



First Session — Thirty-Second Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
LAW
AMENDMENTS

31 Elizabeth II

Chairman
Mr. Phil Eyer
Constituency of River East



MG-8048

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	NDP
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
DODICK, Doreen	Riel	NDP
DOERN, Russell	Elmwood	NDP
DOLIN, Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virden	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNES, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SHERMAN, L.R. (Bud)	Fort Garry	PC
SMITH, Hon. Muriel	Osborne	NDP
STEEN, Warren	River Heights	PC
STORIE, Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
USKIW, Hon. Samuel	Lac du Bonnet	NDP
WALDING, Hon. D. James	St. Vital	NDP

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

Thursday, 1 April, 1982

Time — 10:00 a.m.

MISS CARMEN DePAPE (Clerk of Committees): I call the Committee to order. The first order of business will be to elect your new Chairman. Do I have any nominations? Mr. Penner?

HON. ROLAND PENNER (Fort Rouge): Yes, I would like to move, seconded by Mr. Kostyra, that Mr. Eyler be Chairperson of the Law Amendments Committee.

MISS DePAPE: Mr. Eyler has been nominated. Are there any further nominations? Seeing none, I would ask Mr. Eyler to please take the Chair.

MR. CHAIRMAN, Phil Eyler (River East): The first item of business is to set a quorum. I understand that traditionally 16 members would be necessary to form a quorum. Is that agreeable? Do we have a quorum?

MR. HARRY GRAHAM (Virden): Mr. Chairman, I would like to move that the quorum for this Committee be set at 10.

MR. CHAIRMAN: The quorum will be 10 then for all subsequent meetings. Does anyone have a presentation to make before we start on the bills?

**BILL NO. 3 — AN ACT TO AMEND AN ACT
RESPECTING THE OPERATION OF
SECTION 23 OF THE MANITOBA ACT
IN REGARD TO STATUTES**

MR. PENNER: This is a very straightforward matter and there's really not much more to be said about it than was already said in the House. What it is essentially, is to cover the hiatus that may exist, the gap that may exist in certain circumstances where there is neither a Speaker or a Deputy Speaker, or because there is no Speaker or Deputy Speaker, no one designated by the Speaker or Deputy Speaker to examine and certify translations of an Act. This flows, as I mentioned in the House, from the requirement now — well, it always has been a requirement — but now ascertained, of translating the Statutes of Manitoba from English into French and down the line. In order for the French version to have the legal status that it must have, it must be examined and certified to be an accurate translation. There may be a period of time between the dissolution of the House, the calling of election and the formation of a new government and the election of a new Speaker, there may be a period of time in which there is no Speaker, and it follows, of course, no Deputy Speaker. It's then just a requirement of someone being able to designate who shall examine and certify, and with that explanation I would move — I suppose this is the proper procedure on the clause-by-clause basis — I would move the adoption of Clause 1.

MR. GRAHAM: Mr. Chairman, I don't know where in the statutes it states that we must have a member of

the Legislature to authorize the accuracy of a translation. I would think that that could be more properly be a proper responsibility of one of the officers of the Legislature. If the Honourable Attorney-General can tell me why it is necessary . . .

MR. CHAIRMAN: Mr. Corrin on a point of order.

MR. BRIAN CORRIN (Ellice): On a point of order. I don't mean to interrupt Mr. Graham's train of thought but I think in order to deal with this as expeditiously and rationally as possible, it would be better to withhold remarks with respect to specific aspects of the bill until we reach the section. I say that with all due respect because I think that we're at Clause 1 and I think that really Clause 2 is germane to your concern.

MR. GRAHAM: Mr. Chairman, on the same point of order, I believe I am speaking on Clause 1, and Clause 1 is Section 4.(3) and the added part of it, Clause 2, deals with the commencement of the Act and I would suggest that I am in order.

MR. CORRIN: I'm sorry. I apologize, I look down and I see that I misread the clause numbers and I apologize to the Committee, yourself and Mr. Graham. He is perfectly correct.

MR. PENNER: Could I explain, Mr. Chairperson, to Mr. Graham, it's not intended that it be a member of the Legislature who does the actual examining and certifying. You're quite right, it properly should and would be an official who is competent to do so, but legally that official must be designated by an authority, normally the Speaker or Deputy Speaker as it was contained in the original statute, the Statute of Manitoba 1980, Chapter S207, designated Speaker, Deputy Speaker. Now, we're simply saying, well, if neither of those are around, Attorney-General, but all the Attorney-General would do if it ever arose, I suspect, it would be rare, would in effect designate Mr. Turenne or someone working in Mr. Turenne's department or in the translation section of the Department of Cultural Affairs to be the one to examine and certify. Your point is well taken but that's already encompassed in the wording of Section 4(3).

MR. GRAHAM: Mr. Chairman, the only reason I raised the issue is because I think that in all probability, it would be Legislative Counsel that would do it. No matter what happens it would be on the authority of Legislative Counsel that it would be certified as correct. Now, it may very well be that the Speaker or the Deputy Speaker would be in a position where they wouldn't be able to certify whether or not it was a correct translation, and I think it's putting an undue onus on the Speaker or the Deputy Speaker if that person is not bilingual to sign a letter or to sign an article stating that it is a correct interpretation or translation. So I think that perhaps we should rethink this whole thing and probably remove that rather dubious onus on the Speaker or the Deputy Speaker and

change the whole Act so that the person who may very well for very valid reasons not be able to certify a correct translation and take that onus off his shoulders.

MR. PENNER: Yes, Mr. Chairman, and with respect Mr. Graham has still got it wrong. It is not the Speaker, it is not the Deputy Speaker, and it would not be the Attorney-General, certainly not this one, who actually examines and certifies. It is the Speaker and the Deputy Speaker now who designates a person to do that and the only change would be that in certain very special circumstances where there is not a Speaker or Deputy Speaker, the Attorney-General would designate. Right now the person who is designated is Normand Belair who is on loan to us from the Secretary of State. At some point Mr. Normand Belair will be replaced by someone else, and there may be one or two people who have sufficient competence to do legal translations and legal certification, and that person would be the one designated by the Speaker, Deputy Speaker and now in certain circumstances, the Attorney-General.

MR. CHAIRMAN: Mr. Corrin, did you want to speak?

MR. CORRIN: The same point; Mr. Penner has made the point.

MR. CHAIRMAN: Okay, Subsection 4.(3)—pass; Section 1—pass; Section 2—pass; Preamble—pass; Title—pass.

Mr. Penner.

BILL NO. 4 — AN ACT TO AMEND THE GARAGE KEEPERS ACT

MR. PENNER: Yes, when this bill was introduced and debated on second reading, the Member for St. Norbert, Mr. Mercier, and subsequently the Member for Pembina, Mr. Orchard, raised a question about the need to give adequate notice to owners of motor vehicles of the fact that a lien may be claimed in certain circumstances and equally importantly, what right they might then have to obtain the vehicle and have the dispute between themselves and the Garage Keeper subsequently litigated. I said at the time that I would be bringing into Committee an amendment that I hoped would deal with the concern expressed by them which I thought was an appropriate concern.

There has now been distributed to members of the Committee, proposed amendments to Bill 4. Bill 4 is the one introduced into the House as the amending Act and essentially just speaking to it in general — (Interjection) — yes, what we have is that Section 13 of the Act which was referred to in Section 1 of the original Bill No. 4 was by that original section to be struck out and replaced by Section 13 — no, just to be struck out. Now, in the proposed amendment to Bill No. 4, if you'll just follow through with me, we have a provision that the section in the amending bill is struck out and substituted with a provision which, first of all, repeals Section 11 of The Garage Keepers Act and Section 11 of The Garage Keepers Act simply says that the sale, that is the sale under the lien, may be held at any time after the expiration of two months from the day when the lien first arose.

Now, in order to deal with what is being introduced here, namely, the requirement of a certain written notice, Section 11 will state, "The sale as aforesaid may be held at any time after the expiration of 60 days after the day on which the notice is given to the owner under Section 13." So, we're leading towards a section, as you'll see in a moment, which requires a written notice.

Now, we come in this proposed amendment to Bill No. 4 to the repeal now of Section 13, but we substitute something for the old Section 13 of the Act. The old section 13 of the Act was the one which required a notice to be posted somewhere in the garage. The problem with that as I explained in the House was its ineffectiveness. There it was up on the wall somewhere behind the fan belts and the old spare tires and, if at all visible, covered with grease and usually a notice that pertained to some earlier version of the Act. So, to make sure that the owner of the vehicle knows what his or her or its rights are, the new Section 13, and this is in response to the point raised by the Honourable Members for St. Norbert and Pembina, is as in the paper just circulated, namely, it says that unless, at the time of, or within a reasonable time of the detention or seizure of the motor vehicle, the garage keeper gives the owner of the vehicle a notice in Form 3 which is attached to this bill, or a notice to like effect, because we don't want to make it formalistic. The law should be something that can be used fairly easily and understood fairly easily. Unless that's done, then the garage keeper is not entitled to the lien or the rights given to a lien holder under the Act.

So that, pausing here for a moment, we're saying that if a garage keeper wants to exercise his or her or its right of lien, it must now give a notice and that notice is in Form 3 which I won't read over, but it gives a much clearer detail to the owner of the motor vehicle the fact or notice of the lien and what that owner can do about it.

So, the first motion that I will be making after giving this general explanation encompasses those provisions and then consequent thereupon I will be making a motion that we renumber the original amending bill to fit these new provisions in, and that we have a Section 5 for the addition of that Form 3. So that essentially is what is before you. We started with Bill No. 4; it was given second reading, but there was an undertaking made by myself to introduce an amendment to Bill No. 4. What you have are two motions which will encompass effectively, I think, amendments required to satisfy the concerns which were raised.

At this point, Mr. Chairperson, just give that general explanation leaving some time for any questions on the general points and then I will move the specific motions.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. Before we get into the clause-by-clause part of it, I think it's probably a good time when we're sitting in Committee in a much more informal forum than in the House where you cannot ask the Minister questions and get him to respond in formal debate. I imagine that the amendments to The Garage Keepers Act originally

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came about because of requests from the Garage Keepers Association or whatever they call themselves. Is that a correct assumption?

MR. PENNER: Not to my knowledge.

MR. GRAHAM: I'm talking about previous years. Was there not a request from the Retail Dealers Association or something to have a change made in the Act? I was wondering how it came about in the beginning.

MR. PENNER: No, some time back — Legislative Counsel advises me that the only submission of which he is aware or can recall had to do with the present provisions where the garage keeper could give the owner back the vehicle and still retain his right of lien. Because prior to that, it was a real problem for garage keepers having to store sometimes relatively worthless vehicles at great cost in order to retain the lien. So that there was a change which then allowed the vehicle to leave the premises of the garage keeper and the garage keeper could still retain the lien, but there was no submission as recalled by Legislative Counsel that dealt with the posting of the notice.

The recommendation there — I'm not sure of its origin — but it's one of a number of recommendations which are received from departmental officials who are constantly, together with the Law Reform Commission, reviewing the law and looking at archaic or useless provisions and saying why do we have this? Can't we have something better? And so this is how it comes up the pipe.

MR. GRAHAM: Well, Mr. Chairman, the reason I asked the question is I believe that the amendment that is being made here might have some significance to the garage keepers and I was wondering if they have been notified of the proposed amendment. They would no doubt be notified of the bill itself, but I was wondering if they are aware of the intent of the amendment.

MR. PENNER: Not to my knowledge.

MR. GRAHAM: Well, the only reason I asked the question, I thought quite often we do get public representations in this forum, and if this would have any significant effect on a garage keeper, it might be advisable to notify them of the intended amendment and probably hold this bill for another meeting of Law Amendments Committee.

MR. PENNER: I thank Mr. Graham for that point and suggestion, and I would be quite prepared to put this over for the next meeting of Law Amendments and to contact the association — I presume there's an association — and advise them of the proposed change. I doubt whether there will be much exception taken, but nevertheless we should hear what representations may want to be made, and I'm prepared to go along with the suggestion and just move that this be put over to the next meeting of Law Amendments, or to such meeting as will be sufficient to give notice to the Garage Keepers Association.

MR. CHAIRMAN: Mr. Santos.

MR. CONRAD SANTOS (Burrows): I'm going to second the motion of the Attorney-General. It's moving it over to the next meeting or such other meeting.

MR. CHAIRMAN: Did the Honourable Mr. Penner make a formal motion?

MR. PENNER: Yes, I would move that Bill No.4, if those are the appropriate words, put over to a future meeting of the Law Amendments Committee in order to adequate notice to the Garage Keepers Association.

MR. CHAIRMAN: Is it agreed by the Committee? (Agreed).

The Honourable Mr. Penner.

BILL NO. 5 — AN ACT TO AMEND THE LAW OF PROPERTY ACT

MR. PENNER: Thank you, Mr. Chairperson. Again, this one is very straightforward and I have very little to add other than the explanation given in the House. The Law of Property Act has a long name: An Act Respecting the Law and Transfer of Property. It's an Act which we've had in the statutes of Manitoba for a long time, since 1925 I think, Mr. Tallin, if I'm not mistaken —(Interjection)— right. It's an Act which deals in part with the disposition of real property; it deals with other matters. Prior to the reform of our marital property laws it used to be the case that where a husband and wife — I'll use that particular status relationship — separated but they were both owners of the property, that is, registered as joint owners, then in order to dispose in one way or another of the property, sometimes to give it to one, that one would then pay off the other, or to sell it and divide the proceeds, an application would have to be made under The Law of Property Act, and that is still the case. But The Law of Property Act gives jurisdiction only to a judge of the Court of Queen's Bench.

Now, under The Marital Property Act which is used very very frequently when couples separate and have to have their rights defined with respect to the marital property, very many of those are brought in the County Court, and the county court does not have the jurisdiction to make an order for the division of the real property of the house. So you're faced with this situation where this court of fairly ready access, the County Court . . . a couple might go to that court and be able to deal with everything except the problem of the house and then have to make an application under a separate statute, in a separate court. And that is time consuming, it is expensive, it's now unnecessary. So the proposal then, is to give the judges of the County Court the same jurisdiction as judges of the Court of Queen's Bench under this particular Act. So now, when a marital property matter comes before a County Court Judge, the County Court Judge can do everything. Part under one Act and part under another, it is true, but can give a comprehensive order or orders and the couple will not be put to the time and expense of going to two courts. That's what it's all about, and with that explanation I would move Clause 1 of the amending bill.

MR. GRAHAM: Mr. Chairman, there's nothing in this

change from one court to the other that is inconsistent with the proposed changes in the Constitution, is there?

MR. PENNER: No.

MR. SANTOS: Is there a specific limitation as to the amount?

MR. PENNER: No.

MR. SANTOS: The case that the County Court can take jurisdiction of or will this be consistent with such . . .

MR. PENNER: Well, there is such jurisdictions in terms of contract actions and so on, but this will now confer jurisdiction with respect to this kind of order without limitations.

MR. CHAIRMAN: Okay, 1.(b)(i)—pass; 1.(b)(ii)—pass; 1.(b)(iii)—pass; 1.(b)(iv)—pass; 1.(b)—pass; Section 2—pass; Preamble—pass; Title—pass. Bill be reported—pass.

MR. PENNER: Mr. Chairperson, I formally make the motion on that Section 23 that the bill be reported. If not may it . . .

MR. CHAIRMAN: It'll be reported on Bill No. 4.

MR. PENNER: No, on the first one, on the Order Paper No.3.

MR. CHAIRMAN: Right. Bill No. 3. Bill be reported—pass.

The Honourable Mr. Kostyra.

BILL NO. 7 — AN ACT TO AMEND THE ARTS COUNCIL ACT

HON. EUGENE KOSTYRA (Seven Oaks): Mr. Chairperson, this bill is basically to increase the size of the Arts Council from 12 members to 15 members. The work of the Arts Council since its inception has been increasing. The Arts Council forms a number of sub-committees and it has been reported to me by the council that they've had difficulty working with the present size of the council and it's suggested they increase to 15 members which would better facilitate the work of the Arts Council. Generally the other amendments deal with some sections that were in the act at it's inception that are redundant at the present time. The other change moves away from the fixed terms that presently exist in the Act to terms that would be at pleasure. The one final change is with respect to auditors that would allow the flexibility to have the Provincial Auditor, or an auditor appointed by the Executive Council.

MR. CHAIRMAN: Section 1—pass; Section 2.4(1)—pass; Section 2—pass; Section 3, 5—pass; Section 3—pass; Section 4, 13—pass; Section 4—pass; Section 5—pass; Preamble—pass; Title—pass. Bill be reported—pass.

The Honourable Mr. Kostyra.

BILL NO. 9 — AN ACT TO AMEND THE INSURANCE ACT

MR. KOSTYRA: Mr. Chairperson, The Act to amend The Insurance Act deals with four basic issues as reported and stated in second reading. One is to extend the period of time that action may be commenced against insurer for recovery of a claim from one year to two year; secondly, that monies that are required payable to a minor, at present they're payable directly into the court and then to the Public Trustee; so, what is being proposed here is that it would be paid directly to the Public Trustee. The Act also increases the minimum liabilities limits from 50,000 to 100,000 and there is corresponding changes in other sections related to that. And finally, there's a provision to control the establishment of agencies that are set up for the sole purpose of placing insurance requirements for a single client or a group of clients. These changes are basically keeping in line with changes in insurance law and other jurisdictions in Canada.

MR. CHAIRMAN: Section 1—pass; Is it agreed to pass it page by page? (Agreed). Page 1—pass; Page 2—pass; Page 3—pass; Preamble—pass; Title—pass. Bill be reported—pass.

The Honourable Mr. Uskiw.

BILL NO. 11 — AN ACT TO AMEND THE HIGHWAYS DEPARTMENT ACT

HON. SAMUEL USKIW (Lac du Bonnet): Proceed, Mr. Chairman. Clause by clause, page by page.

MR. CHAIRMAN: Page by page, it's moved page by page, is that agreed? (Agreed). Page 1—pass; Page 2—pass; page 3—pass — Mr. Orchard.

MR. DONALD ORCHARD (Pembina): On the interest section, Mr. Chairman, have the interest rates been decided at prime plus or minus something, or is there a formula in place for determining the interest rates?

MR. CHAIRMAN: The Honourable Mr. Uskiw.

MR. USKIW: As I understand the section on interest holdback, this section merely gives us the authority to establish rates. If the Chair would hold, I would consult with Mr. Dygala.

MR. ORCHARD: I realize it gives authority, but has the Minister got a formula to base it on prime or something like that? Surely it isn't going to be something like 6 percent, it will be relevant to current interest rates, I would take it, and I wondered if the Minister had some idea or possibly a recommendation made as to what the interest levels might be.

MR. USKIW: Mr. Chairman, I assume it's going to conform with other areas within the government system. I'm just advised by Mr. Tallin that it would probably be much the same as under The Builders Lien Act which would provide for something in the amount of what a person would receive if they were to deposit money in a bank of something like that. But we haven't

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really decided that with respect to this Act at this point in time. It's premature.

MR. CHAIRMAN: Page 3 again—pass; Preamble—pass; Title—pass. Bill be reported—pass.

**BILL NO. 13 — AN ACT TO AMEND
THE PUBLIC TRUSTEE ACT**

MR. CHAIRMAN: The Honourable Mr. Penner.

MR. PENNER: Clause by clause, Mr. Chairman.

MR. CHAIRMAN: Clause by clause. Section 1, 13(1)—pass; Section 1—pass; Section 2—pass; Preamble—pass; Title—pass. Bill be reported—pass.
Committee rise