almost every page but most of them are matters of detail and not of important principle, yet I wouldn't want to take Dr. Ewart's time or that of all the people present to deal with them all. I'm wondering if we could agree that when we come to deal with this bill itself that we will have representatives present to whom we can refer particular questions. I'm just throwing it out and I don't intend now to press each and every one of my questions.

There is one which I think is rather important and that is Section 19(c) which says that the council "may prescribe standards of continuing medical education". Dr. Ewart, I'm aware that there's a large body of opinion on professional continuing education which says that making it compulsory doesn't bring about a better education necessarily; that you can have a person attend lectures and sleep through them, you don't know whether they've absorbed or not unless you have examinations and I'm not sure that you're preparing to examine every doctor who attends some course on continuing medical education.

The memorandum that was prepared last year states that, although you're asking for the power you don't intend to use the power, you're going to make it voluntary. Is that correct?

DR. EWART: Yes, that is correct and you're quite right in questioning this. This is a problem and I'm sure all professions right now are having this. We just believe that doctors, those of us on the council, believe that doctors need to keep up-to-date; though we don't have the final comment, as you know, as a person who went through medicine, it is easy to sleep through a class lecture and we're quite aware of this.

The final common pathway is what is the actual benefit to the patient or the citizen of Manitoba and that's really what we're after too. We will be pleased to talk to this later. This is — I don't know if I should use this word — enabling legislation, it may not be the same meaning that you have for it. This would still have to go, before anything was decided upon it would still have to go before the Cabinet or the Lieutenant-Governor-in-Council. We're quite aware of that.

The reason for putting it in is because otherwise it would have to go through a whole change in The Medical Act; there's a strong body that feels it should at least go this far and that's why it's there.

MR. CHERNIACK: I think the Dental Association, as I recall it, is about the only one that has compulsory continuing education. What they do is get credits for time spent, one week or 10 lectures and that's all, they get credits for attendance and really it's

attendance records that are kept, I believe, with the dentists but there is that whole system which is not really used.

The lawyers, as I recall it, on competence will then order continuing education, once competence is challenged. But the continuing medical education, when you say it's enabling I, for one, don't like to see powers granted that it is not intended to use. When you say that you don't intend to use it then I would say if you don't intend to use it then don't ask for it until you know you intend to use it, then come back and ask for it and then it will be evaluated on the basis of a power that you want rather than a power that you may not want.

I'm just suggesting to you that, from my way of thinking, it would be better to withdraw that and come back when you're ready and not just say, well we want the power in case we later decide it's useful, because that's a strong power and it can be abused and it is not necessary. It may lull people into a feeling that they are getting the advantage of continuing medical education when in reality you don't intend to do other than voluntary. I'm just throwing that out. We can discuss it in detail, I hope, later if the committee permits it.

The principle of Section 19 provides that, "The council may, subject to approval by the Lieutenant-Governor, make regulations". You've made that point already, Dr. Ewart. I want to suggest to you that since you accept the principle that the Lieutenant-Governor-in-Council shall have to approve the regulation before it is enacted, that the Lieutenant-Governor-in-Council should also be given the authority to suggest, and even to press you, to change regulations or enact other regulations.

In other words, what you are saying is we want to do certain things; we can't do them without getting the approval of the Lieutenant-Governor. Well then you may have obtained that approval and three years later the Lieutenant-Governor-in-Council may come to the conclusion that the regulations are inadequate because of citizen complaints. There's nothing in the legislation that compels you to review, reconsider and that gives the Lieutenant-Governor-in-Council the power to withdraw certain approvals they've given before. I'm wondering whether you see any basic objection to that being provided, that not only do they have to approve but they have the right to withdraw approval after notice and discussion. Do you understand my point?

DR. EWART: Almost, I think I do. Mr. Chairman, may I answer? It is a two-way street. There's a freedom here that the Cabinet has — if I may use that word — but at the same time it's a limitation on our part as well. I would like to think about that if you don't mind, Mr. Cherniack.

MR. CHERNIACK: Let me just enlarge on that a little. It's not a two-way street once the approval is obtained. Once you've obtained approval then that ends that, as I read it. I think the two-way street should mean that the Cabinet should be able to come back to you and say, after reconsideration on complaints we have received, we think that it ought to be changed. Under the legislation as I see it, you don't have to change it and then it would have to come back into the Legislature with a new bill in order to change it. I think if regulations are to be

dealt with, with the Cabinet, then it should be a two-way street. That's what I'd like you to think about and I do have many questions but I don't want to burden the committee now with them. I wonder if we could understand that Dr. Ewart and his group will be invited back when we deal with the bill in order to raise various points with him, is that a fair assumption?

MR. CHAIRMAN: Are you assuming, Mr. Cherniack, that we're going to do as last year, lay all eight bills out on the table at one time and sit around the table and discuss them, the way you did the nursing bills?

MR. CHERNIACK: It would be pretty difficult dealing with eight but even dealing with one, look how much it would have helped if we had the veterinary people here when we were discussing it so that we could get immediate reactions. It's just a suggestion I'm making.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, one question I would like to put to Dr. Ewart and one comment I would like to make with respect to the suggestion as to the procedure to be followed.

I'd ask Dr. Ewart to consider — and not necessarily respond at this time — a concern I have with respect to the provision establishing and enshrining in legislation, in the Act, the concept of the Standards Committee. The Standards Committee exists at the present time, is that not correct, Dr. Ewart?

DR. EWART: Correct.

MR. SHERMAN: It exists under the rules of the council and the college and what the proposed legislation does is enshrine that institution in the Act, correct?

DR. EWART: Correct.

MR. SHERMAN: Your supporting argument was careful to stipulate that the Standards Committee, although it has considerable information available to it from all across the province of a medical nature, gathered for audit purposes, that the Standards Committee would not pass on any of its information or considerations to any other arm of the college; but your supporting argument goes on to say that the committee could, if its reviews warrant it, suggest that the practices of a specific doctor be investigated through the arm of the investigation Chairman. I understand that you would expect the investigation Chairman to carry out his or her review from the original basic data but there seems to me to be a somewhat perilous gap or gulf in those two positions.

On the one hand you're saying the Standards Committee would not be permitted to pass on any information; on the other hand they can suggest that the practices of a specific doctor be investigated. I would think that you would be asking for a supremely conscientious and responsible performance, and perhaps even an irresponsible performance, by the Standard Committee if you restricted the information that they were going to supply to back up that proposal for an investigation.

So I do see an inconsistency in that language and I would ask Dr. Ewart and the college to think about that before we deal with the subject clause-by-clause, Mr. Chairman.

The other point, as to how we should proceed, I think that it would certainly be agreeable to government members of the Committee that in the case of this bill, which is an extremely detailed, relatively complex and highly important piece of legislation that affects the conduct and the affairs of the whole medical profession that we probably would be well served by having available to us as we went through the clause-by-clause process, the expertise of a college representative similar to the practice we followed last year on the nursing bills, Mr. Chairman. I would suggest that it is not necessary with respect to the health bills that are in front of us in general but I think that it would be very worthwhile to follow that procedure on this specific bill.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Dr. Ewart, I have some specific questions on several sections of the bill. Section 12(1) permits you to erase from the register the name of a member who has been guilty of an indictable offence — I'm going to throw out some — and the next one says that you don't have to do it.

DR. EWART: That is correct, Sir.

MR. GREEN: So I assume that if a member of the profession was so weak in character that perhaps he received stolen goods, was punished by the court for it and even sentenced to prison that the college, being a Judaic Christian organization wouldn't want that to ruin his life, he would have paid his penalty and he'd be entitled to practise medicine. Or would you erase him from the registry?

DR. EWART: No, we would deal with each case individually.

MR. GREEN: Then why would you want to deal with such a person in such a way?

DR. EWART: Because there may be somebody that has been convicted of a crime which would make the practice of medicine. It may have been a crime that involved numerous strangulations, if you would. There may be some sort of thing like this where we may wish to use this at that particular time. That is the reason for that being in there — I can't think of one at the moment — but I'm sure that you are aware there are certain crimes that would.

MR. GREEN: As a matter of fact, Dr. Ewart, that's exactly what I'm worried about. If he was convicted of several strangulations I hardly think that he'd be available to practise medicine. I am concerned that you would suspend a person from the register for receiving stolen goods. Why would you do that?

DR. EWART: Excuse me, Sir, I don't believe that he said we would.

MR. GREEN: But you are asking the power to do so. You're asking me as a member of the Legislature

of the Province of Manitoba to give you the power to do so. Why would you want that power?

DR. EWART: Because in certain situations we may need to erase somebody who we believe would be a threat, as I mentioned previously though I may miss your argument, regarding such things as strangulation, or there could be a number of different charges that we would believe in that case this man may have been capable of doing certain things but we would not want him to drive an automobile perhaps, or look after a sick patient, or operate on a brain tumour.

MR. GREEN: Wouldn't that be covered, Dr. Ewart, in the section that you have, which is available to you under Section 57, "of having been guilty of professional misconduct, conduct unbecoming a member or of demonstrated incapacity or unfitness to practise medicine".

DR. EWART: Yes. Excuse me, Sir. Could you give me that again if you don't mind?

MR. GREEN: I'll read 57(1) to you, just turn to 57(1) and I'm reading to you what you say you're going to discipline people for, "professional misconduct, conduct unbecoming a member, or to have demonstrated incapacity or unfitness to practise medicine". The examples you gave me, wouldn't they fall under that category?

DR. EWART: Yes, I think they would.

MR. GREEN: Then you wouldn't need 12(1) and 12(2) because they're all covered, under the things that you have mentioned they're all covered under 57 and what you're doing — may I just pursue this a moment so I'll tell you what my concerns are and then perhaps you will be better able to deal with them — I'm concerned with giving you a discretionary power to cancel a doctor's right to practise medicine for being convicted of, let us say, I'm not sure of the endictability — maybe there are lawyers here that could help me — there are certain income tax offenses which are endictable, are there not? Mr. Cherniack is nodding up and down, I'll accept his, no . . . I am concerned that there are certain — and Mr. Haig is nodding up and down — I'll take his suggestion.

It seems to me that the criminal law and the law of our land punishes those people, they have to pay a considerable offense for it and they have to sometimes go to prison for it. But they have a skill and that skill is not affected by the fact that they have made this terrible mistake or more correctly, that a court has found they have made this terrible mistake because courts can be wrong. But their capacity to practise medicine is in no way related to the criminal offence. Why would you want me to give you the power to erase that person from the register, to give you a discretion, to erase that person from the register? Because he has done something which there, but for the grace of God go many people, which has not affected his ability to practise in any way, but the college in order to cleanse themselves just as this Legislature wanted to cleanse itself of a person that committed an endictable offence, is going to strike that person from the register. Why?

DR. EWART: If I may answer, Sir.

MR. GREEN: Yes, please.

DR. EWART: First of all this is a registration. This is under the registration of the individual . . .

MR. GREEN: But it says, "may erase that registration".

DR. EWART: Yes, that's true. They've already been registered and we may erase, that's if evidence comes forth that they have, if you wish, strangled four or five people but we don't want it for such things as you're talking about, Mr. Green. Furthermore, you have the right of appeal, to courts, you have all sorts of rights to go at this. In other words we're protecting as much as we can but we're also trying to protect the people in Manitoba.

MR. GREEN: Dr. Ewart, I thank you very much for having so much solicitude for the people of Manitoba because all of us also feel that we have a solicitude and I feel that I have a solicitude and I want to know why you cannot find what you want to do under 57(1) and when we get to 57(1) I'm going to tell you in advance, I think that's too broad too. But the way it is now, do you not have the right to suspend somebody for strangling people? I mean that's the example that you have strangled five people. I think if a person strangled five people he would have demonstrated incapacity to practise medicine.

DR. EWART: I will certainly follow-up with this, Mr. Green. With registration we've said that we have the right to erase certain people. We are not saying shall erase because they have a record otherwise we could ask for that. We say we have the right to do. I realize that you don't want to give us that right. The reason it's in this particular area is because it's registration. Later on, if you wish, it could be dealt with later regarding the right when it comes to the actual disciplining of members.

MR. GREEN: But wouldn't the erasure of the registrations suspend his right to practise?

DR. EWART: Yes.

MR. GREEN: So let's not quibble. I am registered and I've been convicted of receiving stolen goods. I am now in your hands and because the college feels that it's a block on their profession, that it's a stain on all of them, that a doctor has received stolen goods, they erase his name from the register. Now he is no longer permitted to practise medicine.

DR. EWART: Mr. Green, I regret you impute the motive that it is a stain(?) on the college. I disagree with you. This is not why it's done and there is an appeal. Now, I'm sorry, you're putting words in my mouth.

MR. GREEN: No, but you're asking for the right to do that.

DR. EWART: Yes, we're asking for permission in certain cases so we don't have somebody that's strangled somebody that we can take them off the register. It's the only way we can do it.

MR. GREEN: Dr. Ewart, I'm sorry to be impatient. I'm quite prepared to put in a section that where somebody strangles somebody he shall be erased from the register. I don't wish to have it related to something, I asked you whether strangling somebody comes under 57(1)? Whether you can find strangling somebody under the right to suspend them?

Dr. Ewart, may I ask you the following question? Does the college need the right to suspend or erase from the register a member who has committed an indictable offence which has nothing to do with the practice of medicine or his competence to practise medicine.

MR. CHAIRMAN: Dr. Ewart, if you wish to turn to legal counsel from your college, you may bring them forward and they can join you.

DR. EWART: I would like to, if you don't mind.

MR. GREEN: I really would like to know whether the college feels that they need Dr. Ewart as a member of the college — and I really believe that it's fair to ask this question and it's fair to get an answer from him because he is the representative of the college — and I'm asking him whether he thinks, maybe his lawyer will correct him afterward, whether he thinks the college needs the right to suspend or erase from the register the name of a doctor who has committed an indictable offence where it is clear that that indictable offence had nothing to do with the delivery of medical services.

MR. CHAIRMAN: Dr. Ewart, you may consult your legal counsel or your associates if you wish.

MR. GREEN: Well, Mr. Chairman, I would like to get the answer from Dr. Ewart.

MR. CHAIRMAN: Well he'll come back and give you the answer but I'm the Chairman of the Committee and I've given him permission to consult with his people.

MR. GREEN: Mr. Chairman, I would like to have that question answered by the doctor and you know when you have somebody, I can tell the Chairman of the Committee, that when you have somebody who you're trying to get answers from and you have him let us say as a witness in a proceeding, it's the last thing that the court will do is to say, consult your lawyer before you answer the question and I'm doing it in this way because I would like to know what Dr. Ewart thinks about this requirement. If he thinks it's necessary he will say so, if he thinks it is not necessary he will say so. He then may find that his lawyer feels that there are more things to the question than what I have.

MR. CHAIRMAN: Dr. Ewart, you are not under cross-examination. You are here representing the College of Physicians and you came to give some additional information to the committee relating to the bill. You agreed to answer questions. If you wish to seek assistance in answering the questions you may turn to them. In the past I have even permitted associates or legal counsel to join the delegates, such as yourself, at the microphone. So if you wish to have some assistance you have my permission. If

Mr. Green wants to get someone to make a motion to rule me out of order he has that privilege.

MR. GREEN: Mr. Chairman, may I say to you the following.

MR. CHAIRMAN: Mr. Kovnats, on a point of order.

MR. ABE KOVNATS (Radisson): I would suggest that Dr. Ewart as another alternative, does not have to answer.

MR. GREEN: That is right. Dr. Ewart can come in here and say, I'm not going to tell you guys anything, that's right and then he wants legislation passed giving him the power to do the things that are in this Act. I'm telling you, Mr. Chairman, that there's going to be a hell of a lot of fuss made by the elected representatives of the public to give that kind of information to a man who says, I won't answer your questions or I won't talk to you unless I consult my lawyer, that's okay, but I don't think that that's the way in which the College of Physicians and Surgeons should be dealing with members of the Legislature who are asking legitimate questions.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I don't think that Dr. Ewart or this committee has to put up with that kind of personal harassment. I think that that is uncalled for, unnecessary and unacceptable and I'll tell Mr. Green through you, Mr. Chairman, right now that regardless of Dr. Ewart's answer to Mr. Green's question, the answer of the Minister of Health is, yes, I think it is necessary.

I think Mr. Green is mixing apples and oranges; I think he's talking about two different aspects of the Act. In the first place it's permissive legislation, the college may do such and such, may erase it from the Legislature. He's talking on the one hand about a section that deals with the Committee of Inquiry and inquiries that are conducted after somebody has launched a complaint and an investigation is carried out. On the other hand we're talking about an action that could take place without an inquiry relative to an incident, relative to a conviction that was detrimental to the medical profession, detrimental thereby to the consumers of health care in this province, I say the College of Physicians and Surgeons does have the right to have that in their Act. I'm prepared to debate Mr. Green on that issue and I appeal to him to stop harassing Dr. Ewart.

MR. CHAIRMAN: On a point of privilege, Mr. Green.

MR. GREEN: Mr. Chairman, on a point of privilege. I have not harassed Dr. Ewart. Mr. Chairman, I have asked Dr. Ewart whether the college feels — and you can go to Hansard and repeat the question — I've asked Dr. Ewart whether he believes that it is necessary for the college to have the right to erase from the register the name of a doctor who has been convicted of a criminal offence, indictable offence, which has had nothing to do with the delivery of health service. If that is harassment, Mr. Chairman, then I can tell the Honourable Minister of Health, using the language which has been made holy by the First Minister of this province, he can go straight to hell.

MR. SHERMAN: Mr. Chairman, I leave it to members of this committee and those in attendance at this committee hearing whether the term harassment is an exaggeration or not. I repeat for the information of Mr. Green that the sponsor of this bill and the Minister of Health answer his question in the affirmative.

MR. GREEN: Mr. Chairman, the sponsor has not answered the question. The Minister of Health has already indicated that he is here on behalf of the College of Physicians and Surgeons, he indicated that in the House, Mr. Chairman. But let it be shown, Mr. Chairman, that the Minister let all of the people here see that the Minister of Health has said that the sponsor has answered in the affirmative although he has been refused the right to make an answer; the Minister of Health has answered in the affirmative and that's because the Minister of Health doesn't know what he's talking about, therefore we can let all of the people know and judge whether the college — and I'm asking the question and the doctor can answer or not answer — needs the right to suspend a doctor from the practice of medicine because he has been convicted of an indictable offence which has nothing to do with the delivery of health services. The spokesman for the college, the Minister of Health, has said that the answer is in the affirmative. I'm prepared to leave it at that and I will deal with it in debate because the spokesman, Mr. Chairman, of the college has indicated that Dr. Ewart answers in the affirmative, the Minister of Health has so indicated.

Now I'll ask other questions, Mr. Chairman. That question's been answered, I have some other questions.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, on a point of privilege. I object to that categorization of either Dr. Ewart or to myself. We are dealing here with a piece of legislation which, whether the Member for Inkster wants to concede it or not, has been the subject of considerable study, effort and input, the result of considerable professional opinion, advice and counsel over a considerable period of time. It is not the handiwork of the Minister of Health; it is the handiwork of those who are proposing to this committee and this Legislature a piece of legislation designed to protect the best interests of the health consumers of Manitoba.

I can assure him that it is that approach and that sincerity that has gone into it. Regardless of the answer he gets from Dr. Ewart I'm simply suggesting to him that if he wants to debate the issue he will debate it with those who will be speaking on the government side, which include the Minister of Health.

MR. GREEN: I'm merely asking questions which the Minister of Health will not let be answered. I'm merely asking questions. When the Honourable Minister says that this bill has been the subject of extensive discussion etc., etc., the College of Physicians and Surgeons invited me to their office to discuss their bill. They have been the ones who have prepared it; they are the ones that want it; they've been the ones that studied it and the Minister of

Health is merely a mouthpiece, Mr. Chairman, for the presentation of the bill and he has so indicated.

I have asked a question, Mr. Chairman. I know that some of these things are relics of bygone ages, that one suspended somebody from practising his livelihood because he's been guilty of a criminal offence. I know that the Law Society used to think that way and I don't know whether they still do. Mr. Chairman, the very right to do so, I am asking whether or not — I guess the President of the college will not answer the question — I'm asking whether or not he needs it and I'm not being given an answer. The answer is that Minister of Health says he needs it and I will accept that answer and debate it when the time comes.

MR. CHAIRMAN: Dr. Ewart, you have the floor.

DR. EWART: I haven't had a chance to say anything.

MR. CHAIRMAN: That's right, that's why the Chair is recognizing you now, Sir.

DR. EWART: I'm sorry. It's been imputed, a number of things about the college. But I'd just like to point out that it's in there because we do feel that this is necessary and to answer your question, yes, Mr. Green.

MR. GREEN: Then I want to know why it is necessary to have the power to suspend a doctor from the practice of medicine or to erase his name from the registrar, why it is necessary to have that power if he has been convicted of an offence under The Income Tax Act or for receiving stolen goods? He has been found guilty by a judge to that effect. Why is it necessary?

DR. EWART: Because in our viewpoint in that case we wouldn't find it necessary, Mr. Green.

MR. GREEN: Then it's not necessary.

DR. EWART: That's right. It's permissive, if you would.

MR. GREEN: Wouldn't it be covered insofar as it affects the practice of medicine by Section 57 of the Act and that Section 12(1) and 12(2) give a power which is redundant and potentially dangerous because it's gives you a discretion to suspend somebody from the practice of medicine for conviction of a criminal offence which has nothing to do with the practice of medicine?

DR. EWART: The reason I didn't answer immediately is because I'm not quite certain whether the registration which I mentioned, whether there was any legal difference between registration and 55, that's the only reason, Mr. Green. I'd be pleased to deal with that, that's why I wanted to ask the lawyer. But I don't mind coming forth with my own viewpoints on that.

MR. GREEN: Thank you very much. I'm pleased to know your viewpoint because I'm pleased to know that it's the position of the college that they require discretion to suspend somebody from the practice of

medicine for a conviction of an indictable offence which has nothing to do with the delivery of a health service. Now I know that is the college's position.

I would like to ask you, Dr. Ewart, whether the provisions whereby a person can now be admitted to the practice of medicine which are dealt with in Section 19 of the new bill, whether in the old bill they are not spelled out in the legislation so that everybody knows what the requirements are.

DR. EWART: Correct.

MR. GREEN: Now instead of everybody knowing what the requirements are as determined by legislation, the Lieutenant-Governor-in-Council will be able to change these regulations every time the council wants them changed. The difference is . . .

DR. EWART: There's two things I think, Mr. Green, on that. One, is that I don't think we have that much power over the Cabinet of any government.

MR. GREEN: It seems to me you have a great deal of power from what I heard Mr. Sherman say.

DR. EWART: Well agreement doesn't necessarily mean power all the time, Mr. Green.

MR. GREEN: Okay, the Cabinet has that power.

DR. EWART: We agree on some things as you know too.

MR. GREEN: But the Cabinet has that power.

DR. EWART: That's right, so that doesn't necessarily apply. The second thing is, I believe all the things in the Cabinet are published, aren't they? Isn't there an Order-in-Council or something?

MR. GREEN: Yes, there is an Order-in-Council. But under the present law a person looking down the list of requirements could determine what they have to do in order to be able to be admitted to the college. Under the change that list can be changed from time to time by the Lieutenant-Governor-in-Council at the request of the college.

DR. EWART: There's a problem here and I agree with you that there could be some difficulties here but there's a real advantage as well. Doctors coming from other countries that we may want to make a change because of various things that have taken place, either because they've become far right or far left, political or this or that, that it may be there'd be a desire to move, or we need to obtain more psychiatrists, or we need to obtain more anaesthetists, anything along that line this allows for more flexibility. The risk of course, that's a two-edged sword as well, I realize that.

MR. GREEN: You could exclude people because they come from a too-far-right or a too-far-left country.

DR. EWART: No. Well I guess you could yes, but . . .

MR. GREEN: I thought I heard that, I'm sorry, that's right.

DR. EWART: No, no, But with revolutions and so on, an import of people that you want to try and bring any group in that you can help, you're going to turn around and have it so that you can change things as smoothly as you possibly can.

The defect is of course the medical profession has no strong feelings one way or the other on this. It's just felt to be more convenient and in line with the other ways it is being done with the other Acts, I understand. We don't have any strong feelings.

MR. GREEN: You don't have any problem dealing with the specific requirements that are set out in the present Act?

DR. EWART: No. One thing about it, it would probably be better for the people of Manitoba in that there could be a quicker movement in certain areas to change requirements, for example as I mentioned for psychiatrists or anaesthetists or something like that, but that might be a quicker response from government for this.

MR. GREEN: Couldn't that be made available by having a list that now entitle a person; if I'm qualified under that list I'm entitled and then having a rider or such further enabling provisions — just listen to me — I'm worried about the restriction, not the reverse. In other words right now a person knows that if he meets these requirements he has the right to be admitted. This section that you have can restrict that by a Lieutenant-Governor-in-Council. So to get what you say to make it more amenable, if you had that list plus such additional categories as are made available by the college on request to the Lieutenant-Governor-in-Council, that would satisfy your requirement.

DR. EWART: Yes, I think so. It's a little complicated for me but I think it is.

MR. GREEN: Well if I'm too complicated you tell me where I'm complicated.

Dr. Ewart, I also want to ask you whether it is necessary for the college to have the right to suspend a doctor or a race from the registrar of doctors; a doctor who has done something which in the opinion of the college is perhaps wrong but which has nothing to do with the delivery of health services to the patients of the Province of Manitoba?

DR. EWART: I guess the difficulty there is defining who decides what makes the difference as far as the delivery of health care to the people of Manitoba.

MR. GREEN: Supposing we left that for you to decide but specified that a suspension can take place only as it affects a doctor whose conduct is found reprehensible from the point of view of delivering health services to the people of the Province of Manitoba. We find out that you do so because a doctor has, let us assume, taken three months vacation when you think he should have only taken nine months, then we'll have to live with that until somebody changes it. That might indeed be a bad thing if a doctor takes three months vacation and has his patients being looked after by somebody else for the three months.

What I am concerned with is the college's right to suspend and making findings and interpreting

evidence which has nothing whatsoever to do with medical practice but has to do with whether a man properly kept his accounts, which I happen to think the college is incompetent to adjudicate, because they know nothing about how accounts should be kept or should not be kept; that is not their expertise, their expertise is medicine. So do you need the right to suspend people for doing things which have nothing to do with the practice of medicine?

DR. EWART: Once again Mr. Green, I don't think we're that far apart, in fact I know we aren't. The problem arises as to what the definition is, and we talked this over once before. As to the dilemma we're in, there's some difference in the medical codes and ethics that don't transmit themselves into civil law, I guess. We brought a couple of these up and I don't know what your initial reaction was but certainly, when we deal with certain things in codes we run into problems. This can be, for example, the doctor that is involved with molesting patients or that type of thing; this is the type of thing that, almost certainly in many cases, would go through the civil courts without any problem but, at the same time by the medical ethics, becomes a very significant issue and we might suspend somebody for doing that. Now we feel that is interfering with the practice of medicine by that individual.

MR. GREEN: As a matter of fact, it becomes a problem by the very nature of the discussion of it. For instance, you are aware that I am personally acquainted with a doctor who was suspended because he is alleged to have double-billed, which has nothing to do with the delivery of health services. The college took it upon itself to adjudicate that kind of question which they had no competence to adjudicate. It didn't affect his delivery of services at all and if he double-billed there are civil and criminal remedies to deal with that. Wouldn't the civil and criminal courts be the best place to find out whether he double-billed?

DR. EWART: I would think so if that was the total nature of the case but I'm not aware of the case that

MR. GREEN: Well, I'm telling you, you can believe me, it is the total nature of the case. The college does not need the power to suspend a doctor for that kind of conduct.

DR. EWART: I might add, Mr. Green, I can't speak for that case but I know that most other cases, for example, that come up of that particular type, as you know, are referred to the Attorney-General's Department . . .

MR. GREEN: Excellent.

DR. EWART: . . . if there is something in that line. That has been going on for quite a few years. I don't know the case you're speaking of.

MR. GREEN: I think that's absolutely right. So that the college does not need to have the right to discipline where it's an offence that's looked after by the Attorney-General's Department or where there is

civil liability and where it has nothing to do with the delivery of the health service to the patient. You don't need it.

DR. EWART: I would agree with that up to the point as long as it doesn't. We have medical ethics and the medical ethics are there for the protection of the patient. If it runs into some of those areas in which we believe this interferes with the practice of medicine and the good of the patient, then we believe we should be the ones to decide this. I think that's where our differences lie.

MR. GREEN: No differences till we get to the actual doing of the thing. Now may I ask you whether the following statement would cover everything that is presently in 45 and 57: That the college would have the right to discipline where a doctor or a medical person has conducted himself or herself, in the practice of medicine, in such a way as would constitute a continuing hazard or injustice to the consumer of medical service. Is that what you are concerned with and doesn't that cover everything that is in 57(1)?

DR. EWART: I'd have to look at it to see.

MR. GREEN: Okay.

DR. EWART: I need a copy of what you said. Could this be brought up later, Mr. Green? I'm not trying to hide from any questioning; it's just that you're presenting some fairly big points that I would like to compare.

MR. GREEN: Thank you very much for describing them so. Now one more point, Dr. Ewert. An investigation and an inquiry such as you are now talking about with the investigating committee and the inquiry committee and the committee members and the lawyers — I mean I deal with lawyers and I can see \$15,000 going very quickly for one of these inquiries. That's not out of the way as far as you're concerned. I believe the last one, the one that was discussed last year was about \$15,000; the one that involved a Dr. Schwartz. Am I correct?

DR. EWART: I guess so.

MR. GREEN: Okay, you don't know. I'm guessing too. I think it was about \$15,000.00. Given the fact that we have inflation and maybe more doctors and a more complicated investigative procedure, you might get to \$20,000 without any difficulty.

Now, Doctor, do you really think the judges — and the judges are all members of The College of Physicians and Surgeons, the committee that subsequently makes the decision — should be put in a position that if they acquit the man they pay the costs; if they convict him he pays the costs; therefore there is, at least from what I've heard from the Conservatives for many, many years, an incentive to convict, because they say money is an incentive to do things. Now if the college acquits they have to pay it themselves; every member is assessed if they acquit. If they convict, that poor sucker who is convicted has his name erased from the register; he's also got to pay \$20,000 in costs, whereas if he'd been convicted of a criminal offence he'd have to

pay his lawyer — the other way he has to pay his lawyer too. This way he pays society's lawyer and the judges who have taken time off and the transcript and everything. Is it fair to the man who is being judged that the people who are judging him have a financial involvement in the judgment; if they judge him guilty they get off scot-free; if they judge him innocent, they pay for the costs of this inquiry.

DR. EWART: This is a difficult problem. There is no question that this has been raised, I believe, in the House. I've certainly looked at it and became somewhat involved in it because of the problem it does create. I think that though, when we look back to determine if this has had any effect, if it has made any difference to the convictions, because after all . . .

MR. GREEN: We should ask the convicted person whether it has any effect.

DR. EWART: Yes, well that could be done, I'm not questioning that. But out of 1,600 doctors if it was \$16,000, what would that be? \$100, \$75, it's still money. Or is it a dollar, I'm not quite certain, but it's not a great deal. This has been present for a long time and I think there was a list of 39 cases over the last eight years that came up and of those 39 cases there was I think something like 10 or 11 acquittals. There was another 15 or 20 — if I'm off in my numbers, correct me — that were no-costs and there was six or seven in which costs were put to the patient.

MR. GREEN: A slip of the tongue. What would Freud say?

DR. EWART: That's unfair, Mr. Green, now. So in the experience, we haven't found that. Now I can't argue with the imputed motives there. All I can say is it hasn't come up.

MR. GREEN: No motives imputed. I'm suggesting the college is in a difficult position. If a judge was in a position of whether, if he found a person innocent, he'd have to pay the costs and, if he found him guilty, the person paid the costs, I wouldn't want to stand in front of such a judge just on general principles.

MR. CHAIRMAN: Any further questions to Dr. Ewert? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on this very point. There was a difference of opinion in the nursing bills which I believe you will have looked at, not you necessarily but the people drafting this. Interpretation — I wanted to make sure and I want to get your support to it, that the court hearing the appeal will specifically have to deal again with the question of the costs that may be charged by the college. That is, if the court approves of the college's decision in every respect, as to the discipline of a member, the question of costs awarded shall be separately looked at by the court to adjudicate whether or not that decision was fair. I'm assuming you will not disagree with that.

DR. EWART: No, I wouldn't. I think that would be taken for granted as part of the appeal. I could check if you wish.

MR. CHERNIACK: You're right. You can interpret it that way but I believe there are two interpretations possible. I want your concurrence that, when you're present when we deal with it, possibly we can spell it out a little more specifically if my interpretation is right, and it's a little vague. To the same extent, the provision in your bill, on appeal, is that "the appeal shall be founded upon a copy of the proceedings before the Inquiry Committee". I insist rather strenuously that the court should have the right to decide that there shall be a new trial, we call it trial de novo. In other words, all evidence that appeared before the committee shall be heard by the courts and the court arrive at its decision based on hearing all the evidence, rather than just looking at the proceedings as they took place before your inquiry. Now, my interpretation of your bill does not specifically give the court the right to decide to hear all the evidence afresh and itself hear it, but rather deal with a copy of the proceedings; your Sections 64(2) and (3), specifically (3).

DR. EWART: I would appreciate the opportunity for our lawyer to speak to this. All I can say is I understand that theoretically this is fine but I understand in practice this is just something that is very . . . Well, I'll ask my lawyer if you don't mind.

MR. CHAIRMAN: Yes, you may. Have him come forward to the microphone and identify himself for Hansard purposes.

MR. DICK SCOTT: Dick Scott, Mr. Chairman. There is no provision in the draft Act for a trial de novo, nor was it intended that there be.

MR. CHERNIACK: Would you explain why you do not intend to give the court the right to decide to have a trial de novo?

MR. SCOTT: Because every hearing before the College Inquiry Committee is a hearing on the record. A full transcript is taken; all the proceedings of a judicial inquiry are observed and it is therefore a full appeal on the record. It was thought there was no necessity, in those circumstances, for a trial de novo.

MR. CHERNIACK: Mr. Scott, the complaint is heard, in camera, before a body that is not trained in the judicial process.

MR. SCOTT: Although it has legal assistance, Sir.

MR. CHERNIACK: Oh yes, it may have legal assistance to guide it but not necessarily to keep it objective, which it has to be. In any event, it is done, in camera, so even the legal assistance is, in camera. The witnesses are heard by this body not by the court and you're saying that the court shall be bound to take the proceedings as they are transcribed and not have the opportunity to say we want to hear the witnesses ourselves or any additional or other witnesses that may be called, or a cross examination. You don't want them to have that right.

MR. SCOTT: It's not a question of not wanting, Sir, it's a question of in the opinion of the college — and I'm speaking now for them, not as a lawyer — it was

thought to be unnecessary. Also in light of the fact that all parties including the doctor whose conduct is under review are represented by counsel and have the right to call all the evidence that they wish to call before the Inquiry Committee. It was thought it wasn't something that they wanted to remove, it was something that was thought simply not to be necessary or required.

MR. CHERNIACK: Mr. Scott, suppose the person who has been thrown out of practice can no longer practise, suppose he wants it to be heard de novo, do you still consider it unnecessary?

MR. SCOTT: He would only be thrown out of practice, to use your phrase, either under Section 12 as it stands at the present time or pursuant to the disciplinary process where he would have had a full hearing.

MR. CHERNIACK: He would have had a hearing in camera, doors locked; he would have had a hearing before people who are not trained in the judicial process. In spite of that, you say the college or the college does not think it necessary to make that available to the court.

MR. SCOTT: That's my understanding.

MR. CHERNIACK: You know of course, there are trials de novo in our court proceedings themselves where . . .

MR. SCOTT: In some instances, yes.

MR. CHERNIACK: . . . actually the appellant has the right to decide on the trial de novo even though the hearing was conducted in public and even though it was conducted before a person with judicial training.

MR. SCOTT: I'm also aware that under the Criminal Code there have been recent amendments to reduce significantly the rights of an appellant to a trial de novo; those instances where in the opinion of the court it is in fact necessary that there be a trial de novo.

MR. CHERNIACK: Now that's exactly what I was getting at. I thought I mentioned it. I would like to provide here that the court shall have the absolute right to decide to hold a trial de novo. In other words, the court can make that decision, not the college, not the Legislature but the court in any particular case having reviewed the copy of the proceedings may be persuaded by either side or on its own account, that it would like to have the matter heard de novo. Do you still object to that on behalf of the college?

MR. SCOTT: It's not for me to object or not. I came forward to explain . . .

MR. CHERNIACK: I said on behalf of the college.

MR. SCOTT: . . . to explain the legal position and I think in light of our earlier discussion on the procedure to be followed hereafter that the Executive Committee would probably like to consider the point

further in light of your specific suggestion that it be left to the discretion of the Queen's Bench judge whether in his opinion there should be a trial de novo or not. I think they'd like to go into that further.

MR. CHERNIACK: You will undertake to discuss it and inform us.

MR. SCOTT: I most certainly will.

MR. CHERNIACK: Fine. I have another question for Dr. Ewart then.

MR. SCOTT: Thanks.

MR. CHAIRMAN: Mr. Green, did you have a question for Mr. Scott or Dr. Ewart?

MR. GREEN: Yes, it was in connection with the trial de novo.

MR. CHAIRMAN: Mr. Scott, Mr. Green would like to ask you a question.

MR. SCOTT: Yes, Mr. Green?

MR. GREEN: With regard to the jurisprudence relating to appeals from findings of professional association, would you agree that the jurisprudence is as limited if not more limited with regard to reversals as a Court of Appeal looking at a trial judge?

MR. SCOTT: I have difficulty answering that, Mr. Green, because in my own personal experience, which goes back some six or seven years, there have been only one or two appeals. In fact I can only recall two.

MR. GREEN: Then you wouldn't know though what the jurisprudence is.

MR. SCOTT: In those two appeals, the appeals were not successful.

MR. GREEN: I am going to ask you by way of suggestion, is it not the fact that the Court of Appeal takes the position that it will not readily reverse findings of fact that have been made by a body of a self-governing association and also will not reverse self-governing associations on the question of medical competence, etc?

MR. SCOTT: That is the jurisprudence as I understand it.

MR. GREEN: I suggest to you that that jurisprudence is limited, if anything, more limited than the jurisprudence which governs a Court of Appeal in dealing with a trial judge, in that a Court of Appeal in dealing with a trial judge can reverse the trial judge in any area, even a discretionary area, if they feel that his discretion has been wrongly exercised.

MR. SCOTT: Without getting into a semantical argument, I certainly agree and the jurisprudence indicates that there is a reluctance on the part of an appellant court, in this case the Queen's Bench

judge, to interfere with an opinion of a peer review disciplinary committee.

MR. GREEN: That's exactly the point that I had hoped I could make and I thank you for it. Now I am going to say, is not Mr. Cherniack's question much more relevant than you have made it because you have said that the record is there, the proceedings are there, whereas in a trial de novo the court will consider the issue as if it had not been decided before? Whereas the present appeal, the court considers it as if it had been reviewed by a self-governing association and they will only deal with error, they will not deal with the original issue?

MR. SCOTT: There are two answers that come quickly in mind, both of which unfortunately are repetitive. Firstly, we're all the subject of our own experience as it were and again, in my experience over the past six or seven years every physician who has come before the College Inquiry Committee has been represented by experienced counsel and there has been a very full and exhaustive inquiry where the matter has had to go that route.

Secondly, hearkening back to your other point, I think the reluctance to interfere with the professional judgment of one's peers would be just as strong, if not stronger, whether the right to order a trial de novo existed or not.

MR. GREEN: That's not my question, Mr. Scott. My question is, a trial de novo is a hearing starting at Square One where the judge has to deal with all the issues. It may be that a Queen's Bench judge would not want to order a trial de novo but if we went further and gave the convicted — I say that advisedly — doctor the right to say that he will have a trial de novo, then surely you're not saying that the onus, the consideration of the evidence and what have you is not different on a trial de novo than an appellat jurisdiction from the record. Surely it's different.

MR. SCOTT: It seems to me with respect that that's contradictory of the whole peer review process. Either you're going to have a peer review decision on the meat and potatoes issue or you're not and if you are, then it seems to be rather pointless except in the cases of legal error for there to be a trial de novo. But in view of the argument that Mr. Cherniack advanced, I'm certain as I mentioned earlier that the Executive Committee would like to have an opportunity to reconsider the matter because it's an important issue.

MR. GREEN: When they are reconsidering it I do agree, Mr. Scott, that the review process of trial de novo is much more — and I think that's what you've said — is much less accepting and I certainly agree it should be, of peer judgment which I have reason not to be accepting of, but if I was much less accepting of peer judgment then a trial de novo would be a much better vehicle for me to have in appealing than the present appeal provisions if you accept the fact that I'm not accepting of peer judgment. Is that not right?

MR. SCOTT: If you accept your premise, yes, that you don't accept the concept of peer review, then of course.

MR. GREEN: Mr. Scott, from what I have seen of it, from what I have heard from the Minister, from what I have heard from Dr. Ewart, I am becoming more and more scared silly with this process and the last thing that I would want now is to be judged by the establishment of the law society because of what I see happening with this kind of peer judgment.

MR. CHAIRMAN: Mr. Cherniack, is your question to Mr. Scott or to Dr. Ewart?

MR. CHERNIACK: To Mr. Scott. You've talked about the hearings being conducted with the assistance of counsel.

MR. SCOTT: Yes.

MR. CHERNIACK: There's a section in The Registered Nurses Act which I want to read to you — and in the other nursing Acts that you've already heard about — I'm wondering if you will tell me whether or not the practice of the college has been contrary to the intent of this section. It reads, "The association-solicitor may participate in an appeal before the Board but shall not vote thereat or have participated in the investigation of the matter before the Board".

MR. SCOTT: That is the procedure of the college.

MR. CHERNIACK: Yes. So if it's not in your bill, there should be no objection to including it.

MR. SCOTT: I wouldn't think so.

MR. CHERNIACK: I mean it's obvious that when you say they have the assistance of counsel, then counsel will have to be very objective in the advice. Then I have a question for Dr. Ewart, Mr. Chairman.

MR. SCOTT: Thank you.

MR. CHERNIACK: Dr. Ewart, again the nurses' bills that I've referred to have a section of which I have become fond and I want to know whether you have any objection to its inclusion in your bill. It's Section 7(5) of The Registered Nurses Act and it's in the other Acts as well and it reads: "No person shall be denied membership in the association because of the race, nationality, religion, colour, sex, marital status, physical handicap, age, source of income, family status, political belief, ethnic or national origin of that person."

DR. EWART: But as a person years ago who fought for something along that line, I certainly don't object to that being in, although I understand that's in the present Human Rights legislation.

MR. CHERNIACK: Yes, it is but that doesn't necessarily bind. You see no objection to its inclusion.

DR. EWART: No.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Any further questions to Dr. Ewart? Seeing none, thank you, Doctor for your assistance.

DR. EWART: Thank you, gentlemen.

MR. CHAIRMAN: Is Dr. P.W. Aitchison present?

MR. CHERNIACK: On procedure, it occurs to me that by the time we will have heard the other people on this bill, it will be midnight. I'm wondering whether you shouldn't clarify the position for all the other people who are present and find out particularly whether any of them are from out of town or find it difficult to be present in the day or in the evening for our future meetings. It's a matter of consideration for them.

MR. CHAIRMAN: What is the wish of the committee? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, it would be my suggestion and it's only a suggestion, that we hear representations on this bill to the conclusion of the representations to be made on this bill and that Committee rise at that juncture so that other representatives here and delegations here wishing to make presentations on the agenda would not be unduly held over this evening beyond the point to which they have already been held.

MR. CHAIRMAN: All right, if we follow Mr. Sherman's suggestion we would hear the remaining persons regarding Bill 17, The Medical Act. Mr. Mercier said, just in case we didn't finish all these bills tonight that tomorrow night at 8:00 he has set aside for one more go at them and see if we can conclude them in one more evening.

Mr. Uruski.

MR. URUSKI: Mr. Chairman, just to add to what Mr. Sherman has said. In the event that there is someone from out-of-town that may not be able to be back to make presentations on these bills tomorrow night, other than The Medical Act, or in addition to The Medical Act, that we may hear from them this evening.

MR. CHAIRMAN: Perhaps I can, Mr. Uruski, ask if there are any persons who wish to make representation regarding any other bills, other than The Medical Act who are from out-of-town or any persons who have urgent business tomorrow that they cannot be back with us, if they would come forward and identify themselves we would know what the numbers are. Seeing no response then we will conclude tonight by finishing the representation on Bill 17, The Medical Act and then tomorrow night at 8:00 we will carry on with the remaining bills.

Mr. Boyce.

MR. BOYCE: Yes, Mr. Chairman, on Bill No. 17, I would suggest that if you're going to carry over representation that perhaps you could carry over representation on Bill 17 because this was sent to Committee from this afternoon's session which is most unusual.

MR. CHAIRMAN: Sent from who, I don't know what you're . . . ?

MR. BOYCE: From the House. This bill was before the House.

MR. CHAIRMAN: Oh yes, I see what you mean.

MR. BOYCE: I don't want to be a stickler about the rules but you know I could make a good case that this is unprecedented, that people haven't been able to be advised that this bill was going to be before Committee tonight. I know Dr. Aitkinson wanted to be present and I don't know if an attempt was made to contact him or not.

MR. CHAIRMAN: Well, to your concern Mr. Boyce I would think that all members of Committee would agree that if someone was to be present tomorrow night regarding The Medical Act that we would be obligated to hear them because the bill just got through the House this afternoon and, as you do say, it is not usual that a bill gets passed in the House in the afternoon and is dealt with in that evening. So if someone did show up tomorrow evening and wished to make representation I would be in favour of them being permitted to speak. Is a Dr. P. W. Aitchison present? Sybil Shack from the Manitoba Association for Rights and Liberties? Dr. Shack? My apology, Dr. Shack, I just had Sybil Shack written down.

DR. SYBIL SHACK: Mr. Chairman, I'm not a medical doctor and therefore I don't know with how much authority you can treat what I have to say this evening. I'm sorry too, that because of the lateness of receiving the news of this meeting we did not have copies of our brief for everybody and what you have before you is a draft copy with scribbles in the margin, those of you who have any copy at all. I shall try to be as brief as possible but I can't promise that I'm going to be very brief.

I'm speaking for the Manitoba Association for Rights and Liberties, which I will refer to as MARL for the sake of brevity.

MARL's Legislative Review Committee has examined the proposed Medical Act with a view to identifying and making recommendations regarding possible infringements on the rights of Manitobans. We recognize that not only medical practitioners but their patients and others are affected by this legislation.

The brief therefore deals first with the rights of doctors and, secondly, with the rights of patients in the general community. After listening to the presentation and the questions regarding doctors I think you will find that there is some repetition in what we have to say so we'll deal first with the rights of medical practitioners in Manitoba.

MARL is concerned that some sections of the Act will infringe upon or threaten the rights of persons practising medicine in Manitoba, that is, medical practitioners or members of the medical profession as defined in the Act. We've listed specific sections of the Act which causes concern and our recommendations pertaining to them. I'm not going to go into long explanations, I think that our recommendations in many cases are self-explanatory.

First, Part II of the Act, Registration, dealing with Section 12 (2). We've attacked Section 12 from a slightly different direction than that we heard taken this evening. This section spells out an exception to the power given to the College of Physicians and Surgeons to refuse registry and to remove from the register anyone convicted of an indictable offence.

Our objection is that it leaves the right to make an exception to "the opinion of the council". MARL believes that "in the opinion of the council" gives too much opportunity for discretion and I think we're saying here something of what Mr. Green said earlier, the nature of the office of which the member or the candidate for registration has been convicted should alone determine whether registration is given or refused.

So we recommend that the phrase "in the opinion of the council" be deleted from that section.

We move onto Part VI, The Council of the College, Section 32(3) states that, in order to be a councillor, a member of the College must also be a citizen of Canada. We found this clause discriminatory. Citizenship of members in good standing should not make them second class members of their profession and deprive them of the right to participate in policy decisions made by the council on behalf of the College.

We, therefore, recommend that the clause "who is a citizen of Canada" be deleted from Section 32(3).

Part VII, The Standards Committee. The Standards Committee "shall be responsible for the supervision of the practice of medicine by members of the College". Section 38(1) is far too broad we thought. It gives powers to the Committee or any member of it "to inspect books, records and other documents of any member that relates to his practice of medicine", and that we have this underlined, "at his place of practice or elsewhere", and "review the professional competence of any member either on direction from council or on its own initiative".

Since the Standards Committee can, after these drastic measures, only recommend to council that a member serve a period of refresher training — that is it has no powers to discipline beyond that — the powers of search and investigation seem to us to be draconian. I think it wouldn't be difficult to imagine the possibility of harassment of an unpopular member of the profession or of one who honestly holds views differing from those of the majority using the powers that are conferred by this Committee. We're really seriously concerned about that, not that we're accusing the doctors of harassment but doctors are as human as the rest of us, sometimes. At the least the phrase "or elsewhere" should be limited or deleted. Could it be interpreted as permitting a search of patient's property or premises or of pharmacies or of personal effects of patients? "Elsewhere" covers a good deal of territory.

We also suggest that the phrase "on its own initiative" — that's on the initiative of the Standards Committee — be deleted. A review of a doctor's competence in itself suggests a suspicion of incompetence. A suspicion that no matter how innocent he or she is later proven to be could be damaging to him or to her as an individual and a professional person. It should be undertaken only with the approval of the council.

We recommend therefore that the powers of the standards committee be limited, especially in the matter of access to books, records and documents other than in the medical practitioner's place of practice, and that the patient's rights of confidentiality of such records be protected.

We further recommend that the powers of the standards committee be limited to recommending to

the council that a review be undertaken with the decision as to the conducting of the review to remain with the council.

Section 39(1) requires members and associate members of the college to report to the registrar any medical practitioner who is suspected of suffering from a mental or physical disorder that might affect his practice adversely. Now our comment on this one we have some doubt about and we would like you to give it serious consideration.

The provision helps to protect the public but we believe that there should be an exception in the case of a doctor whose patient is also a doctor who is suffering from such a disorder. The section as it stands might prevent a doctor who sorely needs it from seeking medical or psychiatric help from a colleague. If doctor-patient confidentiality were not to be honoured when the patient is also a doctor there might be more serious consequences to the public than if Section 39(1) were not in the Act at all. More knowledgeable people than we are may be able to devise a solution for this problem.

Until they do, we recommend that a section be inserted into the Act specifically exempting a member of the College of Physicians and Surgeons from reporting a doctor who is a patient of his or hers, although he may consider the doctor-patient to be suffering from a mental or physical disorder that might affect his practice adversely.

I'm moving through this very rapidly because of the time element. I would like to expand but won't.

Section 45 reads as follows:

Where, in the opinion of the complaints committee or the registrar a member

- (a) either before or after he's become a member has been convicted of an indictable offence; or
- (b) is alleged to be guilty of professional misconduct or conduct unbecoming a member or criminal conduct whether in a professional capacity or otherwise; or
- (c) is alleged to have demonstrated incapacity or unfitness to practise medicine and so on . . . I won't read the rest of it.

The committee or the registrar shall refer the matter to the investigation chairman for his review and recommendation.

None of (a), (b), or (c) is a circumstance about which an opinion really has to be formed. Conviction of an indictable offence is an established fact. The allegations of (b) and (c) have been made; presumably they have already come to the attention of the complaints committee and the registrar and have been screened beforehand. Doctors and complainants both deserve to have allegations investigated for the protection of the reputations of the former and the rights of the latter to the best medical care possible. If, however, it is believed necessary to allow for some discretion in the matter of referral, the word "shall" might be changed to "may" and this removes part of it and allows discretion in another area.

In (b) of this section the words "criminal conduct whether in a professional capacity or not" should be deleted. We believe that "professional misconduct or conduct unbecoming a member" covers the ground sufficiently and gives the council enough scope to protect the public adequately. I think that point has already been made this evening. Nor is it the

function of the complainants committee or the registrar to determine what constitutes criminal conduct. The term covers many kinds of activities, not all of which might disqualify a doctor from practising his profession, and again, this point has been made.

We recommend that the words "in the opinion of the complaints committee or the registrar" be deleted from the opening clause of Section 45 so that it reads simply "where a member".

We further recommend that in (b) of section 45 the words "criminal conduct" be deleted, so that the clause reads: "is alleged to be guilty of professional misconduct or of conduct unbecoming a member", which would cover criminal conduct certainly if it were of that nature.

We also suggest that if some discretion is desired in the matter of referral, the word "shall" be changed to "may".

Part IX, The Inquiry Committee. The Inquiry Committee is really the trial. This section sets up an inquiry committee which shall be responsible for the holding and conduct of inquiries. The council appoints the committee, presumably from its membership, and is also directed "from time-to-time" to add lay persons. That means that the entire membership of the inquiry committee is selected by the council including the lay persons. We suggest that the inquiry committee should have some independence from the council. Appointment of lay members by the Minister as representative of the general community might avoid possible allegations of bias in the setting up of an inquiry committee.

Section 52(2), five members of the inquiry committee may be named by council to hold an inquiry and three members including at least one lay person shall constitute a quorum.

We suggest additionally that the number or proportion of lay persons on the Inquiry Committee be specified and that the terms of office of all members be specified so that the committee does not become a panel of judges, either with unlimited tenure or with tenure at the whim of either government or council. Appointment of lay persons by the Minister and recognized terms of office for all members would help ensure independence from the council and reduce suspicion of bias. Appointments and terms should be staggered to maintain continuity.

We recommend a Standing Committee of Inquiry with strong lay representations, the lay representatives to be appointed by the Minister in order to minimize suspicion of bias, a set proportion of lay persons should be required in order to constitute a quorum so that no meetings of the Inquiry Committee can be held without the presence of some lay persons.

Now 52(2) suggests that there should be a lay member when an Inquiry Committee is set up. However 52(3) cancels that out because it states that if the lay person isn't able to attend, the inquiry should go ahead anyway.

55(1) gives council or any committee thereof power to suspend a practitioner's licence pending the disposition of the inquiry. Though the registrar is instructed to serve the notice of suspension "as soon as practicable after the suspension" there's no time limit set for the opening of the inquiry. We believe

that a medical practitioner whose licence has been suspended has the right to prompt inquiry but should also have the right to ask for an extension of the time limit set if he needs additional time to prepare his case.

We therefore recommend that there be a section of the Act stating that an inquiry must be opened at a fixed period of time following the service of notice upon the medical practitioner being investigated and that the time limit may be extended at the request of the member being investigated or by mutual consent of the Inquiry Committee and the member.

57(2), and this has been dealt with too — the levying of costs — we tackle it in a slightly different way. Section 57(2) — this clause gives the council the right to levy costs against a member who's been found guilty of an offence. These costs may include all or any part of the costs and expenses incurred by the council and an investigation. We suggest that this provision should be reconsidered. It's too broad in its scope. If the council is given the power to levy costs it should at least have to apply to court for permission to do so. Or a tariff of costs might be set up under regulations to avoid possible bias or possible double punishment for the same offence if the member has already been found guilty of an indictable offence.

If I heard Dr. Ewart correctly, \$16,000 didn't sound like a lot of money to him. Well as a pensioned teacher it sounds like a lot of money to me. We think as a committee that this whole question of costs should be re-examined.

Section 58(1) and (2). These sections provide for the employment by the Inquiry Committee of such legal and other personnel as it needs to execute its duties and for the member under inquiry to retain counsel and "to adduce evidence, examine and cross-examine witnesses at the inquiry". We've just been assured this evening that in practice a lawyer cannot act both as prosecutor or does not act as both prosecutor and legal counsel. We think that that practice should be enshrined in law. Therefore we recommend that during the course of an inquiry the same person should not act as both prosecutor and legal counsel. That should be written into the Act. — (Interjection)— Enshrining your practice in law.

Part XIII — Offences and Penalties. Section 68 reads: "Where a person who is convicted of an offence against any provision of this Act does not, within 14 days after conviction, pay the fine imposed he is liable to imprisonment for a term not exceeding one year". Well if the fine is a heavy one and he's already paid \$16,000 or \$20,000 in costs he may not have the money or he may not be able to raise it within 14 days.

We believe this section is discriminatory and runs contrary to current thinking that there should be alternatives to imprisonment for non-payment of fines. Imprisonment is a clumsy instrument for the collection of fines and remains the last remnant of the concept of debtors' prison.

We recommend then that an alternative to imprisonment for the non-payment of fines be written into the Act.

I'm sorry that I have to present this next section because Elizabeth Semkiw who was going to present it for us, is at present a patient in the hospital and she would have been much more qualified to present

this part since I'm one of those fortunate people who's never spent a night in the hospital in my life.

The Rights of Patients in Manitoba — Since The Medical Act deals largely with the self-disciplinary procedures of medical practitioners, the greater part of MARL's presentation has dealt with the protection of the rights of individual doctors. The medical profession is highly respected in Manitoba as elsewhere and our recommendations regarding the rights of patients in no way reflect upon the integrity and devotion of the vast majority of medical practitioners in this province.

One of MARL's most active committees is the committee on patients' rights. It is working to develop a Patients' Bill of Rights. This brief however deals only with protection of patients' rights as touched upon in The Medical Act.

From time to time, for example, we have received indications that patients' complaints against doctors have met with short shrift, or that the complainant does not learn whether any action has been taken as a result of a complaint, or what action has been taken. The allegation has been made, especially of closed professions, that such professions tend to protect themselves and their own against outside criticism. One way in which this can be done is by keeping private information to which the public should have easy access. Another is to surround the practice of the profession with a mystique and a language which effectively shut out lay persons and to handle complaints against members privately and with brotherly — I should probably say brotherly and sisterly — concern. Even if bias against a complainant does not exist, it can easily, too easily, be seen to exist or seem to exist, especially when complaints and inquiries are handled by bodies which have minimum input from peers of the patient or from other non-professional people. Much of this brief discusses the need for more openness in dealing with patients' complaints and patients' concerns.

The inspection of the register — Bill 17 is an improvement of the present Act which states that the medical register may be inspected by any member. Bill 17 says that the register shall be open and may be inspected at any time. It does not however in Section 11 spell out or make perfectly clear that it is open to the public and may be inspected by any member of the public. Access to the register enables a patient or a prospective patient to note the qualifications and specialties of a medical practitioner. It also provides a form of accountability to the public.

We recommend therefore that Section 11 of the new Act make it clear that the register of the medical profession is as accessible to the public as it is to members.

Confidentiality of Medical Records — Sections 47 and 48 and Section 38(1) refer to the powers of the investigation chairman and of the standards committee to inspect the records of medical practitioners. We believe that there should be a specific statement to the effect that confidentiality of patients' records must be respected. Earlier in this brief we suggested that the powers of search and inspection are too broad and too loosely defined in terms of doctors' rights. We are equally concerned that in the earnest effort to discipline their colleagues

the investigation chairman or the standards committee might seriously infringe upon the rights of patients.

We recommend that persons, be they medical practitioners, counsel or others who in the course of their duties as members of or advisors to committees of the council who have access to patients' records, are under legal obligation to maintain the confidentiality of such records.

We further recommend that access to records and other documents pertaining to patients be limited to the area of the medical practitioner's conduct which is under investigation. That is, they shouldn't be poking around as the police sometimes do to find something that is not related to the particular incident that's being investigated.

Lay Representation on Committees of the Council — Some of the recommendations we have made with the objective of protecting the rights of doctors also offer protection to the rights of patients. For example, a greater involvement of lay persons on both standards and inquiry committees could protect doctors from harassment by their peers. Such involvement might also insure that complaints which seem frivolous or minor to professionals are recognized as having importance to the patients who make them. Now this is the point that has been made to us by a number of people that the complaints committee or the persons to whom they make complaints, brush these complaints aside as being of little importance though there of vital importance to the patient and deserve some investigation. More infringements of patients' rights or more of what patients consider as infringements of their rights might just happen to reach the investigation chairman if the majority of members of the complaints committee were lay persons and if all lay persons were appointed by the Minister rather than by the council.

On the inquiry committee, Section 52(1), the council is required only to add lay persons from time to time and only one lay person by implication need be named to the five member committee actually holding the inquiry. Though Section 52(2) states that "three members including at least one lay person shall constitute a quorum" the section is almost nullified as I pointed out, by Section 52(3).

Lay persons have little enough input as far as the council itself is concerned, being only four of 23 members. Of these four, that's Section 31(1), two are appointed by the council itself, which may to some extent reflect on their credibility as citizens-at-large without bias. In addition, the four-year term of office of the lay members may be terminated earlier by the Lieutenant-Governor-in-Council or by the Council of the College of Physicians and Surgeons as the case may be, that's Section 31(5). This last fact alone tends to lower the status of lay members, to make them second-class members of the council. No reason is set forth in the Act for the termination of lay persons' terms before they have run their course.

We recommend that:

- (1) lay members of council and of committees of council be appointed by the Minister as a representative of the general public, and not by the council.
- (2) lay members of the council and of committees of council have the same status on the council and

the committees as members of the college and that their tenure may not be terminated except for unbecoming conduct or conflict of interest.

We further recommend that on the inquiry committee there be more stringent safeguards for lay input through (1) ministerial appointment of lay persons on the committee, and (2) the mandatory presence of one or more lay persons for a quorum of every meeting of a committee actually holding an inquiry, that is, the deletion of Section 53(3) from the bill. That by the way was added since last year and in Bill 63 that clause did not appear. It was added to Bill 17 this year.

Process. The whole process of laying a complaint and following it through to the conclusion of the inquiry committee is complex. We have a schedule here. I'm not going to bother you with it now but you'll get it when you get our brief, I hope tomorrow.

Although Section 53(1) of the Act might be interpreted as giving the council the right to bypass the preliminary steps of complaints committees and investigation chairman and to set up an inquiry committee without recommendation from the investigation chairman, we suspect most, if not all, patient's complaints passed through the hands of the complaints committee are settled at that level if possible and that only those where the complainants are determined not to settle, or those that have reached public notice, or appear of major importance to the complaints committee, get as far as the investigation chairman. The investigation chairman seems to play the role of the police. He may require the member under investigation to produce books, records, papers and other documents, as we noted in Sections 47, 48, and may call upon the member under investigation to appear before him as he may call upon any other member of the college. The inquiry committee, in effect, conducts the trial.

To complicate matters for the complainant, if he or she is a patient or other member of the public the council establishes by-laws of procedure and terms of office. These will not appear in the Act but contribute to the complexity of the process of laying a complaint — this is true also of regulations. It is hard to imagine an aggrieved patient proceeding beyond the complaints committee stage without legal advice which is costly and time-consuming; it's costly, as Mr. Green has pointed out. Indeed some valid complaints and grievances may not even reach the complaints committee because unsophisticated people — and most of us are unsophisticated in the areas of medicine and law — either do not know how to place a complaint or to voice a grievance. We do not pretend to know how the procedure for laying complaints or voicing grievances can be simplified; we do believe that grievances that are relatively minor to begin with can be aggravated and take on weight beyond their due if they do not receive the consideration they should when they first come to the attention of the people who can do something about them. As one of our members put it, "If the brush fires are put out the forest fires won't develop".

Nowhere in the Act is there specific provision for feedback to the complainant so that he may know what decisions are made regarding his complaint at each stage of the investigation and the reasons for

the decisions. Our Patients' Rights Committee has suggested to us that many of the frustrations patients feel could be eliminated if they received more information and more explanation regarding the progress of their complaint through the system.

We recommend that the process of handling a complaint be simplified and that decisions made regarding it, and the reasons for the decisions, especially at the complaints committee and the investigation chairman levels, be conveyed to the complainant. We make the suggestion but not a firm recommendation until we've had time to consider the matter further, that a medical ombudsman might facilitate the preliminary stages of handling complaints. You'll be relieved to know that I'm reaching the end of this.

Section 41 reads: "The council may appoint a committee to be known as the Program Review Committee which may investigate and inspect, on behalf of the council, all diagnostic and treatment facilities in which services are performed by registered medical practitioners in Manitoba, including those which are operated by the Federal, Provincial or Municipal Governments and those facilities that are approved under The Manitoba Hospitals Act where there is a request from the Federal, Provincial or Municipal Government concerned".

With all due respect to whoever drafted that Clause, this section is ambiguous in its wording. Does the last Clause refer only to those facilities that are approved under The Manitoba Hospitals Act; to those which are operated by the Federal, Provincial or Municipal Governments in those facilities that are approved under The Manitoba Hospitals Act; or the whole works? Whichever interpretation is accepted we're unhappy with the Section. We believe that the Program Review Committee should be a standing committee and should have the power to investigate and inspect without the need for a formal request from a government. In fact, such investigation and inspection as I'm sure I don't have to tell the people here, may have to override government objections. Requests should be considered regardless of their source, whether they come from individuals, citizens' groups, professional bodies. Although of course such requests don't necessarily result in a full review they should at least be considered.

We recommend that the Program Review Committee be a standing committee of the council and that the Clause, "where there is a request from the Federal, Provincial or Municipal Government concerned" be deleted.

This is the last Clause we deal with: Limitation of Action Against Members, Section 61 reads: "No member of the college is liable in any action for negligence or malpractice by reason of professional services requested or rendered unless the action is commenced within two years from the date when, in the matter complained of, those professional services terminated".

This provision has, on more than one occasion, led to gross injustice. Members of the Legislative Assembly sitting here, I'm sure, remember a case not too long ago where this limitation did cause gross injustice. Though a period of two years seems to be a reasonable time in which action may be taken, there have been cases in which the cause for the

action did not surface until the two-year period had elapsed, or patients have been ignorant of or misled regarding their rights to action.

The Limitations of Actions Act provides, in Part II of the Act, for extension of the limitation period. We suggest that consideration be given to include similar sections in The Medical Act, or to make clear that Sections 15 and 16 of The Limitations of Action Act apply to actions brought under The Medical Act.

As a minimum, we recommend that when material facts are discovered after the two-year limit, or other just cause can be proven for the extension of the limit, the court may grant an extension of the period within which an action may be commenced.

We recognize the fact that many of the points we've raised in this bill apply equally to other professional bills in one form or another. We would like to have the opportunity to make representation on those and, if we cannot do that, either because we don't have the facilities or you don't have the time, we would like to mention the fact that the matter of lay representation, the matter of confidentiality of records and the right to protection of both doctors or professional people and of the public should be taken into account in examining those other Acts.

We respectfully request your consideration of our recommendations and we thank you devoutly for the patience that you have shown in listening to us at this hour of the — I was going to say morning, but we're still two minutes off the morning. The members of our Legislative Review Committee who worked on this were Tannis Cohen, Richard Elson, Edward Lipsett, Norman Rosenbaum and I, who acted as co-chairman.

Thank you very much.

MR. CHAIRMAN: Dr. Shack, would you permit questions from members of the Committee?

DR. SHACK: Yes, certainly if I can answer them.

MR. GREEN: Thank you very much, Dr. Shack. May I say I'm very pleased to hear that you are in excellent health and you have shown it tonight by your patience.

DR. SHACK: I have trouble hearing you, sir.

MR. GREEN: I say, you have shown it tonight by your patience. I'm very happy to hear that you are in excellent health. You say you've never been in a hospital in your life and I say it should continue that way for . . . (a hundred years).

May I ask you whether, under Section 12(1) and 12(2), it would not be more appropriate to just eliminate the Sections? Then the discipline that is intended there is all available under Section 57. You've expressed a concern with the discretion allowed under 12(2), that it permits too much discretion to the College as to which criminal offence they're going to erase for. I have the same concern but my question is, isn't the concern better resolved by just eliminating the power to erase for the mere commission of a criminal offence and have it provided for under 57, which deals with the general provision?

DR. SHACK: Yes, I might agree with you. On the other hand, I think we also want to make sure —

excuse me, I have to find my own place on the paper here. We would like to eliminate "in the opinion of the council" as it applies in the other Sections as well.

MR. GREEN: In the other Sections as well. But you're . . .

DR. SHACK: We think that none of these things are a matter of opinion, that the allegations have been made and therefore they should be investigated. Now they may be thrown out of court or they may not go beyond the first stage of investigation, but we believe that both the complainant and the doctor against whom the complaint is leveled, deserves to have those allegations cleared.

MR. GREEN: Okay, there's just one other question that I'll labour you with, and that is you dealt with confidentiality. My impression is that, vis-a-vis the patient, confidentiality has been carried to the extreme in that a patient cannot get copies of their hospital records. Now you would certainly want to extend . . .

DR. SHACK: Excuse me. We are talking about confidentiality in terms of making these records public. Since the matter of access to hospital records is not in The Medical Act we didn't deal with it here. You notice that under the section of patients' rights, I said specifically that we were dealing only with those rights which we thought were being infringed upon by this Act; that we are preparing a patients' rights bill in which these other matters will be raised.

MR. GREEN: You're quite right, Dr. Shack, that you have tried to maintain relevance and I have tried to go beyond it.

DR. SHACK: Well, I thought that at two minutes after twelve we shouldn't go beyond it, with all due respect, Mr. Chairman.

MR. GREEN: All right, but I do want to deal with this one short question and it will be the last question because the confidentiality of patients' records has been taken to the extreme that the patient can't get them. You wouldn't want it to go that far.

DR. SHACK: I thought I answered that. I said we spoke of confidentiality in public terms and we did not mention the patients' access to records because it really didn't come under the terms of this Act.

MR. CHERNIACK: Just on confidentiality, you didn't refer to Section 63. Do you feel that's not adequate?

DR. SHACK: Just let me look at it. Yes, but I think that when we looked at it we also felt that the item about confidentiality should be written in the very sections where access is being given to those records.

MR. URUSKI: Dr. Shack, in your brief you mentioned, concerning Section 39(1), about the doctor-patient confidentiality where the patient is another doctor and that this information should not be passed on to the College. It brings to mind the

information where a doctor who examines a patient's eyesight or heart disorder is required to pass that information on to the driver licensing, to the Motor Vehicle Branch, with respect to his or her physical or mental capabilities, yet you would say this is going too far with respect to the medical capabilities of a doctor who is a patient. How do you feel about that provision in The Highway Traffic Act versus this provision in this Act?

DR. SHACK: Well, I've always had some doubts about that provision in The Highway Traffic Act. I can see, if the case is extreme, it might be necessary but I have some concern about that too.

About this business of the doctor who is a patient, as I said in our presentation, we had some doubts about that but the point was made quite strongly by some members of our Committee that doctors are in a particularly vulnerable position in that regard, that it is very important that they receive the treatment and that they are often reluctant to receive the treatment.

I remember reading a newspaper item, I think it was last week, about doctors who suffered from alcoholism and who were reluctant to take treatment. I think that if they knew that their doctor would report them to the Registrar they would be even more reluctant to take treatment. Now this is one area in which we have a question mark. We are bringing it to your attention as something that should be considered.

MR. CHAIRMAN: Any further questions to Dr. Shack? Seeing none, thank you kindly, Dr. Shack, and I tell you that if you wish to appear on other bills we will be meeting again tomorrow night.

DR. SHACK: Thank you.

MR. CHAIRMAN: Manitoba Health Organizations, Shirley Seidel.

MS. ELEANOR DAWSON: Good morning, Mr. Chairman. My name is Eleanor Dawson, I am counsel to Manitoba Health Organizations and I am appearing on behalf of MHO this evening.

Manitoba Health Organizations is an association of 156 members of personal care homes and hospitals and their concerns are solely from the point of view of such facilities. You will be pleased to know that this evening I only come before you with a concern as to one subsection in Bill 17, that being Section 40(1) dealing with the creation of a Program Review Committee. The section requires that the council may appoint a committee to be known as the Program Review Committee which may investigate and inspect, on behalf of the council, all diagnostic and treatment facilities in which services are performed by registered medical practitioners including approved hospitals under The Manitoba Hospitals Act . . .

MR. CHAIRMAN: Could we have a little more quietness in the room, please? Would you carry on, please?

MS. DAWSON: . . . where there is a request from the Federal, Provincial or Municipal Government concerned. The section is of significance to health

care facilities because, where the Program Review Committee reports that a facility does not meet required standards, an investigation may be held, the result of which may be to close down a health care facility. In view of that consequence, there is concern as to a lack of specificity as to the events which trigger the inspection by the Program Review Committee.

The Act, in the last two lines of Subsection (1), refers to a request from the Federal, Provincial or Municipal Government concerned but does not provide as to the element or the organ of government charged with the responsibility for organizing or requesting the inspection. We would request that the section be clarified.

One clarification which the Committee might wish to consider is in the case of hospitals under the jurisdiction of the Provincial Government, the request be made by the Minister as defined in the Act. In the case of facilities falling under federal jurisdiction, that it be a specified Minister of the Federal Crown.

Mr. Chairman, those are my comments for this morning.

MR. CHAIRMAN: Would you permit questions?

MS. DAWSON: Certainly.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I generally have concern about the idea of an investigation into the practices or the facilities by only registered medical practitioners. I should think that nurses, for example, might know a lot more about how to approach certain problems within hospitals and other, maybe a straight administrator would. I wonder about any other mechanism whereby there could be some kind of a review committee that is not necessarily one of the council's. I visualize the possibility of a health team made up of doctors, nurses and I don't know what other personnel or expertise could be used. Is there any other legislation where this could be taken care of rather than just a self-appointed investigation by the council itself.

MS. DAWSON: The difficulty is that, in candour, my instructions relate only to the legislation before the Committee this evening which deals solely with The Medical Act in giving powers to the College. It would be possible for me to request input from Manitoba Health Organizations but I'm afraid I'm not instructed to answer that question this evening.

MR. CHERNIACK: You asked for clarification and it seems to me the only thing you suggested was that only the provincial should have the right to request a review of hospitals under provincial jurisdiction, only municipal over municipal jurisdiction. To me that doesn't make sense. The Minister of Health is responsible for health in the entire province and I should think he should be involved in investigation of any hospital of any nature, private — if we have such and I think we do — and municipal or federal. Now, you're saying only the jurisdiction shall have authority to request it.

MS. DAWSON: If counsel to the committee were satisfied as to the constitutionality of giving the

Minister of Health of the Province of Manitoba jurisdiction to request such investigation over every facility in the province I do not anticipate that Manitoba Health Organizations would have any objection thereto.

MR. CHERNIACK: So what's the problem?

MS. DAWSON: The problem is that 40(1) as presently constituted refers to a request being made by a government. It doesn't specify, in the case of the Provincial Government, whether that be exercised by the Manitoba Health Services Commission, for example, as a delegate of the government, were it be by the Lieutenant-Governor-in-Council, whether it's to be by a Minister of the Crown. The only request that we make is that whoever is charged with that responsibility be clearly set out in the Act.

MR. CHERNIACK: I'll let the Minister worry.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I wonder if I could just follow up on the point with the delegation from the Manitoba Health Organizations and ask her whether she feels, or the Manitoba Health Organizations feel, that there is ambiguity with respect to this subclause as described by the Manitoba Association for Rights and Liberties in their brief a few moments ago. I was interested and concerned in the position that the MARL brief took and the criticism they made of this section on the grounds of ambiguity. I would just like confirmation from the MHO that they don't read ambiguity or they don't perceive any ambiguity in the wording. I had not in fact perceived any ambiguity in it myself on initial examination but the MARL brief seemed to indicate that there might be some ambiguity and I would ask the MHO, regardless of the fact that they feel it's incomplete and not specific enough, whether they feel that it is clear and understandable.

MS. DAWSON: No, Mr. Chairman, it would be the position of Manitoba Health Organizations that, as drafted, the section would be open to the interpretation that the last clause "where there is a request from the Federal, Provincial or Municipal Government" could apply not only to the case of approved hospitals but also back to diagnostic and treatment facilities which are under the jurisdiction of Provincial or Municipal Governments.

MR. SHERMAN: Mr. Chairman, so that the MHO is suggesting that the wording is rather cumbersome and unclear too.

MS. DAWSON: Yes, Mr. Sherman.

MR. SHERMAN: Well, I think it was a good point made in the MARL brief. As one rereads it it does appear to take on that ambiguity. The MHO confirms that and certainly the section should be looked at for clarity, independent of the specific aspect raised by the MHO, relative to designation of a Minister or an agency or an office of government and we will look at that in terms of clarifying the language. Certainly the last clause in the subsection, it's my

understanding that it's supposed to apply only to those hospitals approved under The Manitoba Hospitals Act, not to the health facilities referred earlier in the clause and that language should be clarified.

MS. DAWSON: On balance, that interpretation may well be the stronger because the previous jurisdiction of Provincial or Municipal Governments makes no reference to the Federal Government which is referred to in the last line, which would suggest that Federal, Provincial or Municipal Government refers only to the approved hospital but there is, I would submit, still an ambiguity in the section, aside from the concern previously voiced as to the ambiguity as to what constitutes government, what agency, what individual.

MR. SHERMAN: Thank you.

MS. DAWSON: Thank you, those are my comments, Mr. Chairman.

MR. CHAIRMAN: Any further questions to the delegate? Seeing none, thank you kindly.

MS. DAWSON: Thank you.

MR. CHAIRMAN: Dr. Morison, did you wish to make representation?

MR. J. MORISON: That wasn't my intention, sir. I told the people that I'd be available to answer questions and I presume that's going to come up later but I wouldn't turn down . . .

MR. CHAIRMAN: All right, thank you, sir. We will I understand meet again tomorrow evening at 8 o'clock and as I said earlier, if persons wish to make representation regarding Bill 17, I think it's only fair we hear them.

Committee rise.