



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

STANDING COMMITTEE

on

LAW AMENDMENTS

31-32 Elizabeth II

Chairman
Mr. P. Eyler
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
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GRAHAM, Harry	Virden	PC
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HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, 10 May, 1983

TIME — 10:00 a.m.

LOCATION — Room, 255, Legislative Building, Winnipeg

CHAIRMAN — Mr. P. Eyler, River East

ATTENDANCE — QUORUM - 10

Members of the Committee present:

Hon. Ms. Dolin, Hon. Messrs. Evans, Kostyra, Mackling, Parasiuk and Penner

Mrs. Dodick, Messrs. Driedger, Enns, Eyler, Filmon, Graham, Mrs. Hammond, Messrs. Johnston, Lecuyer, Malinowski, Nordman, Mrs. Oleson, Ms. Phillips, Messrs. Santos, Scott and Steen

APPEARING: Mr. Rae Tallin, Legislative Counsel

MATTERS UNDER DISCUSSION:

Bill No. 5 - The Surface Rights Act; Loi sur les droits de surface (Passed with certain amendments)

Bill No. 8 - An Act to amend The Corporations Act (Passed without amendment)

Bill No. 9 - An Act to amend The Partnership Act (Passed without amendment)

Bill No. 10 - An Act to amend The Real Property Act (Passed without amendment)

Bill No. 11 - An Act to amend The Registry Act (Passed without amendment)

Bill No. 13 - An Act to amend The Business Names Registration Act (Passed without amendment)

Bill No. 19 - The Survivorship Act; Loi sur les présomptions de survie (Passed with certain amendments)

Bill No. 22 - The Wills Act; Loi sur les testaments (Passed with certain amendments)

Bill No. 27 - An Act to amend The Social Services Administration Act (Passed without amendment)

Bill No. 33 - An Act to amend The Pharmaceutical Act (Passed without amendment)

Bill No. 44 - An Act to amend The Fisheries Act (Passed without amendment)

Bill No. 45 - An Act to amend The Forest Act (Passed without amendment)

Bill No. 61 - An Act to amend The Insurance Act (Passed without amendment)

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BILL NO. 5 - THE SURFACE RIGHTS ACT

MR. CHAIRMAN: Committee come to order. We are considering a list of bills today beginning with Bill No. 5, The Surface Rights Act. What is the will of the committee on how to proceed?

Mr. Parasiuk.

HON. W. PARASIUK: Mr. Chairman, I sent out to all members of the Law Amendments Committee last week proposed amendments to Bill No. 5. I would hope that we could deal with Bill No. 5 first today. It is a fairly long complex bill, because it's the first bill. At the same time, I think that since really there has been a non-partisan approach to this bill, we might be able to go through it fairly expeditiously. I would like to make a short introductory statement and see if the members of the opposition have concerns about the proposed amendments that I put forward, and then we might be able to go through the bill fairly quickly, unless, of course, there are particular matters of dispute that arise with respect to particular clauses. I think that this bill has been reviewed by so many people and over such a length of time that I don't know if we need a minute clause-by-clause explanation and review of this bill. So I am hoping that we will be able to move quickly.

If I might, Mr. Chairman, I would like to thank all the people for their briefs, their written or oral ones, that have been received by members or presented to the Law Amendments Committee. I think it reflects a sincerity on the part of all people involved with this issue to establish a mechanism that might ameliorate the disputes that arise from time to time regarding surface rights.

As I said, this is a non-partisan bill. It is trying to establish a fairer system of dealing with the issues of surface rights, taking into account agricultural, petroleum and community perspectives. It's a difficult thing to do. I've been told that Tiny Tim is going to be in Ottawa next week singing. We might want to bring him here and he could sing "Tiptoe Through the Tulips" with respect to this one, because I think it is a matter of tiptoeing nicely with his ukelele through the tulips between the competing interests of agriculture and petroleum. I know we, as a province, want both to proceed, but at the same time we want both to exist with some type of harmony.

It's a first bill. It will establish for the first time a Surface Rights Board and particular processes under it. It's a bill that is not inscribed in stone. It's evolutionary. We will see how it works over the year and make our adjustments based on the Manitoba experience if further amendments to the bill are required. I don't think I want to defend to the death any proposals that we have put forward, but rather we should look at these in the light of experience over the year and recognize that we are trying to establish a process that works better, have an open mind on it, and make the appropriate corrections next year if required.

We have drawn on other jurisdictions, and we have had the benefit of 10 years of their experience so that's been a big help. But this is Manitoba and some of the situations in Manitoba are a bit different, so we may need some variations to the experiences of other provinces, and only time will tell whether in fact those are needed. But I think we start with good will in establishing the Surface Rights Board. We can argue forever about dotting "i's" and "t's." I suggest we don't do that. I suggest we get the board established. There's a backlog, there's an expectation out there that a board, using its best judgment, will deal with a number of issues that are backlogged. I can appoint the board through the Lieutenant-Governor-in-Council who are fair and experienced in the area.

If people have been in that area for some time, I believe that they know both the agricultural and the petroleum perspectives, and it certainly would be my intention to get people who are acquainted with the agricultural, the petroleum, and what I would call the community or municipal perspectives. There are a number of people in that area of the province who have that background and I'm sure that we will be able to put together a very knowledgeable, fair-minded board.

Given that, the major areas of modification to the bill, are that I will be deleting Section 6(2) - I propose that we delete Section 6(2), subsection (2), regarding specifying qualifications within the bill itself. We'll leave that to the particular judgment of the government involved and people can use the Legislature in commenting on that.

Secondly, we are going to be making modifications to Section 26(3), in that we will be making costs of appearing before the board discretionary to the board, to decide how those costs should be allocated. A lot of the amendments will hinge on the separate legal motion of separating leases from other agreements and there have been modifications in the wording to take that into account. That's more of a technical drafting matter.

Finally, Section 68, towards the end, expands on what can be done by Order-in-Council. This is by regulations and this is done to provide for more flexibility, especially over the course of the first year or two, and if necessary, we certainly wouldn't object to coming back and looking at whether, in fact, some of the flexibility which is provided in regulations couldn't be brought into the legislation a year or two from now.

So, with those introductory comments, Mr. Chairman, I would like to know if other people are interested in making introductory comments and then we could proceed with the specific perusal of the bill.

MR. CHAIRMAN: Mr. Graham.

MR. H. GRAHAM: Thank you very much, Mr. Chairman. First of all, I want to thank the Minister for making his introductory comments and I have to say that while the amendments he has proposed are not numerous, the one that I think is a good one is the amendment to Section 26. I think it's only proper that the board should have the discretionary power to assess cost.

I was a little dismayed to see that the Minister had not seen fit to pay heed to some of the presentations that were made regarding right of entry and the fact

that the present bill leaves a very open-ended arrangement under Section 23, applications for right of entry. There doesn't seem to be any time frame there to give any guidance to the board at all. The reason I'm somewhat apprehensive about that is I believe the oil companies who use law and agreements such as this to their advantage wherever possible, I suspect that most applications for right of entry will not come under Section 23 at all. Most of them will come under Section 27, which I believe the intent of the board was to use that one for exceptional cases. I would suggest that without the proper guidance given to the board for Section 23, that most of the applications will now probably come in under Section 27.

MR. CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I have two or three areas of concern, and I know it comes from the surface rights people as well, because when the presentation was made by the legal counsel for the Surface Rights Association, I think there was an overemphasis made on the part of the membership of the board or who would be on the Surface Rights Board, and because it was dealing with agriculture problems, there was a particular emphasis made that agricultural people be put on that board. I have to say, in listening to it, it was a very convincing argument to me and I would hope to other members of the committee.

Possibly the Minister has indicated, or he has indicated to this point, that giving him a free hand is not all bad, however, I think a firmer indication or a more clear indication of whether there will be more farmers or more agricultural people on the board than oil industry might put to rest some of the concerns of the surface rights people and I would hope that he would further address that at some point in the bill.

Another concern that I have, Mr. Chairman, and that deals specifically with some of the current hearings that are waiting to be held, and in view of the fact that there has been a court decision, as I understand it, that has ruled currently against some of the work or the decisions that have been made by the present mining board, where does that leave the introduction of this legislation? There is no retroactive part in it, it becomes law the day it is proclaimed. What authority is the government giving this board to now deal with current legal decisions that are made? As the Minister may or may not be aware, there was a judgment passed down disallowing entry of an oil company onto a farmer's land?

We also have situations in the oil fields where the right of entry has been given against the wishes of a farmer, and does that make those decisions invalid if oil companies entered against the will of people? Is there anything in this Act that takes care of that situation? I think it's fairly serious, because oil companies have entered properties now when the board, in fact, possibly didn't have the jurisdiction to do so?

I'm not trying to be difficult with this particular legislation, but I hope that it's being dealt with. I hope that it's being dealt with, because I don't want us to be getting into a box on when this bill is proclaimed and possibly there should be some retroactivity in it

so that it can deal with those situations. You have legal counsel and lawyers involved in the passing of this bill, and they should be able to answer those questions.

A third question, Mr. Chairman, and this is in light of the announcements that have been made by the Minister and comments that have been made by interested oil companies or construction companies, who may be prepared to proceed in the building of a pipeline in the southwest corner of the province, will this Act cover the rights or the protection of, or will it protect the landowners when it comes to the laying of a pipeline or spillage from pipelines or that type of thing? Is that well enough covered in this Act? Those are three general areas of concern that I have, and I would hope the Minister could respond in a manner that would put to rest some of my concerns in that area.

HON. W. PARASIUK: If I could deal with the concerns that have been raised; firstly, with respect to Mr. Graham's concerns - Section 27 does require that a company, which tries to use Section 26, as opposed to using the other sections, has to prove undue hardship. I think that provides some guidance for the board to try and ensure that the companies and the surface rights owners use other mechanisms.

With respect to the issues raised by both Mr. Graham and Mr. Downey with respect to the composition of the board. Certainly, I think that if one looks through that area of Manitoba you'll find that there are very few people who indeed haven't got a strong agricultural background. So I would expect that in looking at the qualifications, I would be looking for people who, in a sense, have a good agricultural knowledge. They may not be practising farmers per se, but I think in discussions with them you can determine whether they do have a good agricultural knowledge. It may be that one or two of the members will also have a good knowledge of the petroleum industry, but I think it's a matter of trying to pick people who because of their breadth and depth of experience have the ability to understand the agricultural industry and the petroleum industry.

I intend to be selecting people for this board from that area, and I think that should help provide for a balanced board. I certainly think that it's possible to find people in that area who are fair minded and who will be able to make good judgments. Again the proof of the pudding will be in the eating in terms of the appointments and their performance over the course of the year.

With respect to the question of retroactivity. All Mining Board rulings are made subject to final ruling by the Surface Rights Board as established by this legislation. That retroactivity in terms of the Mining Board rulings goes back to August 1982.

With respect to the question of the pipeline. That is dealt with by another instrument. It's another Act and it's The Pipeline Act that we have in Manitoba here. At the same time, we certainly would like to use the PLUC process, which has been used, I think, effectively with respect to Hydro rights-of-way to ensure that the pipeline rights-of-way protects the interests of the people and the municipalities in the area.

MR. CHAIRMAN: If I might step in here. It seems that some of the members are discussing the substance of

the bill without having decided on a procedure to follow. Last year in Statutory Orders and Regulations during consideration of The Rent Regulation Review Bill, we went through the Act page-by-page with the Minister moving his motions on each particular page where it was appropriate. Is there any — (Interjection) — page-by-page?

Mr. Penner, Page 1.

HON. R. PENNER: Mr. Chairman, I move that Section 1 of Bill 5 be amended by adding thereto immediately before the definition of "battery site" the following definition:

"agreement" means an agreement between an operator and an owner or occupant relating to a lease or to surface rights, but does not include a lease;"

MR. CHAIRMAN: Is that agreed? (Agreed) Mr. Penner.

HON. R. PENNER: I move on the same page, that the definition of "lease" in Section 1 of Bill 5 be amended by striking out the words "surface lease" in the 1st line thereof and substituting therefor the words "lease of surface rights."

MR. CHAIRMAN: Is that agreed? (Agreed) Page 1 as amended. Mr. Penner.

HON. R. PENNER: I think that would fit on Page 2, the next one. The power line would be on Page 2. It comes after (m) right? — (Interjection) — we just passed that. We've passed the first two motions and then we're onto Page 2.

MR. CHAIRMAN: Page 1 as amended—pass; Page 2 - Mr. Penner.

HON. R. PENNER: Thank you, Mr. Chairman. I move that the definition of "power line" in Section 1 of Bill 5, that's on Page 3 - I'm sorry.

MR. CHAIRMAN: Page 2—pass; Page 3 - Mr. Penner.

HON. R. PENNER: Mr. Chairman, thank you. I move that the definition of "power line" in Section 1 of Bill 5 be amended by striking out the words "by an operator" in the 3rd line thereof.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 3 as amended—pass; Page 4—pass; Page 5 - Mr. Penner.

HON. R. PENNER: Thank you, Mr. Chairman. I move that Section 5 of Bill 5 be amended by striking out the words "anything contained in" in the 2nd line thereof.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 5 as amended—pass; Page 6 - Mr. Penner.

HON. R. PENNER: Thank you, Mr. Chairman. I move that subsection 6(2) of Bill 5 be struck out and subsections 6(3) to 6(13) of the Bill be renumbered as subsections 6(2) to 6(12).

MR. CHAIRMAN: Is that agreed? (Agreed) Page 6 as amended—pass; Page 7 as amended—pass; Page 8—

pass; Page 9—pass; Page 10—pass; Page 11 - Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move that subsection 16(1) of Bill 5 be amended by striking out the words "the written agreement as to the rights specified therein of" as they appear in the 5th and 6th lines thereof and substituting therefor the words "a lease of the rights specified therein granted by."

MR. CHAIRMAN: Is that agreed? (Agreed)
I would like to mention a spelling error on Page 10 in Section 12(3), Line 5 in which the word "appointed" is misspelled. Is should be "appointed."

HON. R. PENNER: Do we need a motion for that?

MR. CHAIRMAN: Would you like to move a motion, Mr. Penner?
Page 11 . . .

HON. R. PENNER: Move a blanket motion that all spelling errors be corrected.

MR. CHAIRMAN: Page 11 - Mr. Penner.

HON. R. PENNER: I move, Mr. Chairman, that subsection 16(2) of Bill 5 be amended by striking out the word "agreement" in the 1st line thereof, and substituting therefor the word "lease".

MR. CHAIRMAN: Is that agreed? (Agreed)
Mr. Penner.

HON. R. PENNER: I move that subsection 16(3) of Bill 5 be amended by striking out the word "agreement" where it appears in the 1st line thereof and again in the 3rd line thereof, and substituting therefor in each case the word "lease".

MR. CHAIRMAN: Is that agreed? (Agreed)
Page 11 as amended—pass; Page 12 - Mr. Penner.

HON. R. PENNER: I move, Mr. Chairman, that Section 17 of Bill 5 be amended by striking out the words "by agreement acquire" in the 2nd line thereof and substituting therefor the words "acquire a lease of".

MR. CHAIRMAN: Is that agreed? (Agreed) Page 12 as amended—pass; Page 13 - Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move that subsection 21(1) of Bill 5 be struck out and the following subsection substituted therefor:

21(1) Every lease or agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and the occupant, if any, with respect to any surface right shall be in writing and a copy of the lease or agreement shall be filed by the operator with the board within 30 days after the date of execution thereof.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 13 as amended - Mr. Penner.

HON. R. PENNER: I would move, Mr. Chairman, that subsection 21(2) of Bill 5 be amended by adding thereto immediately after the word "Every" in the 1st line thereof the words "lease or".

MR. CHAIRMAN: Is that agreed? (Agreed)
Mr. Penner.

HON. R. PENNER: I would move on the same page, Mr. Chairman, that subsection 23(1) of Bill 5 be amended by striking out the word "an" in the 6th line thereof and again in the 7th line thereof and substituting therefor in each case the words "a lease or".

MR. CHAIRMAN: Is that agreed? (Agreed) Page 13 as amended—pass; Page 14—pass; Page 15—pass; Page 16—pass; Page 17 - Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move that subsection 26(3) of Bill 5 be amended by striking out the words "be borne by the operator" in the 2nd line thereof, and substituting therefor the words "subject to the regulations be in the discretion of the Board." I believe this has already been spoken to.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 17 as amended—pass; 18 - Mr. Penner.

HON. R. PENNER: I would move, Mr. Chairman, that subsection 27(1) of Bill 5 be amended by adding thereto immediately after the word "board" in the 4th line thereof the words and figures "under section 23".

MR. CHAIRMAN: Is that agreed? Pass.

HON. R. PENNER: Page 18.

MR. CHAIRMAN: Page 18, as amended—pass; Page 19 - Mr. Penner.

HON. R. PENNER: I move that section 30 of Bill 5 be amended by striking out the words "an agreement which grants surface rights" in the 2nd and 3rd lines thereof and substituting therefor the words the words "a lease".

MR. CHAIRMAN: Is that agreed? Pass.
Mr. Penner.

HON. R. PENNER: I move that subsection 35(1) of Bill 5 be amended by striking out the words "agreement between an operator and an owner and between an operator and an occupant" in the 1st and 2nd lines thereof and substituting therefor the word "lease".

MR. CHAIRMAN: Is that agreed? Pass.
Page 19, as amended—pass; Page 20—pass; Page 21 - Mr. Penner.

HON. R. PENNER: I would move that section 39 of Bill 5 be amended by striking out the words "the agreement entered" in the 14th line thereof.

MR. CHAIRMAN: Is that agreed? Pass.

Page 21, as amended—pass; Pages 22 to 24, inclusive—pass.

I would like to note a spelling error on Page 22, clause 40(3)(c), the final line, the word should be “any”.

Page 25—pass.

Another spelling error on Page 24, clause 43(a), the first line, it should be “the land of an owner,” not “the land or an owner”.

HON. R. PENNER: That’s right. Sometimes you can confuse the two; you get some old stick in the mud.

MR. CHAIRMAN: Page 26 - Mr. Penner.

HON. R. PENNER: Yes, the motion I am presently making is with respect to the English version only because the words already appear in French translation. Don’t ask me how that happened; I’m only making the motion. I think that if you were wise, you would ask Gerard if what I say is true.

I would move that subsection 48(2) of Bill 5 be amended by striking out the words “awarding compensation or conferring a right of entry” in the 1st and 2nd lines thereof and substituting therefor the words “conferring a right of entry or awarding compensation”.

MR. CHAIRMAN: Is that agreed? Pass.

Page 26, as amended—pass; Page 27—pass; Page 28 - Mr. Penner.

HON. R. PENNER: Yes, here again, I’m making the motion as it applies to the English version only.

I move that subsection 52(4) of Bill 5 be amended by striking out the word “operator” in the 4th line thereof and substituting therefor the word “owner”.

MR. CHAIRMAN: Is that agreed? Pass.

HON. R. PENNER: You will see in the French version that it says “propriétaire”.

MR. CHAIRMAN: Page 28, as amended—pass; Pages 29 to 33, inclusive—pass.

Page 33, there is another spelling error, Section 64(3), the fourth line from the bottom, the word should be “claim” - c-l-a-i-m.

Page 34 - Mr. Penner.

HON. R. PENNER: There are a number of amendments here to the Regulations section. Mr. Chairperson, I’ll move them one at a time, of course.

I move that clause 68(g) of Bill 5 be struck out and the following clause substituted therefor - actually that would be over on Page 35, I’m sorry - my amendments are not to Page 34, but to Page 35.

MR. CHAIRMAN: I would like to note a spelling error on Page 34, section 66, the second line from the bottom, it should be “land titles” - plural - rather than “titled”.

Page 34—pass; Page 35 - Mr. Penner.

HON. R. PENNER: I would move that clause 68(g) of Bill 5 be struck out and the following clause substituted therefore: “(g) prescribing forms of lease and renewals thereof;”.

MR. CHAIRMAN: Is that agreed? Pass.

Mr. Penner.

HON. R. PENNER: I move that clause 68(j) of Bill 5 be amended by striking out the word and figures “subsection 26(2)” in the 2nd line thereof and substituting therefor the word and figures “subsections 26(2) and (3);”.

MR. CHAIRMAN: Is that agreed? Pass.

Mr. Penner.

HON. R. PENNER: Mr. Chairman, I would move that clause 68(k) of Bill 5 be amended by striking out the words “surface rights agreement” in the 3rd line thereof and substituting therefor the word “lease”.

MR. CHAIRMAN: Is that agreed? Pass.

Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move that section 68 of Bill 5 be further amended by striking out clause (m) thereof and substituting therefor the following clauses, and these were spoken to at the beginning:

“(m) defining any word or term not defined for the purpose of the administration of this Act or the regulations;

(n) respecting the granting of the extension of time or the reduction of time for the doing of anything or the filing of any notice required under this Act or the regulations;

(o) respecting rules for the calculation of time either in specified cases or generally;

(p) respecting the disbursement of moneys received by the board pursuant to the Act or the regulations;

(q) respecting such other matter as may be necessary for the purpose of carrying out the provisions of this Act or the regulations.”

MR. CHAIRMAN: Is that agreed? Pass.

Page 35, as amended—pass; Preamble - Mr. Lecuyer.

MR. G. LECUYER: Page 4 of the French section, Que l’article 1 de la version française du Projet de loi 5 soit amendé par la suppression, à l’alinéa (i) de la définition de “propriétaire,” des mots “le registre foncier” et leur remplacement par les mots “l’enregistrement foncier”.

It’s just replacing something that wasn’t really French. It was really an English word that was used in there by putting a correct French word in.

MR. CHAIRMAN: Is that a motion to amend?

MR. G. LECUYER: Page 23. It’s actually article 42. Que l’article 42 de la version française du Projet de loi 5 soit amendé par la suppression, à la 8e ligne, des mots “le registre foncier” et leur remplacement par les mots “l’enregistrement foncier”.

MR. CHAIRMAN: Is that agreed? Pass.

MR. G. LECUYER: It’s Page 33. It’s the same correction all the way.

MR. CHAIRMAN: What’s the same correction?

MR. G. LECUYER: All three of these actually represent the same correction.

MR. CHAIRMAN: Is that agreed? (Agreed)

MR. G. LECUYER: Page 33, Paragraph 64(3); Que le paragraphe 64(3) de la version française du Projet de loi 5 soit amendé par la suppression, à la 2^e et à la 3^e lignes, des mots "le registre foncier" et leur remplacement par les mots "l'enregistrement foncier."

MR. CHAIRMAN: Is that agreed? Pass.
Mr. Tallin.

MR. R. TALLIN: We have a set of French version amendments and a set of English version amendments. With the exception of the two that the Honourable Mr. Penner mentioned were for the English version only and the three amendments that Mr. Lecuyer just made to the French version only, all the other amendments are corresponding. At least, that's what our translators tell us. I presume it's the intent of the committee, when they pass the English version of an amendment as read by Mr. Penner, that the corresponding amendment was to be made to the French version.

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

What is the will of the committee? Do you wish to proceed with the remainder of the bills in numerical order?

Mr. Penner.

HON. R. PENNER: May I suggest that we take them Minister-by-Minister? So I would suggest that we take 8, 9 and 13.

MR. CHAIRMAN: Is that agreed? (Agreed)

BILL NO. 8 - AN ACT TO AMEND THE CORPORATIONS ACT

MR. CHAIRMAN: Bill No. 8, An Act to amend The Corporations Act.

HON. R. PENNER: Page-by-page, Mr. Chairman?

MR. CHAIRMAN: Page-by-page. Order please. What is the will of the committee - page-by-page for Bill No. 8? Page-by-page.

Pages 1 to 8, inclusive—pass; Preamble—pass; Title—pass; Bill be reported—pass.

BILL NO. 9 - AN ACT TO AMEND THE PARTNERSHIP ACT

MR. CHAIRMAN: Bill No. 9, An Act to amend The Partnership Act - page-by-page?

Pages 1 to 4, inclusive—pass; Preamble—pass; Title—pass; Bill be reported—pass.

BILL NO. 13 - AN ACT TO AMEND THE BUSINESS NAMES REGISTRATION ACT

MR. CHAIRMAN: Bill No. 13, An Act to amend The Business Names Registration Act - page-by-page?

Pages 1 to 7, inclusive—pass; Preamble—pass; Title—pass; Bill be reported—pass.

What is the will of the committee for the next bill? Bill No. 61.

BILL NO. 61 - AN ACT TO AMEND THE INSURANCE ACT

MR. CHAIRMAN: Bill No. 61, An Act to amend The Insurance Act - page-by-page?

Page 1—pass; Page 2—pass; Preamble—pass; Title—pass; Bill be reported—pass.

What is the will of the committee for the next bill? Mr. Penner.

HON. R. PENNER: There is only one standing in the name of the Minister of Community Services. May I suggest we take Bill No. 27?

BILL NO. 27 - AN ACT TO AMEND THE SOCIAL SERVICES ADMINISTRATION ACT

MR. CHAIRMAN: Is that agreed? Agreed to have Bill No. 27 considered next - page-by-page?

Page 1—pass; Page 2—pass; Preamble—pass; Title—pass; Bill be reported—pass.

The next bills to be considered are at the discretion of the committee.

HON. R. PENNER: May I suggest that we take bills standing in my name, Mr. Chairperson?

MR. CHAIRMAN: Bills 10 and 11, 17, 19, 22.

BILL NO. 10 - AN ACT TO AMEND THE REAL PROPERTY ACT

MR. CHAIRMAN: Bill No. 10 - page-by-page?

HON. R. PENNER: Page-by-page, Mr. Chairperson.

MR. CHAIRMAN: Page 1—pass; Page 2—pass; Page 3—pass; Preamble—pass; Title—pass; Bill be reported—pass.

BILL NO. 11 - AN ACT TO AMEND THE REGISTRY ACT

MR. CHAIRMAN: Bill No. 11 - page-by-page?

Page 1—pass; Preamble—pass; Title—pass; Bill be reported—pass.

Mr. Penner.

HON. R. PENNER: With respect to 17, I believe the Member for St. Norbert had some questions about that one and I would prefer that he be here, so I would recommend that we hold it in case he still has some questions.

MR. CHAIRMAN: Bill No. 22?

HON. R. PENNER: Bill No. 22? 19, The Survivorship Act.

BILL NO. 19 - THE SURVIVORSHIP ACT

MR. CHAIRMAN: Bill No. 19.

MR. R. TALLIN: There are some amendments to this.

MR. CHAIRMAN: Bill No. 19 - page-by-page with amendments for each page? Bill No. 19, page-by-page. Page 1—pass; Page 2 - Ms. Phillips.

MS. M. PHILLIPS: I move that subsection 2(1) of the English language version of Bill 19 be amended by striking out the word "contract" in the 1st line thereof and substituting therefor the word "contrary".

HON. R. PENNER: That's a good one.

MS. M. PHILLIPS: Isn't that exciting.

MR. CHAIRMAN: Is that agreed? Pass.
Next page. Page 2 as amended—pass; Page 3 - Ms. Phillips.

MS. M. PHILLIPS: Yes, Mr. Chairperson, I move that section 4 of Bill 19 be struck out and the following section substituted therefor:

Insurance.

4 Where a person whose life is insured under a life insurance contract or an accident or sickness insurance contract and a beneficiary under the policy die at the same time, or in circumstances rendering it uncertain which of them survive the other, the insurance moneys payable under the contract on the death of the insured shall be paid in accordance with The Insurance Act and, if the insurance moneys are paid to the personal representative of the insured, this Act applies to their disposition by the personal representative.

MR. CHAIRMAN: Is that agreed? Pass. Page 3 as amended—pass; Preamble—pass; Title—pass; Bill be reported—pass.

BILL NO. 22 - THE WILLS ACT

MR. CHAIRMAN: Bill No. 22, The Wills Act. Are there any amendments for this one? Mr. Tallin.

MR. R. TALLIN: I'm afraid that we haven't had an opportunity to have these translated into French yet because we just prepared them yesterday and on Friday. Would it be all right if we moved the amendments in English and have the translators provide the French version changes at a later time?

MR. CHAIRMAN: Agreed? (Agreed)
Page-by-page with the motions on each appropriate page per amendment. Page 1 to 11 inclusive—pass; Page 12 - Ms. Phillips.

MS. M. PHILLIPS: I move that clause 29(b) of Bill 22 be struck out and the following clause substituted therefor:

(b) where used in that law, the words "child", "issue" or "descendant" include for the purposes of this

section, a person related by or through adoption to the testator of other person.

MR. CHAIRMAN: Is that agreed? Pass. Page 12 as amended—pass; Page 13—pass; Page 14 - Ms. Phillips.

MS. M. PHILLIPS: Thank you.

I move that section 35 of Bill 22 be amended by adding thereto, at the end thereof, the words "unless before the will takes effect, the relationship is severed by adoption".

MR. CHAIRMAN: Is that agreed? Pass. Page 14 as amended - Ms. Phillips.

MS. M. PHILLIPS: I don't know whether this one will fit on 14 or whether it will have to be on 15.

I move that section 35 of Bill 22 be numbered as subsection 35(1) and the following subsection be added thereto:

Relationship by adoption.

35(2) In the construction of testamentary dispositions, except where a contrary intention appears in the will, the words "child", "issue" or "descendant" where used to refer to the child, issue or descendant of the testator or a specified person include a person related by or through adoption to the testator or the specified person and other words denoting other relationships to the testator or a specified person include persons standing in that relationship to the testator or that specified person by or through adoption by another person.

MR. CHAIRMAN: Is that agreed? Pass. Page 14 to 23 inclusive—pass. Page 24 - Mr. Tallin.

MR. R. TALLIN: There was a typographical error made on Page 24. The old Wills Act, which is being repealed is chapter W140 not W150. Unfortunately it was a typographical error in the English version and it was carried over into the French version and so both versions will have to be amended. 62 on Page 24, 62(a). W140 should be W150.

HON. R. PENNER: Oh yes, okay.

MR. CHAIRMAN: With the understanding that typographical error will be corrected in both languages, Page 24—pass. Page 25 to Page 34 inclusive—pass; Preamble—pass; Title—pass; Bill be reported—pass.
Mr. Penner.

HON. R. PENNER: Mr. Uskiw is just on his way. He'll be here in two minutes and he will be present for Bill 15 and Mr. Orchard wishes to speak to Bill 15, so if we could just wait a minute?

A MEMBER: Did we do 10 and 11?

HON. R. PENNER: Yes, we did.

MR. D. ORCHARD: We could just move on to the next one if you wish, Mr. Chairman.

HON. R. PENNER: I think Mr. Sherman wanted to be present for that. He gave some indication that he did.

BILL NO. 44 - AN ACT TO AMEND THE FISHERIES ACT

MR. CHAIRMAN: Bill 44.

HON. R. PENNER: Now there's just one page of . . .

MR. CHAIRMAN: Two pages.

HON. R. PENNER: Okay, page-by-page.

MR. CHAIRMAN: Page-by-page. Page 1—pass; Page 2—pass; Preamble—pass; Title—pass.

HON. R. PENNER: We've done 44, we can do 45 and amend at report stage.

MR. CHAIRMAN: Bill be reported—pass.

BILL NO. 45 - AN ACT TO AMEND THE FOREST ACT

MR. CHAIRMAN: Bill No. 45, An Act to amend The Forest Act, Page 1—pass; Page 2—pass; Preamble—pass; Title—pass; Bill be reported—pass.

HON. R. PENNER: Five-minute adjournment?

MR. CHAIRMAN: Five-minute adjournment - is that agreed? (Agreed)

BILL NO. 15 - AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT

MR. CHAIRMAN: Order please. Bill No. 15, An Act to amend The Highway Traffic Act, page-by-page. Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I see the Minister is here. In clause 1 of the Bill on Page 1, can the Minister indicate if it's the intention of this amendment to classify all of the currently manufactured three-wheeled, self-propelled vehicles as mopeds?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, the intent of the amended legislation is to take into consideration three-wheeled vehicles that fall within the definition of "moped" but are excluded, due to the fact that the moped as currently defined, only allowed for a two tandem wheels and it's the intention to allow vehicles with three wheels that meet all the remaining requirements of a moped to be included.

Other higher powered three-wheeled, all-terrain vehicles may be registered under the provisions of The Snowmobile Act.

MR. D. ORCHARD: There's some confusion here then. Can the Minister give an example of what style of three-wheeled vehicle he has envisioned that would be able to be registered here as a moped and have that kind of right to the roads and highways?

HON. S. USKIW: Mr. Chairman, I'm afraid I can't give the Member for Pembina all of the various vehicles that are available on the market; I'm not that familiar with them. I'm waiting for my staff to be here and it may be that we might be able to answer that before this committee completes its consideration of this bill.

MR. D. ORCHARD: I appreciate that the Minister may not know all of the kinds, but back about three years ago, there was a considerable effort put into amending The Highway Traffic Act to bring in the Happy Wanderer, which was a three-wheeled vehicle used by the handicapped. I'm wondering if this is the type of vehicle that the Minister is targeting with this amendment?

HON. S. USKIW: I'm just wondering if we can just bank those and by that time, I think, my staff should be here, Mr. Chairman.

MR. CHAIRMAN: Does the Minister need a further recess to get his staff?

HON. S. USKIW: Well, they're supposed to be on their way. They should have been here.

MR. H. GRAHAM: You lost control again, Sam.

HON. S. USKIW: No, just you can't be in two committees.

MR. H. ENNS: This isn't seat belt legislation is it?

HON. S. USKIW: Mr. Chairman, I'm wondering whether it wouldn't be more prudent - is this the last bill before the committee? It might be better to lay this one over so that we don't hold up the committee's work, rather than trying to do something that we're not equipped to handle at the present time.

MR. D. ORCHARD: That would be entirely acceptable and if I might pose one more question. First of all, an apology for a misinterpretation in my remarks on Section 6 of the Bill, where I misread the intent of this legislation in my remarks. But if the Minister could provide a little more clarification on Section 4 of the Bill, which amends subsection 31(1) of the Act. There's a requirement in there for reflective materials to be attached to various towed implements of husbandry.

I've got some concerns over this requirement, Mr. Minister, in that most vehicles now, for certain on the back end of them, have "SMV" - the slow-moving vehicle symbols, and what I'd like to know is if this requirement is in addition to the SMV on the back. If so, I think the Minister can appreciate with his knowledge of farm machinery, you're probably going to have this barred reflective material probably above or below the SMV because it's a fairly sizable area that's required by this amendment and it's going to have to be in practically the same place.

I simply question as to whether it's going to gain any advantage to have this in there. So, if the Minister could provide an answer as to why this amendment is being proposed, no doubt by staff in the department, and if he could also indicate the number of accidents that had been involved with farm machinery being towed

down the highways, which would theoretically prompt this kind of an amendment.

HON. S. USKIW: Yes, that's fine, Mr. Chairman. We'll take that under advisement.

MR. D. ORCHARD: The only other explanation that I would have, or one of the only other ones that the Minister might want to provide for, is in Section 25 of the Bill on the commencement. I note that there are some sections that are going to be retroactive to March 1, 1983, and two other sections of amendment that are going to be retroactive to June 30, 1982. If the Minister could provide explanation as to why the retroactivity is in there, that would be appreciated.

HON. S. USKIW: That's fine, Mr. Chairman.

MR. CHAIRMAN: Are there any further comments or questions on this bill? Mr. Mackling.

HON. A. MACKLING: No, not on this bill.

MR. CHAIRMAN: I take it then, it's moved that this be left over to the next meeting of the committee? Mr. Sherman . . .

HON. S. USKIW: Will it be the first bill up the next time?

MR. CHAIRMAN: I think it's up to the committee to decide. Is it agreed that this will be the first bill? (Agreed) Mr. Mackling.

HON. A. MACKLING: Mr. Chairman and colleagues, I wonder if I could comment for just a moment on two bills, Bills 44 and 45, that received Second Reading here. I apologize for my absence, again another meeting, but I wasn't aware how efficient we were. We gave Second Reading to these bills on Friday, as I recall, and I didn't anticipate that they would be this quickly before the committee, and my staff has not readied the amendments we deemed appropriate to these bills. They have now been dealt with by committee.

I would like to give notice that at the Report Stage there will be amendments not dealing with the principle involved in each of the bills, but dealing with the mechanics of the requirements of the reporting itself. So I just give notice to that effect.

MR. H. ENNS: Mr. Chairman, I was just commenting on the problems that government seems to have in terms of management, but I do ask the Minister of Natural Resources that, as is custom at Third Reading or Report Stage, the bills have a tendency, particularly those that we have indicated our support of at Second Reading and now again in Law Amendments Committee, that it would be helpful to members of the opposition if those proposed amendments could be distributed to us in advance of that Report Stage and in advance of that Third Reading of the bill.

HON. A. MACKLING: Certainly, no problem with that and I undertake that. Again, I say I apologize; I did leave; I didn't expect that they would be dealt with. I

wanted to indicate to the committee that we would want them deferred so that we could introduce our amendments.

MR. CHAIRMAN: I notice that Mr. Sherman is here. Do you wish to go to Bill 33 now?

BILL NO. 33 - AN ACT TO AMEND THE PHARMACEUTICAL ACT

MR. CHAIRMAN: Bill No. 33, An Act to amend The Pharmaceutical Act. Page-by-page?

MR. L. SHERMAN: Clause-by-clause.

MR. CHAIRMAN: Clause-by-clause. Clause 1—pass; Clause 2 - Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, I have no difficulty with Clause 2. If I may, just for a moment, speak to 45(1) of subsection (1) in the bill. I appreciate the opportunity to just say a word or two. It's not my intention to delay the passage of this legislation and this is not cataclysmic legislation, but I do just want to put on the record the serious interest that a great many of us in the health field have, and that I believe the Manitoba Pharmaceutical Association has, in watching the effects of this amendment to the legislation before us.

As you know, Sir, the current section dictates that an "interchangeable pharmaceutical product" means a product containing a drug or drugs in the same amounts of the same active ingredients in the same dosage form as that directed by a prescription . . . "etc., etc. Of course, the amendment says that it means, "a product containing a drug or drugs in the same or similar amounts of the same or similar active ingredients in the same or similar form as another product directed by a prescription . . . "etc., etc., and of course, "listed in the Manitoba Drug Standards and Therapeutics Formulary . . ."

So the difference is that there is a door being opened here to permit a definition and recognition of a pharmaceutical product, medication that for purposes of the definition of an interchangeable product can be similar to one contained in the Formulary, but not necessarily precisely the same. Now I know that there will be intensive care taken to ensure that the similarity extends to the point of equivalency insofar as full equivalency is possible, but I think there is a danger that a door is being opened to permit a practice that might prove unsatisfactory in the future.

I have discussed it with the Manitoba Pharmaceutical Association. They say that there is a real dichotomy of thought on it in the profession. The Minister, Sir, indicated when he introduced the bill for Second Reading that approval of this amendment would provide a similar procedure for determining therapeutical equivalence as currently exists in the Saskatchewan and Ontario drug formularies.

The fact of the matter is that although it perhaps is being done in Saskatchewan, it is not in the Saskatchewan legislation. The Pharmaceutical Association here in Manitoba, while having no real reason to object to it at the moment, wants to monitor

the situation very carefully and see how it works for a year.

They would also wish to make the point that they hope that the government permits the pharmacy profession and the medical profession to monitor this change; and that their active monitoring of it is not unduly affected by a particular position which the government may take on the subject. They believe the two professions should monitor the change and provide advice to the government on it after it has had a fair trial.

So those are the only comments I would want to make on it, Mr. Chairman, and I wish to express my thanks to the committee for the opportunity to do so.

HON. R. PENNER: I would like to assure the Member for Fort Garry that his remarks which I followed closely will be drawn to the attention of the Minister.

MR. CHAIRMAN: Clause 1—pass; Clause 2—pass; Preamble—pass; Title—pass; Bill be reported—pass. Committee rise.
Mr. Penner.

HON. R. PENNER: There still is 17 and 15, but they will simply go on to the next meeting of the committee. I don't think there is any point holding the committee for the Member for St. Norbert, as long as we hold the bill for him.

MR. CHAIRMAN: Agreed? (Agreed)
Committee rise.