



Fourth Session - Thirty-Fifth Legislature  
of the  
**Legislative Assembly of Manitoba**

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**STANDING COMMITTEE**

on

**ECONOMIC DEVELOPMENT**

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42 Elizabeth II

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*Chairperson*  
*Mr. Jack Reimer*  
*Constituency of Niakwa*



**VOL. XLII No. 25 - 7 p.m., TUESDAY, JULY 20, 1993**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Fifth Legislature**

**Members, Constituencies and Political Affiliation**

NAME	CONSTITUENCY	PARTY
ALCOCK, Reg	Osborne	Liberal
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHOMIAK, Dave	Kildonan	NDP
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Cliff	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Wolseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
GRAY, Avis	Crescentwood	Liberal
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MALOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCRAE, James, Hon.	Brandon West	PC
McINTOSH, Linda, Hon.	Assiniboia	PC
MITCHELSON, Bonnie, Hon.	River East	PC
ORCHARD, Donald, Hon.	Pembina	PC
PALLISTER, Brian	Portage la Prairie	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
VODREY, Rosemary, Hon.	Fort Garry	PC
WASYLYCIA-LEIS, Judy	St. Johns	NDP
WOWCHUK, Rosann	Swan River	NDP
<i>Vacant</i>	Rossmere	
<i>Vacant</i>	Rupertsland	
<i>Vacant</i>	The Maples	

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT**

**Tuesday, July 20, 1993**

**TIME — 7 p.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRPERSON — Mr. Jack Reimer (Niakwa)**

**ATTENDANCE - 11 — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. Cummings, Findlay, Mrs. McIntosh

Mr. Alcock, Ms. Barrett, Messrs. Evans (Brandon East), Helwer, Maloway, McAlpine, Reimer, Mrs. Render

**MATTERS UNDER DISCUSSION:**

Bill 37—The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act

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**Mr. Chairperson:** Will the Committee on Economic Development please come to order. The committee will continue to consider the following bill this evening: Bill 37, The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act.

We will now proceed with clause-by-clause consideration of Bill 37.

**Point of Order**

**Mr. Leonard Evans (Brandon East):** Just to facilitate matters, I have well over 30 amendments which other members of the committee are aware of. I know the procedure is to read the amendment and then to debate it. Some of them are rather long. Some are two pages, and I was wondering whether it would be in order at some point, instead of having to read the whole thing because we have copies for everyone, whether we could say, here it is, can we accept it as read at this point, and then I could explain it, rather than taking time to read the two pages, let us say. Then, if it is acceptable, I could read it into the record if that is necessary. But all of these have been prepared, and they are typed.

**Clerk of Committees (Ms. Bonnie Greschuk):** You have to actually read the amendment before you can discuss it.

**Mr. Leonard Evans:** I just cannot say, here is a two-page amendment.

**Madam Clerk:** You can start by reading the portion of it. If the committee says dispense, then we will dispense with the reading of it.

**Mr. Leonard Evans:** Okay.

\* \* \*

**Mr. Chairperson:** Then we will start with clause—what I will do for the benefit of the committee, because the bill is a fairly long bill and there are a number of amendments on it, we will proceed fairly slowly on it on a clause-by-clause consideration instead of a block of clauses. For the sake of clarity and expediency, it is better to do it thoroughly than to do it quickly.

So we will start with Clause 1. Shall Clause 1 pass? The Title—oh, pardon me. For clarification, the Title and the amendments to the Title will come at the very end, along with the Preamble and the Schedule.

Okay, we will start with Clause 1 then. Clause 1—pass.

Shall Clause 2 pass? Just a minute. On Clause 2, I believe the minister has an amendment.

Clauses 1 to 4—pass. We are now working on Clause 5 which has a myriad of subsections, so we will go through them as subsections. Subsection 70.1, shall it pass?

**Hon. Glen Cummings (Minister charged with the administration of The Manitoba Public Insurance Corporation Act):** Mr. Chairperson, I move

THAT the definition "dependant" in the proposed subsection 70(1), as set out in Section 5 of the Bill, be struck out and the following substituted:

**"dependant" means**

(a) the spouse,

(b) the person who is married to the victim but separated from him or her de facto or legally,

(c) a person whose marriage to the victim has been dissolved by a final judgment of divorce or declared null by a declaration of nullity of marriage, and who, at the time of the accident, is entitled to receive support from the victim under a judgment or agreement,

(d) a child of the victim

(i) who was under the age of 18 years at the time of the accident, or

(ii) who was substantially dependant on the victim at the time of the accident, and

(e) a parent of the victim who was substantially dependant on the victim at the time of the accident; ("personne à charge")

**[French version]**

Il est proposé que la définition de "personne à charge" énoncée au paragraphe 70(1) du projet de loi soit remplacée par ce qui suit:

**"personne à charge"**

a) Le conjoint;

b) la personne qui est mariée à la victime mais qui en est séparée de fait ou légalement;

c) la personne dont le mariage avec la victime est dissous par un jugement définitif de divorce ou est déclaré nul par un jugement en nullité et qui, au moment de l'accident, a le droit de recevoir de la victime une pension alimentaire aux termes d'un jugement ou d'une convention;

d) tout enfant de la victime

(i) qui avait moins de 18 ans au moment de l'accident,

(ii) qui était essentiellement à la charge de la victime au moment de l'accident;

(e) le père ou la mère de la victime qui était essentiellement à la charge de cette dernière au moment de l'accident. ("dependant")

**Motion presented.**

**Mr. Leonard Evans:** In the original definition of spouse, it made reference to a number of years of—pardon me, okay.

**Mr. Cummings:** This is a definition of a dependant, not the definition of a spouse.

**Mr. Leonard Evans:** Okay, I am sorry.

**Mr. Reg Alcock (Osborne):** Mr. Chairperson, it might facilitate things if the minister could just give us a sense, when he is bringing in an amendment, as to what he is intending to address, and it may save several counteramendments or additional amendments or subamendments if he would just tell us what it is he is proposing to do.

**Mr. Cummings:** The objective was to clarify the separation so it did not have to have a certificate to prove separation or a separation agreement, and under (e) the 50 percent, there was a reference to 50 percent dependency, and that has been removed.

**Mr. Alcock:** Does this broaden the definition of dependant?

**Mr. Cummings:** Yes.

**Mr. Alcock:** And it adds the concept of a parent receiving support from a child—is entitled to benefit under this?

**Mr. Cummings:** Subject to who was substantially dependant.

**Mr. Chairperson:** Shall the proposed amendment by the minister pass? All those in favour, say yea.

**Some Honourable Members:** Yea.

\* (1910)

**Mr. Chairperson:** The amendment is accordingly passed. Shall Clause 70—

**Mr. Cummings:** Excuse me, Mr. Chairperson, I have a second amendment on 70(2).

**Mr. Chairperson:** We have one more amendment prior to that, Mr. Minister.

**Mr. Leonard Evans:** I move

THAT clause (a) of the definition "spouse" in the proposed subsection 70(1), as set out in section 5 of the Bill, be amended by striking out "five" and substituting "two".

**[French version]**

Il est proposé que l'alinéa a) de la définition de "conjoint" figurant au paragraphe 70(1) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "cinq", de "deux".

**Motion presented.**

**Mr. Leonard Evans:** I believe, Mr. Chairperson, that in other jurisdictions, in other agencies, there is not this lengthy requirement to be cohabitating with another person for such a period of time, and five years seems to be a very, very long time. It would

seem to me that after two years of cohabitation it should be proof enough that this person is a spouse and therefore should be treated as a spouse. So I just think that two years is quite reasonable as opposed to five.

**Mr. Alcock:** Mr. Chairperson, given the complexity of this bill and the number of amendments that appear to be out there, I believe I heard the minister reference that he may have an amendment on this same section.

**Mr. Chairperson:** Further on.

**Mr. Alcock:** It is not on the definition of spouse. Okay.

**Mr. Chairperson:** The sequence of amendments have been followed quite closely between the minister and the parties that want to make amendments.

**Mr. Cummings:** In response to the concern that the member for Brandon East (Mr. Leonard Evans) is raising with his amendment, the reason that it is written as it is because it coincides with The Fatal Accidents Act, The Family Maintenance Act, WCB regulations and act, and stays in line with the present practice of MPIC and the existing act there. So if we were to accept this amendment we would de facto be agreeing to amend all of the other sections, and while you might want to argue that, that is a broader question and I would suggest that, particularly, this follows on The Fatal Accidents Act that this makes a reasonable line by which decisions can be made.

**Ms. Becky Barrett (Wellington):** On the proposed amendment, the suggestion has been made by a member of the committee that at the next sitting of the House a blanket amendment or an amendment that would cover all of the legislation and all of the acts that the minister just spoke about could be brought in changing the definition of spouse from five years to two years, subsequent to the approval of this particular amendment, which would mean that this particular piece of legislation would be the first in a series of changes. I think that would be an excellent thing for the minister to undertake to do.

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East, all those in favour of the amendment, please signify by saying yea.

**An Honourable Member:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it. A recorded vote has been requested.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The amendment is accordingly defeated.

Shall Clause 70(1) as amended be passed?

**An Honourable Member:** Pass.

**Mr. Chairperson:** The clause is accordingly passed.

Shall Clause 70(2) pass?

**Mr. Cummings:** I would move

THAT the proposed subsection 70(2), as set out in section 5 of the Bill, be amended in the part following clause (b) by adding "in its opinion" after "determine an amount that".

**[French version]**

Il est proposé que la version anglaise du paragraphe 70(2) énoncé à l'article 5 du projet de loi soit amendée par adjonction après "determine an amount that" dans le passage qui suit l'alinéa b), de ", in its opinion".

**Motion presented.**

**Mr. Cummings:** Mr. Chairperson, the reason to make this amendment is to bring it in line with the wording in other sections of the act which is in reference to indexation, consumer price index, 162(2). It does not materially change the meaning, but it makes the wording similar so that it can be read in a similar fashion.

**Mr. Leonard Evans:** So there is no substantive change, it is rather a technical correction.

**Mr. Alcock:** I am just trying to understand "determine an amount that in its opinion" represents the industrial wage average.

In Clause (b) you say Statistics Canada uses a new method to determine the industrial aggregate average earnings for all employees of Manitoba. So if Statistics Canada does that, why are we opening it to the discretion of the corporation to alter that?

**Mr. Cummings:** There are no such figures published monthly—pardon me, in the eventuality that we would not receive that monthly figure, and apparently that does occur.

**Mr. Alcock:** So your intention, your belief here then is that that is the mark that would be used. This allows them to select the one from the preceding month or amend one in the forthcoming month? I mean, one of the concerns about this bill is the level of discretion that the corporation has to begin with.

**Mr. Cummings:** Obviously you could put interpretations on this along the line that the member for Osborne is, but I suggest it is put here in order to make sure that there is no lag time in making the adjustments. In present times these are not a problem. Where inflation is jumping all over the place, it becomes somewhat of a problem, and the alternative argument would be, well, until we see the figure, we do not make a change. This allows the adjustment to be made in a figure that in their opinion represents the consumer price index.

**Mr. Chalrperson:** On the proposed amendment by the honourable minister, all those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chalrperson:** All those opposed, please signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chalrperson:** In my opinion, the Yeas have it.

The amendment is accordingly carried.

Clause 70(2)—pass. Clause 71(1)—pass.  
Shall Clause 71(2) pass?

**Mr. Cummings:** I will start by saying that I think the explanation for this is fairly obvious.

I move

THAT the proposed subclause 71(2)(c)(iv), as set out in section 5 of the Bill, be amended by adding "other than a snowmobile capable of registration under subsection 5(13) of that Act," after "The Highway Traffic Act,".

**[French version]**

Il est proposé que le sous-alinéa 71(2)c)(iv) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après "Code de la route", de ", à l'exclusion des motoneiges qui peuvent être immatriculées en vertu du paragraphe 5(13) de ce Code".

**Mr. Chalrperson:** Just as a matter of clarification, I believe it is a "snow vehicle," not a snowmobile.

\* (1920)

**Mr. Cummings:** I am sorry if I said snowmobile. I meant snow vehicle because what this refers to is those larger vehicles, I presume something similar to a bombardier, that would in fact require a Manitoba licence to be in use. They are covered under the insurance act, and they are now included by this amendment to make sure they are not accidentally excluded. They are now included.

**Motion agreed to.**

**Mr. Chalrperson:** Clause 71(2) as amended—pass; Clause 72—pass. Clause 73.

**Mr. Leonard Evans:** I move

THAT section 5 of the Bill be amended by adding the following after the proposed section 73:

**Disclosure of documents to claimant**

**73.1** A claimant may, on giving reasonable notice to the corporation, examine and copy any document in the corporation's possession respecting the claim and is entitled, on request, to one copy of the document without charge, but the corporation may fix a fee for providing more than one copy of the document.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 73, de ce qui suit:

**Transmission de documents au demandeur**

**73.1** A la condition de donner un préavis raisonnable à la Société, le demandeur peut examiner et copier tout document qui a trait à sa demande d'indemnisation et dont la Société est en possession. Il a droit, sur demande, à une copie gratuite du document. Toutefois, la Société peut fixer des frais pour les copies supplémentaires.

If I can explain, my understanding is that this was a change made in Workers Compensation some years back where files used to be secretive and hidden from the claimants involved. This is opening the system, and it does provide for more responsibility on everyone's part. We think it is a good progressive amendment; therefore, I would recommend that it be passed.

**Mr. Cummings:** I do not argue with the desire that the member is expressing. The way this bill is intended to deal with that openness and access to files that the member refers to is that they shall be open and accessible to the appeal commission. One of the problems is that there is occasionally third-party information, as part of investigations,

that is kept in the files, and very often that is privileged information.

**Mr. Leonard Evans:** Just by way of explanation or understanding, is the minister saying that when it gets to the appeal level, the appeal commission, at that point the files will be made available? Is that assured in the legislation?

**Mr. Cummings:** I cannot quote the section, but in the appeal commission section, and we will find the section here for you so that you can double-check this, the obligation is placed on the corporation to make all information available to the commission.

**Mr. Leonard Evans:** So what the minister is saying is that there is probably not a problem until you get to a client or a claimant who wants to appeal because he or she was not satisfied with the judgment or decision of the corporation. So at that point it is more relevant to have access to the files.

**Mr. Cummings:** I am not suggesting that the claimant may not desire that information. I am suggesting, however, that the process that is being envisaged is that that information will be made available to the commission and there is a requirement that that occur so that there is no attempt to make that information unavailable to the benefit of the client because in fact the commission is listening to their concerns in order to enhance their benefits. So their best interests will be protected in front of the commission, but in terms of releasing all of the information, the corporation is making the case that they have sometimes third-party confidential information that is attached to those files.

**Mr. Alcock:** Why would it not be possible to exclude third-party information and still make the claimant's information available to them? I mean, that is done under freedom of information now. If there is information there that is privileged in some way, that is withheld, but the remainder—if the principle is disclosure and only withholding those things which cannot be disclosed, why would we not disclose the information to the individual?

**Mr. Cummings:** Mr. Chairperson, the two sections of the clause that mandate the corporation to provide information are 179 and 180—[interjection] And 140.

In 140: The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the

compensation to which they are entitled under this part.

Under 179 it says: The corporation shall without delay forward to the commission any record or other information that the commission requests in respect to the appeal filed. Under 180(1): The commission shall conduct a hearing in respect to the appeal filed.

Under 181(6): The commission shall give the appellant and the corporation a reasonable opportunity to examine all material filed with the commission that is relevant to the appeal. Therefore, that would indicate a pretty large degree of openness.

**Mr. Leonard Evans:** Excuse me, what section is that?

**Mr. Cummings:** The last section, the one I misread, is 181(6).

**Mr. Alcock:** Mr. Chairperson, I think though that the last two sections are sections that deal with the appeal process, so once the dispute has arisen—and the first section does not talk about openness of information or access to the file. It simply talks about the corporation doing everything it can to see that the person gets everything to which they are entitled.

I think Mr. Evans's amendment is a relatively straightforward one, and the minister has pointed out a problem with it. The amendment says any document in the corporation's possession, and the minister rightly says that there may be third-party information there that a claimant would not be entitled to under legislation.

That being the case, and given that it is the intention of the minister and the corporation to be as open as possible, why not simply take this as a friendly amendment and do a subamendment of this amendment of Mr. Evans's that excludes third-party information and put something in legislation that supports your intention to see that this is a free and open process?

**Mr. Cummings:** I think we do not disagree. I think we only disagree on how it would be done. The commission has the—with 181 I am trying to reach a compromise with what you are suggesting. The only other way that you could do it is, as I asked the corporation, would you put a reverse onus in there that they could withhold where there was claims investigation, confidential information? But then in order to create fairness, someone has to adjudicate

what could in fairness then be withheld. Therefore, I refer to the clause that says that the commission shall have access and shall make available—the corporation shall make available at that point.

So what we are really saying is that we believe that the appeal process is such that the person will have received the access that Mr. Evans is looking for at that point.

**Mr. Alcock:** Mr. Chairperson, I understand why the minister keeps coming back to the appeal process, but that is at the point at which things have broken down. That is at the point at which somebody is dissatisfied enough with what they are receiving from the corporation in order to move to another step.

Now, we passed the freedom of information bill some many years ago in the Legislature that—well, actually we passed it under this government, as I recall. It contained within it a provision that everything would be shared that could be shared, and only those things which were deemed could not be shared would be withheld. I think if that is what Mr. Evans is seeking here, why would we not facilitate that? Given that there is no action, why would we not allow people to examine their files?

**Mr. Cummings:** This information is, in fact, to be released relevant to The Freedom of Information Act, but there is, as you recall, still some dissatisfaction about what can and cannot be held back under Freedom of Information. Therefore, I point to 181 which provides that additional assurance that the claimant, at that point, can double-check that everything he asked for is being made available.

**Ms. Barrett:** I would like to state that I agree with the comments put on the record, not only by the member for Brandon East (Mr. Leonard Evans), but also by the member for Osborne (Mr. Alcock), that—[interjection] Hold that thought—there are two time periods at least that we are talking about here. The member for Brandon East's amendment discusses from the very beginning the claimant having access to his or her file, and we can discuss the mechanism by which third-party information could be withheld.

The 181(6), as the member for Osborne stated, talks about the appeal process, but not only that, Mr. Chairperson, I do not think my reading of 181(6) says to me that the commission determines which information will be relevant to the claimant and to

the corporation. So it still is not clear that the claimant would know that the claimant has all of the information except third-party information. It is information that the commission states is relevant. There could be information in the file that the claimant would see as relevant that the commission did not.

**Mr. Leonard Evans:** I wonder, Mr. Chairperson, if the minister would consider an amendment to my amendment or an adjustment of the amendment whereby we can exclude third-party information. For instance, in the fourth line after the word, the claim, respecting the claim, but excluding third-party information, would that accommodate the concerns raised?

\* (1930)

**Mr. Cummings:** We are getting down to some pretty finite details here, but the fact is there probably will also be some third-party information that the corporation should give them. So that in itself will not solve the problem. Somebody has to have the authority to make a decision. That is why the Freedom of Information guidelines and the commission are put forward.

I would think the members agree that there may well be situations where there is information that the corporation has received that they are unable to release. If, obviously, they are going to use it in certain situations, then they have to be able to verify it.

**Mr. Leonard Evans:** This suggestion comes out of, I believe, the change that was made in The Workers Compensation Act. I do not have the details in front of me, but I recall in the, I think, early '80s where the files of the Workers Compensation Board were opened up to the claimants at that point, and it made quite a difference, I believe, in the handling of everything. Apparently, the openness was very refreshing and seemed to facilitate matters.

**Mr. Cummings:** By way of compromise, it has been suggested that there is another section of the act where this might better be lodged, but in fact, what would happen is, there would be a (2) to follow this which would refer to the proceeding, which is your amendment that exemptions under FOI would apply.

It really puts us back where we thought we were in the first place, but if it would make you feel happier, and I see smiles all around, we will bring it

back at the appropriate section, and you could reintroduce it at that point.

**Mr. Leonard Evans:** Okay.

**Mr. Chairperson:** Before we proceed on the proposed amendment by the member for Brandon East (Mr. Leonard Evans), we must go back to Section 73 again.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 73, as set out in section 5 of the Bill, be amended by renumbering it as subsection 73(1) and by adding the following as subsection 73(2):

**Purpose of no-fault system**

**73(2)** The purpose of this Part is to fairly compensate victims for their actual financial losses, regardless of fault.

**[French version]**

Is est proposé que l'article 73 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 73(1) et par adjonction de ce qui suit:

**But du régime sans égard à la responsabilité**

**73(2)** La présente partie a pour but d'indemniser équitablement les victimes de leurs pertes financières réelles, sans égard à la responsabilité.

Mr. Chairperson, you might say, well, this is the purpose of the whole bill, and indeed it is, but it was suggested by the Legal Aid document, the Legal Aid submission, that it would strengthen the bill by simply having this as a clause stating the purpose very clearly of the intention of the bill. So therefore, it is put forward in that vein, that we make it very clear what the purpose of the no-fault system is, and as I said, it is to fairly compensate victims for their actual financial losses regardless of fault.

**Mr. Cummings:** I recognize that this was put forward in the spirit of making sure that we clearly defined. The fact is that we find the bill is paying benefits that are, in fact, not correct to refer to them as actual. Where a non-earner goes on to a deemed income, that is not an actual loss. So there is an inaccuracy in that sense, probably an invitation to court interpretation the way it is written, as well, frankly, and I would recommend that perhaps this one be defeated.

**Mr. Chairperson:** On the proposed motion—

**Mr. Leonard Evans:** We will withdraw it.

**Mr. Chairperson:** Withdraw?

**Mr. Leonard Evans:** Is that okay?

**Mr. Chairperson:** Absolutely. Is it agreed to withdraw this by unanimous consent?

**Some Honourable Members:** Agreed.

**Mr. Chairperson:** Okay. Clause 73—pass.

Just for a point of clarification, on the proposed amendment that we were previously discussing, 73.1, Disclosure of documents to claimant, what was the will of the committee on that particular clause?

**Mr. Cummings:** Mr. Chairperson, by agreement of the committee, it will be referred to the Legislative Counsel to be amended, to be reintroduced by the member for Brandon East (Mr. Leonard Evans) in a future section.

**Mr. Chairperson:** Well, then, I guess what we will have to do then is we have to have unanimous agreement to withdraw the amendment put forth by the member for Brandon East regarding Section 73.1. Agreed? Agreed. [interjection] We do not want to foul up the system is right. Okay.

Shall Clause 74 pass?

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed subsection 74(1), as set out in section 5 of the Bill, be amended by striking out "if the accident occurs in Canada or the United States" and substituting "whether the accident occurs in Manitoba or anywhere else in the world".

**[French version]**

Il est proposé que le paragraphe 74(1) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "si l'accident survient au Canada ou aux Etats-Unis", de "que l'accident survienne au Manitoba ou partout ailleurs dans le monde".

Mr. Chairperson, by way of explanation, the fact is that many Manitobans do visit various places in Europe and Australia and wherever, and I think we tend to be touring more and more. We travel more and more. It is becoming a global village. It seems to me that there is some merit in covering Manitobans wherever they may be in the world. I do not know whether there would be such a big percentage of people, but I know it is a growing number, and I think it is worthy of consideration.

**Mr. Cummings:** I recognize the member has a lot of history associated with this type of insurance and this type of insurance and accident coverage. There has, in fact, been discussed the potential that

this could be extended beyond North America, but it is my view that the corporation should have some history under its belt in terms of how this is handled in the near term in the North American market. It does extend to cover nondrivers. Every Manitoban is covered in the North American sense.

While your advice is probably worthwhile, I would propose that we move slowly in this direction, that we stay where we are. The corporation can adjust it in the future if their record is favourable.

**Motion presented.**

**Hon. Glen Findlay (Minister of Agriculture):** Would the member be interested in broadening it to the area covered by NAFTA?

**Mr. Chalrperson:** All those in favour of the motion, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chalrperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chalrperson:** In my opinion, the Nays have it. A recorded vote has been requested.

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

Yeas 3, Nays 6.

**Mr. Chalrperson:** In my opinion, the motion is defeated.

\* (1940)

**Mr. Cummlngs:** Mr. Chairperson, is it appropriate to have members abstain at these votes? [interjection] I withdraw that question.

**Mr. Chalrperson:** The amendment is accordingly defeated.

Clause 74.

**Mr. Alcock:** Mr. Chairperson, I did not vote the last time, and it was suggested that was because of some fear of opposing this act because I was going into federal politics. Nothing could be further from the truth. I just am not going to respond to spurious actions of the committee.

**Mr. Chalrperson:** I would remind honourable members that we have a bill in front of us that has 70 pages. We are on page 7. We should move along a little bit on this, if you do not mind.

Clause 74—pass; Clause 75.

**Mr. Cummlngs:** I move

THAT the proposed subsection 75(1), as set out in section 5 of the Bill, be amended in the part

preceding clause (a) by adding ", or a dependant of a victim," after "a victim".

THAT the proposed subsection 75(2), as set out in section 5 of the Bill, be amended by adding ", or a dependant of a victim who dies as a result of the accident," after "a victim".

**[French version]**

Il est proposé que le paragraphe 75(1) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après "au Manitoba", de "ou leurs personnes à charge".

Il est proposé que le paragraphe 75(2) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après "les victimes", de "ou les personnes à charge des victimes qui décèdent des suites d'un accident".

This is to make clear that the references in the clause also apply to dependants.

**Mr. Leonard Evans:** So what the minister is saying is this is a definite improvement. You are clarifying the protection of these dependants?

**Mr. Cummlngs:** That is correct.

**Motions agreed to.**

**Mr. Chalrperson:** Clause 75(1) as amended—pass. Clause 75(2) as amended—pass.

**Mr. Leonard Evans:** On 75(2), I notice you do not make any reference to the kind of court. Is there any significance in that? It just says "the court" rather than any specific court.

**Mr. Cummlngs:** I am told that there is not a defined court here as they might choose to go to Small Claims with this particular issue.

**Mr. Chalrperson:** Clause 76—pass; Clause 77—

**Mr. Cummlngs:** Clause 77(1), I move

THAT the proposed subsection 77(1), as set out in section 5 of the Bill, be amended

(a) by striking out "from any person"; and

(b) by striking out clauses (a) and (b) and substituting the following:

(a) from any person who is not resident in Manitoba, to the extent that the person is responsible for the accident; or

(b) from any other person who is liable for compensation for bodily injury caused in the accident by the person referred to in clause (a), to the extent that the person referred to in clause (a) is responsible for the accident.

**[French version]**

Il est proposé que le paragraphe 77(1), énoncé à l'article 5 du projet de loi soit amendé:

- a) par suppression de "versée aux personnes";
- b) par substitution, aux alinéas a) et b), de ce qui suit:
  - a) auprès des personnes qui ne résident pas au Manitoba, dans la mesure de leur responsabilité eu égard à l'accident;
  - b) auprès de toute autre personne qui est tenue de verser une indemnité pour les dommages corporels causés en raison de l'accident par une personne visée à l'alinéa a), dans la mesure de la responsabilité de cette dernière eu égard à l'accident.

This is not to change any of the intent of these clauses. It is to restate them so that they can be interpreted more readily according to the wording that is in there, and from having just read it, I can see why.

**Motion agreed to.**

**Mr. Chairperson:** Clause 77(1) as amended—pass; Clause 77(2)—pass.

**Mr. Cummings:** I move

THAT the proposed section 78, as set out in section 5 of the Bill, be struck out and the following substituted:

**Entitlement to recover from non-residents under other Acts**

**78** Notwithstanding section 72 (no tort actions), where a person receives compensation under The Workers Compensation Act, The Criminal Injuries Compensation Act or The Health Services Act in respect of bodily injury caused by an automobile, the body that authorizes the compensation is entitled to recover any amount that it would be entitled to recover under its Act

- (a) from a person who is not resident in Manitoba, to the extent that the person is responsible for the accident; or
- (b) from any other person who is liable for compensation for bodily injury caused in the accident by the person referred to in clause (a), to the extent that the person referred to in clause (a) is responsible for the accident.

**[French version]**

Il est proposé que l'article 78 énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Droit de recouvrement auprès de non-résidents**

**78** Par dérogation à l'article 72, lorsque des personnes reçoivent une indemnité en vertu de la Loi sur les accidents du travail, de la Loi sur l'indemnisation des victimes d'actes criminels ou de la Loi sur les services de santé pour des dommages corporels causés par une automobile, l'organisme autorisant l'indemnisation a le droit de recouvrer tout montant qu'il pourrait recouvrer aux termes de la présente loi:

- a) auprès des personnes qui ne résident pas au Manitoba, dans la mesure de leur responsabilité eu égard à l'accident;
- b) auprès de toute autre personne qui est tenue de verser une indemnité pour les dommages corporels causés en raison de l'accident par une personne visée à l'alinéa a), dans la mesure de la responsabilité de cette dernière eu égard à l'accident.

What this says is that we retain the right to enter into a suit against nonresidents, retaining the right to recover from them.

**Ms. Barrett:** Is this just stating more clearly what the original Clause 78 stated, or what is the difference?

**Mr. Cummings:** Mr. Chairperson, it does restate it more clearly, but apparently the reason for stating it more clearly is that the organizations referred to have the right to recover but not the right to subrogate. They take a direct action rather than subrogate, and this allows us to subrogate and to recover those dollars.

**Motion agreed to.**

**Mr. Chairperson:** Clause 78 as amended—pass; Clauses 79(1) to 81—pass.

**Mr. Cummings:** I move

THAT the proposed clause 81(2)(b), as set out in section 5 of the Bill, be amended by adding "that" after "the benefit".

**[French version]**

Il est proposé que la version anglaise de l'alinéa 81(2)(b) énoncé à l'article 5 du projet de loi soit amendée par adjonction, après "the benefit", de "that".

**Mr. Alcock:** The reason is? Why?

**Mr. Cummlngs:** I am told it is a grammatical correction.

**Motion agreed to.**

**Mr. Chairperson:** Clause as amended—pass. Clauses 81(3) to 98—pass. That is on page 22.

**Mr. Cummlngs:** I move

THAT section 5 of the Bill be amended by adding the following after section 98 and the heading "Victims Aged 64 or Older At Time of Accident":

**Application of certain provisions**

**98.1** Sections 81 to 98 and section 103 do not apply to a victim who is 64 years of age or older on the day of the accident.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après le titre "Victimes d'au moins 64 ans" qui suit l'article 98, de ce qui suit:

**Inapplication de certaines dispositions**

**98.1** Les articles 81 à 98 et l'article 103 ne s'appliquent pas aux victimes âgées d'au moins 64 ans au moment de l'accident.

\* (1950)

There is an explanation for this, Mr. Chairperson. It is not to change any intent or do anyone out of any benefits. It is to make clear that in times of future interpretation, there is no ambiguity about whether or not a person collects under this section or under the other sections of the act; therefore, this amendment.

**Mr. Chairperson:** Amendment pass. Clause 98 as amended—pass; Clause 99(1)—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed subsection 99(2), as set out in section 5 of the Bill, be struck out and the following substituted:

**Exception**

**99(2)** Notwithstanding subsection (1), the victim is entitled to continue to receive the income replacement indemnity for as long as he or she continues to be employed or for as long as the corporation is satisfied, based on evidence provided by the victim, that the victim would have continued to be employed but for the bodily injury resulting from the accident.

**[French version]**

Il est proposé que le paragraphe 99(2) énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Exception**

**99(2)** Par dérogation au paragraphe (1), les victimes peuvent continuer à recevoir l'indemnité de remplacement du revenu tant qu'elles occupent un emploi ou que la Société est convaincue, d'après la preuve qu'elles ont produite, qu'elles auraient continué à occuper un emploi, n'eût été du dommage corporel subi en raison de l'accident.

**Motion presented.**

**Mr. Leonard Evans:** Mr. Chairperson, what we are trying to get at here is the whole question of discriminating against people who may wish to work and indeed would work beyond sixty-five, a doctor, lawyer, or whoever, whatever occupation, farmer. We are trying to grapple with this by suggesting that we give the corporation the power to receive evidence from the victim and make a decision on this.

So 99(1) still holds, but you have, notwithstanding that, this additional possibility of the corporation making an adjustment based on the evidence provided by the person. Therefore, what we are trying to do is to eliminate discrimination on the basis of age, I suppose.

**Mr. Cummlngs:** Mr. Chairperson, this amendment references, "... as long as he or she continues to be employed ..." That would not be possible because you would not be receiving IRI while you were employed. Based on evidence provided by the victim, I am not sure how you would define that. Nevertheless, what we are really talking about here in 99(1) and this amendment to 99(2) is whether or not the provisions of this bill for the benefits at the higher age brackets are to be extended, and there are significant actuarial impacts depending on what, if any, decisions would be considered. It seems to me that this amendment does leave an open-ended situation.

I also believe there has to be a general understanding of the fact that the changes considered in this area, you are not just considering the changes to benefit someone who may at the time of their accident be older than sixty-four. You are talking about changes to the upper end of the benefits in terms of age for every long-term recipient of benefits by the corporation. Those are significant costs if they are left open-ended.

Therefore, there does have to be conditions such as or similar to the ones that are laid out in 99(1).

We do not take these types of amendments lightly, however. I would ask, Mr. Chairperson, that perhaps if we allowed two minutes to adjourn. I would suggest that the amendment in front of us is not one that I would be prepared to accept, but there is an issue that I wish to caucus for a second before we proceed with it.

**Mr. Alcock:** I was simply going to say, I mean, this is no surprise to the minister this is coming up. There was a lot of discussion about this. It is not just this section which is someone who was above sixty-five at the time of the accident, but it also applies to people who are injured. There are two or three clauses that are affected by it.

I guess my question is, if the minister has a different way of fixing this, a different way of addressing this, then let us get that on the table as part of this discussion so we can solve the problem.

**Mr. Chairperson:** Is there willingness to have a two-minute recess? [agreed] We can probably make it three minutes then if you like. Three minutes max.

The committee recessed at 7:56 p.m.

#### After Recess

The committee resumed at 8:01 p.m.

**Mr. Cummlings:** Mr. Chairperson, we are just checking with legal drafting as to a procedure, but I would like to comment on the concern that is raised in this respect. That is why this amendment is in front of us here, to generate the discussion as much as it is to achieve the full benefits that are referred to in this amendment, I believe.

I go back to my argument that at one point or another, there has to be a cutoff in order to provide some certainty as to the operation and the actuarial soundness of the program. Either that or you pay open-ended benefits. Challenges have occurred before as to whether or not there is discrimination, and they have been withstood, although, no doubt, people could debate on that for some time, as well.

I would like to indicate to the committee that we would be prepared to introduce an amendment to change the numbers that are used in 99(1), to sixty-five years or older. That would require some additional drafting.

\* (2000)

I am not prepared to accept the amendment as proposed by the member for Brandon East (Mr. Leonard Evans), but we are conscious of the fact that this is a balance we are trying to strike in this respect, and particularly in this area. If the committee would agree to return to Section 99(1) after we have drafted the appropriate amendment in the area I have just referenced, then we could proceed with our other work.

**Mr. Alcock:** I appreciate the willingness of the minister to look at this issue, and I might suggest just to take some of the pressure off the minister and the drafters at this point, rather than run the risk of trying to hurriedly correct this, we do have the opportunity to reflect on this and to introduce a report stage amendment that I think people would be willing to accept, given everybody's willingness to see this section approved.

I am just a little conscious of the fact that too often sitting in committee, we have in the lateness of the hour introduced an amendment that we then had to take out. Rather than do that, why do we not do it in some orderly fashion that gives the lawyers an opportunity to look at the impacts and the minister to make a more responsible amendment?

**Mr. Cummlings:** The amendments would reflect on 99(1) through to 103(2), so those would be the areas we would have to deal with.

**Mr. Alcock:** So given the undertaking of the minister to work to reduce the negative impact of this and introduce it at report stage, we would certainly support it at that point.

**Mr. Leonard Evans:** So I understand the minister to say he is prepared to amend 99(1) to change sixty-four to sixty-five and any other consequential changes that are required to make it. So that is what you are doing, is adding one year? Well, that is a step in the right direction.

The whole question is one of human rights, I guess, and it could be challenged in the court of law. I just want to make a clarification. Perhaps we could vote on my amendment to 99(2), but I apologize, I should have not included the words in the third line after indemnity "for as long as he or she continues to be employed or . . . ." That should be left out.

Therefore it reads: Notwithstanding subsection (1), the victim is entitled to continue to receive the income replacement indemnity for as long as the corporation is satisfied, based on evidence

provided by the victim, et cetera. That is what it should have been.

Is it possible to accept that as an amended amendment before we vote on it?

**Mr. Chalrperson:** Just as a point of clarification, I think what the member for Brandon East will have to do is withdraw this amendment he has introduced, the original amendment, and then reintroduce it as you have just outlined with the corrected wording.

So if the minister would like to withdraw it. Is it agreed that the amendment is withdrawn? [agreed] Now, Mr. Evans, to reintroduce the amendment, as corrected.

**Mr. Leonard Evans:** Okay. I move

THAT the proposed subsection 99(2), as set out in section 5 of the Bill, be struck out and the following substituted:

**Exception**

**99(2)** Notwithstanding subsection (1), the victim is entitled to continue to receive the income replacement indemnity for as long as the corporation is satisfied, based on evidence provided by the victim, that the victim would have continued to be employed but for the bodily injury resulting from the accident.

**[French version]**

Il est proposé que le paragraphe 99(2) énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Exception**

**99(2)** Par dérogation au paragraphe (1), les victimes peuvent continuer à recevoir l'indemnité de remplacement du revenu tant que la Société est convaincue, d'après la preuve qu'elles ont produite, qu'elles auraient continué à occuper un emploi, n'eût été du dommage corporel subi en raison de l'accident.

**Motion presented.**

**Mr. Chalrperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** What I did was to clarify. We had extraneous wordage in the original. As I said, really what we are doing is allowing the corporation discretion to provide some income replacement indemnity to people who may have worked well beyond seventy perhaps, seventy-five—an actress who is in her prime maybe as an actress in her seventies, you know, or a musician or whoever, a writer, farmer. This would enable the corporation

to get the evidence and decide, yes, this person was indeed engaged in farming successfully, and he was sixty-nine or seventy years of age.

At any rate, it is a matter of being fair to people, but the corporation has the discretion. It does not mean that everybody comes along and says, you know, I am entitled to more because I was going to work anyway. They would have to provide some evidence, and the corporation has the discretion. So it is not as though the corporation is bound by it. They can look at the matter. It is an option. Then you do not get any court challenges.

\* (2010)

**Mr. Cummings:** Again, there is no difficulty in identifying whether or not a person is self-employed and earning revenue. The corporation has that capability through the other aspects of the act.

If the member is asking for sort of a second category of eligibility, and I believe that is what this would amount to, then that becomes very inconsistent with the principles we have tried to put in place, and that is if you are indeed beyond age sixty-four or sixty-five, as we intend to look to, and employed, and that even at age seventy, you are still entitled to the four-year step-down, that goes far beyond the benefits that are in other similar types of programs in place across the country and I believe creates an inconsistency that would make it very difficult to not take the next step which is wide, open-ended benefits.

We admit that is not part of the program we are putting in place. We believe it is a fair reimbursement until one is into the area of where they have income. Without exception, there will be pension benefits once one is past age sixty-five, and those are the types of things we considered in structuring this. So, no, I am not prepared to accept that amendment.

**Ms. Barrett:** A question of clarification for the minister, and I know we are not technically on 99(1) yet. The minister was talking earlier about coming back at some later point and changing the title and other elements of 99 through 103 to replace sixty-four with sixty-five.

The question I have of clarification, if the minister returns with those amendments or those changes, will all of the other numbers then bump up by one year?

**Mr. Cummings:** That is the consistency that is built into the bill which will be maintained when we make those amendments.

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East (Mr. Leonard Evans)

THAT the proposed subsection 99(2), as set out in section 5 of the Bill, be struck out and the following substituted:

**Exception**

**99(2)** Notwithstanding subsection (1), the victim is entitled to continue to receive the income replacement indemnity for as long as the corporation is satisfied, based on evidence provided by the victim, that the victim would have continued to be employed but for the bodily injury resulting from the accident.

**[French version]**

Il est proposé que le paragraphe 99(2) énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Exception**

**99(2)** Par dérogation au paragraphe (1), les victimes peuvent continuer à recevoir l'indemnité de remplacement du revenu tant que la Société est convaincue, d'après la preuve qu'elles ont produite, qu'elles auraient continué à occuper un emploi, n'eût été du dommage corporel subi en raison de l'accident.

All in favour, please say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The amendment is accordingly defeated. [interjection] A recorded vote has been requested.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** Shall Clauses 99 through 103 be accordingly passed?

**Mr. Cummings:** I would propose that the committee set aside Clauses 99(1) to 103(2) to be dealt with at the end of this committee or at report stage.

**Mr. Leonard Evans:** Just by virtue of clarification, my next amendment dealt with 103(2), so I wonder if we could deal with that first. It is the same thing.

**Mr. Chairperson:** These amendments, these clauses have to be passed, and then they can be amended at report stage, so we still have to pass these clauses as outlined in the bill.

Clauses 99 through 103(1)—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed subsection 103(2), as set out in section 5 of the Bill, be struck out and the following substituted:

**Exception**

**103(2)** Notwithstanding subsection (1), the victim is entitled to continue to receive the income replacement indemnity for as long as the corporation is satisfied, based on evidence provided by the victim, that the victim would have continued to be employed but for the bodily injury resulting from the accident.

**[French version]**

Il est proposé que le paragraphe 103(2) énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Exception**

**103(2)** Par dérogation au paragraphe (1), les victimes peuvent continuer à recevoir l'indemnité de remplacement du revenu tant que la Société est convaincue, d'après la preuve qu'elles ont produite, qu'elles auraient continué à occuper un emploi, n'eût été du dommage corporel subi en raison de l'accident.

By way of explanation, the same argument applies, more or less, as was previously stated.

**Motion presented.**

**Mr. Chairperson:** All in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** It is accordingly defeated.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** Clause 103(2)—pass.

**Mr. Cummings:** I move

THAT the proposed section 104, as set out in section 5 of the Bill, be amended by striking out "A victim" and substituting "Notwithstanding sections 81 to 103, a victim".

**[French version]**

Il est proposé que l'article 104 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "Les personnes", de "Malgré les articles 81 à 103, les victimes".

This is to correct an ambiguity that arose as a result of the wording. It does not change the meaning.

**Motion agreed to.**

**Mr. Leonard Evans:** I move

THAT the proposed section 104, as set out in section 5 of the Bill, be amended by renumbering it as subsection 104(1) and by adding the following as subsection 104(2):

**Interpretation**

**104(2)** A victim shall not be considered to be regularly incapable of holding employment solely because he or she lacks skills, or because he or she has not been employed during periods of high unemployment.

**[French version]**

Il est proposé que l'article 104 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 104(1) et par adjonction de ce qui suit:

**Interprétation**

**104(2)** Les victimes ne sont pas réputées être habituellement incapables d'exercer un emploi du seul fait qu'elles manquent d'aptitudes ou qu'elles ont été sans emploi au cours de périodes pendant lesquelles le taux de chômage était élevé.

**Motion presented.**

**Mr. Leonard Evans:** We are concerned that some people may be unjustly deprived of income replacement indemnity, and we are simply clarifying it by referring to the fact that there are people who may be unemployed because of a very high unemployment situation—[interjection] Well, we have to make judgments.

So it is a matter of being as fair as possible to people who are deemed to be regularly incapable. It is just a matter of being more flexible, a little more liberal, if I can use that term—I had better not—more flexible in interpreting the victim. So it has been put forward in that spirit.

**Mr. Alcock:** Well, I think Mr. Evans makes a good point. There is a question to the minister on the current clause. The question was asked of Mr.

Evans, how do you define the various terms he has put in there, but there is no definition of what it means to be regularly incapable.

I wonder if the minister could help us understand what that means and how that is going to be defined for the corporation.

**Mr. Cummings:** Mr. Chairperson, by way of trying to understand this clause, and I had to have it explained to me, as well, the nonearner, I refer to the definition of a nonearner—the victim, who at the time of the accident is not employed but who is able to work, but does not include a minor or a student.

So this clause does not refer to what would be known as a nonearner. This refers to people who would be incapable, for reasons other than age, of holding full-time employment. It is not a clause that was dreamed up. This is directly brought forward from the Quebec definitions.

\* (2020)

As we have always said, we did not set out to reinvent the wheel. We did try to bring it forward and modify it to suit our needs, and it seems to me that this is a reasonable way of interpreting.

**Mr. Leonard Evans:** Mr. Chairperson, I just point out that my amendment does not take away 104; 104 stands as the minister has presented in the bill. What we are doing is simply clarifying that we should not discriminate against someone who, for whatever reason, did not attain certain skills or has been unemployed for some time, perhaps because of the labour market situation.

So it is just a matter of providing an interpretation. It does not take away from 104; 104 still stands. This is just a clarification to say that you cannot consider someone incapable of holding employment just because that person has not been employed, say for the past year, because the labour market situation was poor.

**Mr. Cummings:** Just to repeat, this is not referring to someone who has not held a job because of unemployment. If you look at the heading, the heading is persons incapable of employment. I know there are people who take strong exception to that reference. Somehow, we have to define in terms of how we strike IRI benefits, and this is not to discriminate against anyone. It is to, however, clarify what benefits are being made available.

**Mr. Leonard Evans:** Is there somewhere in the definitions—I do not recall about incapability.

I appreciate what the minister is getting at. There are some people who, unfortunately, for some physical reason just cannot work. Unfortunately, they have had some disease, there is some pre-existing situation, accident or whatever.

We are just worried that people will be deemed to be incapable of employment because they were unemployed for, say, two years before an accident because of the labour market situation. This is what I am getting at.

**Mr. Cummlings:** In direct response to that point, this clause does not affect persons in that situation.

**Mr. Alcock:** Mr. Chairperson, I think, though, that the other aspect of this—and I am satisfied with the minister's comment about someone who is employable but may be unemployed because of high unemployment or whatever. I am satisfied that person is not harmed by this act or this clause.

Was there not—I am recalling the presentation by the very first presenter from the Manitoba Head Injury Association plus some of the letters—a feeling that this clause really was a double burden for handicapped persons who increasingly are determined to be able to hold employment, as new technologies come up, as people are able to, by the use of certain aids, access employment? The lack of definition was of serious concern to them.

I think that was the substance of Mr. Enns's concerns, this sense that they would simply be set back in their quest to become contributing members of their community by their inability to be recognized as being employable at all.

**Mr. Cummlings:** This definition is also used in the existing MPIC regulations. This almost sounds like a flippant answer, but it is not meant in that sense. If a person, even if handicapped, is capable of work, then they are capable of work. Someone who, and I hesitate to use—in fact I will not use precise examples. There is a judgment there that is required to be made. Even to try and define it would be a very imprecise—you have to say, if someone is capable of work, they are capable of that job.

**Mr. Alcock:** One other part of the presentations that was made was the body of regulations that existed in support of decisions that the corporation was currently making. If someone had a concern under this section, they could then move to appeal, and presumably there would be an expansion of

the definitions or the conditions that would be considered.

That body of definition that currently exists, will that go forward as part of the defining characteristics of this act?

**Mr. Cummlings:** Mr. Chairperson, the advice I am receiving and I concur with is, if you attempt to define by precisely laying out a disability you probably increase the discrimination or the potential for discrimination. The wording is flexible not to discriminate but to avoid discriminating. Therefore, my response earlier that if someone is capable of a job, they are capable.

The incapability, by categorizing it in that way, is probably quite extreme in order to define what is capable and what is not.

**Ms. Barrett:** The minister spoke, and I think legitimately, about the problems in trying to set out, in concise terms, what could be defined as an incapability, particularly in reference to physical or emotional or mental handicaps that we consider barriers to employment but which should probably not be considered, and more and more are not being considered barriers to employment.

I guess I am suggesting that the amendment the member for Brandon East (Mr. Leonard Evans) is bringing forward is on the other side of that process and says, these are particular areas that we want the process to take into account, we want to be more precise in these particular areas. That is the fact that a person who has been unemployed for a period of years should not be held in definition of regularly unemployable. The fact that a person may not have a high level of skills should not be used to define regularly incapable of holding employment. I think you could incorporate both elements by passing this amendment or if the minister wanted to make some changes to make it more comfortable.

I am also, again, not very comfortable with the fact that the minister says, someone who has been unemployed for two years will not have to worry. Why will they not?

**Mr. Cummlings:** The definition of a nonearner means someone who is not employed but who is able to work but does not include a minor or a student. A nonearner will still be entitled to income, subject to the determination of income.

To be fair with the member's concerns, I think a person chronically unemployed over a decade,

certainly that is a different definition than what the member for Brandon East (Mr. Leonard Evans) has raised where someone with a particular skill, let us say a miner, whose product he is mining is no longer in demand, could well be taking odd jobs on the expectation that without leaving his town he will be able to be re-employed shortly in his original occupation. Interpretations of the difference between those two I think are obvious. That is the kind of reference that I make. The corporation has to use the guidelines that they have to make those decisions. Those are also appealable. That is where the information goes forward to the commission, if the person is dissatisfied, in order to make some additional determinations.

I would suggest that this will not help the process and I recommend that we vote against it.

**Mr. Chairperson:** On the proposed motion by the member for Brandon East (Mr. Leonard Evans)

THAT the proposed section 104, as set out in section 5 of the Bill, be amended by renumbering it as subsection 104(1) and by adding the following subsection 104(2):

**Interpretation**

**104(2)** A victim shall not be considered to be regularly incapable of holding employment solely because he or she lacks skills, or because he or she has not been employed during periods of high unemployment.

**[French version]**

Il est proposé que l'article 104 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, de numéro de paragraphe 104(1) et par adjonction de ce qui suit:

**Interprétation**

**104(2)** Les victimes ne sont par réputées être habituellement incapables d'exercer un emploi du seul fait qu'elles manquent d'aptitudes ou qu'elles ont été sans emploi au cours de périodes pendant lesquelles le taux de chômage était élevé.

\* (2030)

All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The amendment is accordingly defeated.

A recorded vote has been requested.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** The amendment is accordingly defeated.

Clause 104—pass; Clauses 105 through to 108—pass.

**Mr. Leonard Evans:** I move

THAT the proposed subsection 108(1), as set out in section 5 of the Bill, be amended by adding the following after clause (c):

(d) the level of unemployment in the region in which the victim resides.

**[French version]**

Il est proposé que le paragraphe 108(1) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après l'alinéa c), de ce qui suit:

(d) le taux de chômage dans la région où réside la victime.

This is the section that gives a lot of people who had dealings with the Workers Compensation Board a lot of grief. That is the whole matter of deeming of income. As I understand, at some point the corporation, after second anniversary of the accident, can determine a new type of employment, perhaps a lesser level of skill or whatever because the person has been incapacitated somehow, and that person, therefore, is expected to get a job at that level.

Let us say he was an electrician making a high salary. Now he is only capable of being a parking lot attendant and is making, therefore, a much lower salary. I understand if that person cannot obtain a job as a parking lot attendant, at some point the corporation can deem that person to be working as a parking lot attendant and therefore subtract, let us say \$20,000 he would get as a parking lot attendant from the \$50,000. Therefore, the income replacement is \$30,000, and they deem that he would be able to work and earn the \$20,000.

What I am suggesting is to add another category in here, another qualification. That is, as I said, the level of unemployment in the region in which the victim resides. I am trying to be as fair as possible.

I know you are, too, in taking into consideration the person's education, training, work experience,

knowledge, et cetera, but I believe that in this day and age, people can have difficulty in getting a job, and I would hope they are not discriminated against on that basis. In other words, if they are deemed to have been able to earn that income, of course, they will lose the amount that is being deemed, let us say \$20,000, my example, but what I am saying is, what if that person was really trying to get a job as a parking lot attendant but just could not because of the employment supply and demand for people in that occupation?

**Mr. Cummlings:** Supply and demand I do not think would dictate the deemed employment, because it is also modified by 108(2)(a), normally available in the region in which the victim resides.

In other words, I think the argument does not hold that because someone is deemed to be employable, to use the member's example, as a parking lot attendant, but there does not happen to be an opening for parking lot attendants, the fact is if it is a deemed employment that is available to him, that is not the same, unless I am confusing the two sections—I am not, am I? Deemed employment means that is the level of IRI.

Now, if we are looking at a job in the area, then it is modified by the clause I referred to in 108(2), which talks about normally available in the region, so there is a recognition.

**Mr. Leonard Evans:** That is a clarification, talking about a situation that pertains in a particular region. If a person lives in a remote community, for instance, certain deemed jobs are simply not available, so the corporation cannot say, well, you should be a parking lot attendant in Pukatawagan, when there are no parking lots. That is what that does. That is fine.

I have no problem with 108(2), but I do not see how this amendment should give the corporation any difficulty. All it does is add another consideration, and I just think it is a reasonable one. They probably would do it anyway, but let us put it down. I do not know whether the minister is listening because I know he was occupied, but I do not think it detracts from 108(1). It just simply adds another consideration which is reasonable, I would think.

As I said, the Manitoba Federation of Labour, as the minister may remember, made quite a point. This is one of the areas they were concerned about, the whole deeming. They wanted to

eliminate it altogether. I do not know whether you can do that, but at least one thing we can do is to say, well, we are going to recognize—the corporation will recognize the unemployment situation in an area.

**Mr. Cummlings:** There are two aspects to this, and I do not want to confuse it by talking about them both at once. In referencing the presentation we received, they were concerned about deeming an employment, first of all, for someone who was incapable of taking a job but had not been a wage earner.

There was some offence taken at the fact that they might say what level they might have been able to work at, had they been able to work. It is a reasoned process in terms of—we have talked it about before—a homemaker who probably or potentially could return as a professional. It would not be difficult to determine their deemed income.

A deemed job, where someone is returning to the workforce at less than capacity that they had prior to leaving the workforce as a result of the accident, that is a different situation. It is modified by the fact that we cannot force them to take a job that is not available in the area. It has to be something that is reasonably available in that area.

You can have a full range of jobs, when you look at that, and, in fact, it speaks to the difficulty of people living in some remote areas and the difficulty the corporation will have in being able to find alternative employment for them.

There is a bit of a tradeoff there that I thought at first examination of this proposal some number of months ago was actually very fair when you consider it does recognize that the area in which the person normally resides is the area you would expect to find a job for them.

**Mr. Leonard Evans:** I appreciate the minister's explanation of 108(2)(a). That is fine, I have no difficulty with that. That is very good, but again I am concerned about the deeming of a job, and again I will use parking lot attendant. We can use any example.

Maybe I could put it to the minister. What would happen if the person could no longer perform their original occupation, was retrained and somehow or other was able to do an occupation that provided a lesser income—let us say, instead of 50, it is 20—and it had been deemed that person could do that job.

What happens if the person did not get that job? That means the corporation says, sorry, we deemed that you should have been able to get that job and we are going to take that, let us say, \$20,000?

**Mr. Cummlings:** From the point of determination that they could accept employment in the community at a deemed level—let us talk about level, as opposed to a precise job—they would have one year continuing at full benefits while they attempt to acquire that employment.

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East

THAT the proposed subsection 108(1), as set out in section 5 of the Bill, be amended by adding the following after clause (c):

(d) the level of unemployment in the region in which the victim resides.

**[French version]**

Il est proposé que le paragraphe 108(1) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après l'alinéa c), de ce qui suit:

d) le taux de chômage dans la région où réside la victime.

All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The amendment is accordingly defeated.

**Mr. Leonard Evans:** A vote, please.

\* (2040)

**Mr. Chairperson:** A recorded vote has been requested. All those in favour, please raise their hand.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The amendment is accordingly defeated.

Clause 108—pass. Clauses 109 to 113.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT section 5 of the Bill be amended by adding the following after proposed section 113:

**Northern Manitoba additional maximum insurable earnings**

**113.1** Despite section 113, the amount of the maximum yearly insurable earnings for 1994 and for each year after 1994 for a victim residing in "Northern Manitoba" as defined in The Northern Affairs Act shall be increased by \$5000. or such amount greater than \$5000. as may be prescribed in the regulations.

**[French version]**

Il est proposé d'ajouter, après l'article 113 énoncé à l'article 5 du projet de loi, ce qui suit:

**Autre maximum assurable - résidents du Nord**

**113.1** Malgré l'article 113, le maximum annuel assurable pour 1994 et les années subséquentes applicable aux victimes qui résident dans le Nord au sens de la Loi sur les Affaires du Nord est majoré de 5 000 \$ ou de tout autre montant plus élevé prévu par règlement.

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** By way of explanation, it simply recognizes that in northern towns, especially the northern mining towns, Thompson and Flin Flon, the level of earnings is considerably higher on average than what you find even in Winnipeg or Brandon or Portage. It is a recognition of a northern higher-wage level, and it is recognized, as indicated, in The Northern Affairs Act. So government has already recognized some income differential, and we are simply putting it forward to this committee for consideration.

**Mr. Cummlings:** The basis upon which these amendments to the act are put together is that they were looking at a level of 55,000 which is 90 percent of the working population of the province.

It seems reasonable that if someone is earning beyond that level, they would be able to recognize that. I suppose that even when you consider the level of the occupations some of us in this room have, there is almost no one in this room, or very few in this room at least, who would exceed the 55 by enough to want to be concerned about the additional coverage.

This is a principle that I think applies no matter which part of the province, and I would encourage us not to create a two-tier coverage in the province.

**Motion presented.**

**Mr. Chairperson:** All those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the amendment is accordingly defeated.

**An Honourable Member:** Recorded vote.

**Mr. Chairperson:** A recorded vote has been requested. All in favour, please raise their hand.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The amendment is accordingly defeated.

Clauses 113.2 to 118.2, under Division 3, Death Benefits, on page 30—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 119, as set out in section 5 of the Bill, be struck out and the following substituted:

#### **Computing Indemnity to spouse**

**119(1)** The spouse of a deceased victim is entitled to a lump sum indemnity equal to the product obtained by multiplying the gross income that would have been used as the basis for computing the income replacement indemnity to which the victim would have been entitled if, on the day of his or her death, the victim had survived but had been unable to hold employment because of the accident, by the greater of

(a) a factor of five; or

(b) a factor equal to the number of years from the day of death of the deceased victim until the youngest dependant child of the deceased victim living with the spouse reaches 18 years of age.

#### **Undue financial hardship**

**119(2)** Notwithstanding subsection (1), where the death of a victim results in undue financial hardship to the spouse of the victim, and on the day of the victim's death the spouse is 50 years of age or older or is disabled, the factor to be used for the purpose of subsection (1) shall be not less than the number of years from the date of the victim's death to the date the spouse will reach 65 years of age.

#### **[French version]**

Il est proposé que l'article 119 énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

#### **Calcul de l'indemnité du conjoint**

**119(1)** Le conjoint d'une victime décédée a droit à une indemnité forfaitaire correspondant au produit obtenu en multipliant le revenu brut, qui aurait servi au calcul de l'indemnité de remplacement du revenu à laquelle la victime aurait été admissible si elle n'était pas décédée et avait été incapable, à la date de son décès, d'exercer un emploi en raison de l'accident, par le plus élevé des montants suivants:

a) cinq;

b) le facteur correspondant au nombre d'années compris depuis le jour du décès de la victime jusqu'au dix-huitième anniversaire de naissance de la plus jeune personne à la charge de la victime et demeurant avec le conjoint.

#### **Contraintes financières excessives**

**119(2)** Par dérogation au paragraphe (1), si le décès de la victime entraîne des contraintes excessives pour son conjoint et que celui-ci est âgé d'au moins 50 ans ou a une déficience au moment du décès de la victime, le facteur visé au paragraphe (1) correspond au moins au nombre d'années compris depuis la date du décès de la victime jusqu'au soixant-cinquième anniversaire de naissance du conjoint.

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Mr. Chairperson, one area of the bill that really gives me a lot of concern is the fact that we have not provided sufficiently for the spouses of deceased victims, or for the parents.

I really think we tend to be a bit niggardly on that. There are other parts of the bill where there is some generosity, but this is one area that I think deserves to be strengthened. What this proposes is that we use a factor that is being used by the Workers Compensation Board, I understand. So it is drawn from the experience of the Workers Compensation Board.

I know it is much richer than what was originally proposed. It costs a bit more money, but we really believe—[interjection] well, I cannot tell you exactly. I mean, I do not know whether anyone could tell us here, maybe the staff could. But the fact is that I do have a concern that we are not looking after the widows and the orphans.

This is one major criticism that has been made time after time by the lawyers opposing this bill, that people would be deprived of going to court and

they would not necessarily get the kind of compensation that a widow and her children, the orphans, deserve. So I am saying, for fairness for widows and children or the orphans, we should consider this resolution seriously and pass it.

As I said, it is much more generous, but I think it is much fairer and I think it will ward off a lot of criticism that might occur in the future if the present death benefit schedule was maintained. I have given advance notice of this to the minister and his staff so they could consider it. So I would hope that we could get something that would be much fairer to widows and orphans or widowers and orphans, because it is simply not adequate. This is the one area where we tend to be a little too sparse in our income provisions, a little too niggardly.

**Mr. Findlay:** I just want to ask the member in proposing this amendment, does he take into consideration the fact that a large portion of those spouses, be they male or female, are already employed? So you are really giving them a double income situation.

**Mr. Leonard Evans:** Well, that is true. Some are employed, but many are not, especially if there are children involved. The spouse is involved, hopefully, raising the children. Of course, like all these regulations, you can only provide for general categories and that is true for everything in here. I simply repeat, we are not providing enough by way of death benefits.

**Mr. Cummings:** The approach that the member has taken would result in some rather startling figures and these are upper-end figures, so I make that clear. Potentially, a young spouse 18 to 20 years of age would end up being paid about \$2.5 million. There are a lot of counterparts out there that are worth more dead than alive if you get into those types of—

**Mr. Leonard Evans:** Over what period of time?

**Mr. Cummings:** Over a lifetime [interjection] or lump sum, pardon me. I am sorry. [interjection] If the child is one year old at the time of the death, potential benefits of \$935,000, including a benefit of \$100,000 lump sum payment to the child.

I guess what we need is a little bit more explanation and substantiation of the position that this act takes and that is based, first of all, on the premise that a spouse is not necessarily indolent and that over a course of five years will have the opportunity to acquire some skills with which to

deal with the situation that they find themselves in, but the death benefits that the corporation would be paying range from \$40,000 up to a maximum of \$275,000 and that is based on a multiple of the wage that the deceased is earning. Yes, they are not as generous as one might want them to be, but they do provide for that immediate impact.

\* (2050)

You will recall the example that we gave of how this system can balance off against the tort system, particularly where we may have the family of a partially at-fault victim. In fact, these benefits are more generous, and that, of course, is a criticism in the eyes of some people. It is the same as the impaired driving laws when you did not put a marked licence plate on the car of every known impaired driver. You recognized a sense of decency and a sense of honour to the children and the family of someone who is at fault. The same thing is recognized here, that the children are innocent and therefore entitled to some reasonable level of benefit.

**Mr. Leonard Evans:** Mr. Chairperson, as I indicated, this is based on the experience with Workers Compensation and with their death benefits. In other words, I am advised that Workers Compensation does provide something in the order of what I am proposing here, far more generous than what Autopac is going to make available. It seems to me there must be some basis for Workers Compensation, which has been around for a long, long time, providing this level of benefits, much superior to what is being proposed here, and why would we not want to be using their experience, because you have done that in other parts of the bill to be consistent with some of the other organizations. Why not use the Workers Compensation model or approach here?

**Mr. Cummings:** The bill references the \$40,000 level, but that is not less than \$40,000. The range, as I said, is as much as seven times that.

Mr. Chairperson, I recognize that occasionally we are referenced to the WCB and occasionally we look to WCB for precedents, but by and large these are processes that have been adopted out of the Quebec plan and rejigged to equal the 90 percent of the wage-earning capacity of our population. Therefore, I would encourage us to pass it as written.

**Mr. Leonard Evans:** I wonder if I could ask the minister if he and his staff would take another look at this, and we will be voting on this right away, but if he and his staff could take another look at the death benefits to see whether there is some possibility of perhaps making this a bit more generous than it is, if you would undertake to look at that.

**Mr. Cummings:** The only undertaking that I could make at this juncture is that I will ask what potential impacts are, as I did on the other section, but I will not provide an undertaking to amend at this juncture. It may well be subject of review as the system unfolds.

**Mr. Chairperson:** On the proposed amendments moved by the member for Brandon East, regarding the proposed subsection 119(1) and 119(2) be amended, all those in favour, please signify by saying yea.

**An Honourable Member:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The motion is defeated. A recorded vote is requested.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The amendments are accordingly defeated.

Clauses 119(1) to 122(2)(a)—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move THAT the proposed clause 120(2)(b), as set out in section 5 of the Bill, be amended by striking out "\$17,500." and substituting "\$52,500."

**[French version]**

Il est proposé que l'alinéa 120(2)(b) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "17 500 \$", de "52 500 \$".

The explanation is similar to my previous one. I just believe that we should be more generous in providing lump sum indemnities to other dependants. It is quite clear what we are suggesting here.

**Mr. Cummings:** Well, basically, we have had the discussion on whether or not we would like to increase these benefits as we go through. I recognize the concerns that are raised. I also recognize that these are benefits that are in

addition to all of the other coverages that are available, and I would recommend that we not accept the amendment.

**Ms. Barrett:** Mr. Chairperson, I have a question, and I apologize for not being familiar enough with the bill to know the answer to this question.

Would this be the only sum of money then that the dependant would have, or are there other areas where there are schedules where dependants can get additional sources of income or indemnities?

**Mr. Cummings:** This is in addition to the Schedule 3 benefits on page 65 which run from \$35,000 to \$19,000 from year one to year sixteen.

**Ms. Barrett:** This 122(b) is a recognition of disability so that it is an additional lump-sum payment.

**Mr. Cummings:** That is correct.

**Ms. Barrett:** I very briefly would just like to add my concerns to those expressed by the member for Brandon East that if this is the lump sum in recognition of a disability of a dependant and the degree of disability is not elucidated here—it could be a marginal disability or a permanent long-term disability—it seems to me the sum of \$17,500, even added to the \$35,000 which is the largest sum available under Schedule 3, is not generous. It is not even, I think, a minimum recognition of the potential long-standing harm that has come to this individual as a result of this accident.

**Mr. Cummings:** I would ask the member to reconsider the conditions which this may refer to. This, as I read it and I invite counsel to correct me, may well be a minimum wage labourer who is deceased and the dependant is other than a spouse who would receive this lump sum. It is not a very large sum, I agree, but it is not in any way reflected upon the loss of the wage-earning capacity of the deceased. It is simply a recognition in the short term of some additional dollars to be made available.

**Mr. Chairperson:** On the proposed motion—

**Mr. Cummings:** Sorry to interrupt, Mr. Chairperson, but it is pertinent. This does not refer to any disability caused in the accident. This would be someone who perhaps had a disabled child living or dependant of any sort living with them.

**Ms. Barrett:** I read, if the dependant is disabled on the day. I read, obviously incorrectly, on the day, referring to the disability happening as—I still stand

by my caucus colleague, but I do understand 120(2)(b) better. Thank you.

\* (2100)

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East (Mr. Leonard Evans)

THAT the proposed clause 120(2)(b), as set out in section 5 of the Bill, be amended by striking out "\$17,500." and substituting "52,500."

**[French version]**

Il est proposé que l'alinéa 120(2)b) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "17 500 \$", de "52 500 \$".

All those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** Signify, those opposed, by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the clause is defeated.

**Mr. Leonard Evans:** Recorded vote.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** Clause 120(2)(b)—pass; Clause 121—pass.

**Mr. Cummings:** I have an amendment, and I see Mr. Evans also has an amendment. I will take the prerogative to introduce my amendment for 122, which is the entitlement of child and parent of deceased victim.

I move

THAT the proposed section 122, as set out in section 5 of the Bill, be struck out and the following substituted:

**Entitlement of child and parent of deceased victim**

122 Where a deceased victim has no dependant on the day he or she dies, each child and parent of the deceased victim, although not a dependant of the deceased victim, is entitled to an lump sum indemnity of \$5,000.

**[French version]**

Il est proposé que l'article 122 énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Admissibilité des enfants et de la mère ou du père**

122 Tous les enfants ainsi que la mère ou le père de la victime décédée, même s'ils ne sont pas à la charge de cette dernière, ont droit à une indemnité forfaitaire de 5 000 \$.

This is a change to reflect upon the fact there is a view that there should at least be some recognition of the family, where there are not dependants involved, and it is somewhat substantive.

**Motion agreed to.**

**Mr. Leonard Evans:** I move

THAT the proposed section 122, I guess, as amended—

**Mr. Chairperson:** Yes, as amended.

**Mr. Leonard Evans:** As set out in section 5 of the Bill, be amended by striking out "\$5,000." and substituting "\$10,000."

**[French version]**

Il est proposée que l'article 122 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "5 000 \$", de "10 000 \$".

**Mr. Chairperson:** If we could just hold it for a sec, we have to change the tape on the machines. So if we could just hold the response.

The committee recessed at 9:04 p.m.

**After Recess**

The committee resumed at 9:09 p.m.

**Mr. Chairperson:** Order, please. We come back to the amendment that was introduced by the member for Brandon East (Mr. Leonard Evans), to explain. You read it into the record, I believe.

Just to make sure, maybe you would not mind reading it back into the record, just to make sure.

**Mr. Leonard Evans:** I move

THAT the proposed section 122, as set out in section 5 of the Bill, be amended by striking out "\$5,000." and substituting "\$10,000."

**[French version]**

Il est proposée que l'article 122 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "5 000 \$", de "10 000 \$".

The explanation is along the lines of a previous discussion. That is, my intent is to make the payments more generous than they are outlined and this is a specific suggestion.

\* (2110)

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the amendment is defeated.

**An Honourable Member:** A recorded vote.

**Mr. Chairperson:** A recorded vote has been requested.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** The amendment is accordingly defeated.

Clause 122 as amended—pass.

**Mr. Leonard Evans:** I move, Mr. Chairperson,

THAT the proposed section 123, as set out in section 5 of the Bill, be amended by striking out "\$3,500." and substituting "\$5,000."

**[French version]**

Il est proposé que l'article 123 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "3 500 \$", de "5 000 \$".

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** This comes out of a specific suggestion made by one of the presenters of an organization, the Manitoba Federation of Labour, I believe.

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** A recorded vote has been requested.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** The motion is accordingly defeated.

Clause 123—pass. Clauses 124 through 129—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 130, as set out in section 5 of the Bill, be amended

(a) by striking out "of not more than \$3,000 per month"; and

(b) by adding ", in the opinion of the medical practitioner attending the victim," after "where".

**[French version]**

Il est proposé que l'article 130 énoncé à l'article 5 du projet de loi soit amendé:

a) par suppression de ", jusqu'à concurrence de 3 000 \$ par mois,";

b) par substitution, à "lorsqu'elles", de "lorsque, de l'avis du médecin qui les traite, elles".

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** You may recall that Mr. John Lane, I believe, head of a disability organization, pointed out that in terms of personal assistance, expenses of \$3,000 a month may not go very far, particularly if the person is a quadriplegic or has had a very serious accident and has heavy disabilities. He, I believe, suggested that \$3,000 was too constraining, so we are responding to that suggestion.

I believe the Legal Aid paper may have made reference to this as well. It certainly did make reference to the other part of my amendment which refers to the opinion of the medical practitioner attending the victim. The point is to allow the doctor involved to have a greater say or to ensure that that doctor has an important say in the type of personal assistance that the victim unfortunately has to obtain. So the amendments are in keeping again with recommendations made to this committee by two organizations.

**Mr. Cummings:** Mr. Chairperson, I was just double checking my facts. This benefit is just about the only benefit that is capped. Remember that this is not capped for lifetime. It is only capped on the per month basis. It is in excess of all of the other services that are available.

I think Mr. Lane and I have had this discussion before. I am not going to put words in his mouth or try and interpret something, but my view of this has always differed from his a little bit inasmuch as

these are very generous benefits in the long term, because there is no lifetime reduction or capping of the benefits. They are over and above all rehab expenditures. They are over and above any expenditures that would be required to modify a residence or to provide specialized equipment. This is over and above any paramedics or those types of expenses that would be provided along with MHSC benefits.

It strikes me that it would be almost impossible to exceed this limit, except where one was looking at perhaps the absolute maximum in all categories. The difference here is that these have been enhanced over and above the Quebec benefits. Theirs are at 25, as I recall. This was added to in order to try and accommodate some of the concerns that Mr. Lane raised and certainly do not, in any way, reject his concerns. We believe that this, properly managed, is quite an adequate sum of money.

You will recall that when Ontario was dealing with its no-fault provisions, this was an area where there was absolute outrage expressed. That has raised, no doubt, a lot of concern across this province, knowing that we are talking about a system that at least has a similar name. The difference is that they were talking about lifetime limits. They talked about, I believe it was a half a million lifetime limit. When you start calculating out these kinds of dollars, it does not take very long to get to a half a million. They had a right to be outraged.

The corporation, while we seem to be stingy by the comments that some people have made in certain areas, I have no qualms about pointing to the fact that a long-term disability victim—and that is what they are as a result of automobile accidents—if they have a life expectancy of seventy and are injured in the area of their early twenties, will receive benefits that exceed, in most instances, what are known as some of the highest awards that have ever been given in this province.

I do not reject, in any flippant way, the questions, but I do believe we have a pretty adequate proposal here. Therefore, I would ask that it be adopted as it is written.

**Ms. Barrett:** As I recall Mr. Lane's presentation, I think he stated that his concerns with this particular reimbursement amount was for the few. He also stated that there probably would not be very many

people that would need to have this kind of situation happen, although, I might add, it is interesting that as we get more technologically advanced in medical care we find that there are many more people living today who would not have lived after an accident. I am thinking in particular of head injuries and spinal cord injuries and those kinds of things. That means that there are potentially going to be more people than there are currently today.

\* (2120)

The other point that Mr. Lane made, and I am not sure if the section as unamended deals with that, is he felt that the \$3,000 cap would not, in those extreme cases, keep an individual in their home but would, very likely, mean that an individual would have to be institutionalized. I believe his point was, in those cases it would end up costing, if not the corporation certainly the taxpayer, in the larger sense, more money, to say nothing of quality of life, because the individual would have to be institutionalized.

I guess my question is: You are talking about relating to personal home assistance, and I am wondering if there is any place in the act where personal home assistance is defined more clearly. The minister stated in his comments to the member for Brandon East (Mr. Leonard Evans) that physical changes to the individual's home would not be included in this. I just wonder if that is clarified in the act or would be clarified in the regulations—if the minister could give us some assurance in that regard.

**Mr. Cummings:** I refer the member to Division 6, Section 137. The corporation is obligated under this section: "Subject to the regulations, the corporation may take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market."

There is another section that has been cited that would refer to the re-adaptation of the premises. [interjection] Pardon me. That would be included under what is referred to as Rehabilitation. None of this would come out of the \$3,000 per month cap that would—it is not a cap. It is a \$3,000 per month benefit, with a maximum of \$3,000.

**Ms. Barrett:** I do not want to belabour this particular issue too long. I wish I could say that the minister's response gave me a comfort level that was what I am sure he would like me to have, but I am sorry it does not.

I am not going to talk about the word "may" in Section 137, because the member for Brandon East will have an amendment dealing with that later. Given that, Section 137 talks about rehabilitation of a victim, lessen a disability and facilitate the victim's return to a normal life. Those are all excellent situations to have happen. I am not quarrelling at all with this section as it states.

It does not, to me, deal with the person who is not, at this point in our technological advance, able to be rehabilitated or whose disability will be lessened or who has the opportunity to have a job. I think that is where we are potentially looking at the situation where someone is not going to be able to find assistance and get rehabilitated, and that is why there is an amendment that is speaking to a degree of flexibility that we would like to see put in the legislation.

**Mr. Cummlings:** I can only argue that reintegration into society comes about as close as you can get to using the words, make the person comfortable in their home setting. Maybe for those who are dramatically injured, that goes a long way just to accomplish that.

**Mr. Alcock:** Mr. Chairperson, just on the same section, can the minister explain to me the interaction between the benefit that is offered here, the \$3,000 a month, and the benefits that a victim might otherwise be entitled to under other programs of the departments, such as Family Services? Does this supersede that? Are they no longer entitled to the home care, home support independent living or is it in addition to that?

**Mr. Cummlings:** It is in addition to what they would otherwise be entitled to.

**Mr. Alcock:** So then the \$3,000 a month, about a hundred bucks a day, is over and above home care and attendants they might otherwise be able to access from other programs.

**Mr. Cummlings:** That is correct.

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East

THAT the proposed section 130, as set out in section 5 of the Bill, be amended

(a) by striking out "of not more than \$3,000 per month"; and

(b) by adding ", in the opinion of the medical practitioner attending the victim," after "where".

**[French version]**

Il est proposé que l'article 130 énoncé à l'article 5 du projet de loi soit amendé:

a) par suppression de " , jusqu'à concurrence de 3 000 \$ par mois,";

b) par substitution, à "lorsqu'elles", de "lorsque, de l'avis du médecin qui les traite, elles".

All those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The amendment is accordingly defeated.

**An Honourable Member:** Recorded vote.

**Mr. Chairperson:** A recorded vote is requested. All those in favour, please signify by raising their hand.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The amendment is accordingly defeated.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 130, as set out in section 5 of the Bill, be amended by renumbering it as subsection 130(1) and by adding the following as subsection 130(2):

**Assistance in least restrictive environment**

**130(2)** In the administration of this Part, the corporation shall encourage and assist each victim to obtain any personal assistance required by the victim in an environment that is the least restrictive environment for the victim.

**[French version]**

Il est proposé que l'article 130 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 130(1) et par adjonction de ce qui suit:

**Aide dans le milieu le moins contraignant**

**130(2)** Pour l'application de la présente partie, la Société encourage et aide les victimes à obtenir

l'aide personnelle dont elles ont besoin dans le milieu qui est le moins contraignant pour elles.

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** The explanation of this, Mr. Chairperson, is that we are concerned that the corporation, well meaning perhaps, might be inclined to force a person into an institution when that person may not want to be institutionalized. This was, again, referred to us in the Legal Aid brief, that it would be very much in keeping with the best interests of the victim who was disabled that we make this as a statement, as a declaration. This might occur, perhaps, otherwise, but what this does is make it quite clear that the corporation has an obligation to allow that injured person to be able to live virtually outside of an institution if that is possible.

**Mr. Cummings:** I think I have to argue that we have already gone through the response to this type of argument in our reference to 137, where we are obliged to take the steps described there, and the argument I put forward in the previous amendment regarding the \$3,000-per-month special benefit.

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

**An Honourable Member:** Recorded vote.

**Mr. Chairperson:** A recorded vote has been requested.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** The proposed amendment is accordingly defeated.

Clause 130—pass; Clauses 131(1) to 136 on page 36—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 137, as set out in section 5 of the Bill, be amended

(a) by adding ", including subsection 9(2) (reimbursement of certain expenses) of the Automobile Insurance Coverage Regulation,

Manitoba Regulation 290/88 R," after "Subject to the regulations,;" and

(b) by striking out "may" and substituting "shall".

**[French version]**

Il est proposé que l'article 137 énoncé à l'article 5 du projet de loi soit amendé:

a) par adjonction, après "Sous réserve des règlements," de "y compris le paragraphe 9(2) du Règlement sur la garantie, règlement du Manitoba 290/88 R,;"

b) par substitution, à "peut prendre", de "prend".

It was pointed out, I believe, on Monday morning by a lawyer that the corporation had an excellent set of regulations that could be used as a guide. He recommended strongly that we take that set of regulations and incorporate it into the bill. This is what this amendment is intending to do.

Also, this (b) part, we are striking out "may" and saying "shall." In other words, subject to the regulations, the corporation shall take any measure it considers necessary, rather than may take any measure. I think that is stronger and considering the intention to assist in rehabilitation, I think that should not give the minister any difficulty, to say that it "shall," rather than "may."

\* (2130)

As I was indicating a moment ago, there are some excellent regulations, and we feel that they can and should be incorporated. This is what this part (a) is intended to do.

**Mr. Cummings:** Mr. Chairperson, we are not disputing the basis on which the member puts this forward, but this is part and parcel of our rehabilitation directive the corporation will undertake with every claimant.

**Ms. Barrett:** I am not going to discuss the (a) part of the amendment because I have no knowledge of it. I would like to talk about the (b), which is the striking out "may" and substituting "shall," just a reiteration of concerns I raised earlier that if this is the section, which it appears it will be, that speaks directly to rehabilitation and reintegration and quality of life for disabled individuals, that I think the word "shall" is the appropriate word.

I am not assuming for a moment that any person who would be implementing this section of the legislation would not be doing all that he or she

could or felt that they could, but you must always in legislation look for the worst possible case in some of these cases.

I think the word "shall" instead of "may" makes it very clear that this is what the corporation will do, and the minister, in his earlier comment, said that. He said the corporation will do this, and I think changing "may" to "shall" only puts into the legislation what the minister has put on the record here tonight.

**Mr. Cummings:** Well, being a man of my word, we can accept (b). I want a unanimous vote on this, though.

**Mr. Chalrperson:** Maybe as a suggestion to the member for Brandon East, he could withdraw this motion and reintroduce it with just the Section (b).

**Mr. Cummings:** Why do we not just accept Section (b).

**Mr. Chalrperson:** I believe the motion that had been read into the record is the total motion. It would be easier if the total motion is withdrawn and then reintroduced just as Section (b) and then a vote is taken. That is in agreement with the committee?

**Mr. Leonard Evans:** What we would like to do—I would appreciate the minister's agreement here. For (b), what we would like to do is vote on the amendment as is, and then I would introduce another one which would be just that. It would only include the (b) portion.

**Mr. Chalrperson:** Is there a willingness? [agreed]

On the proposed motion by the member for Brandon East

THAT the proposed section 137, as set out in section 5 of the Bill, be amended

(a) by adding ", including subsection 9(2) (reimbursement of certain expenses) of the Automobile Insurance Coverage Regulation, Manitoba Regulation 290/88 R," after "Subject to the regulations,;" and

(b) by striking out "may" and substituting "shall".

**[French version]**

Il est proposé que l'article 137 énoncé à l'article 5 du projet de loi soit amendé:

(a) par adjonction, après "Sous réserve des règlements," de "y compris le paragraphe 9(2)

du Règlement sur la garantie, règlement du Manitoba 290/88 R,;"

(b) par substitution, à "peut prendre", de "prend".

All those in favour of the amendments (a) and (b), please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chalrperson:** All opposed to the amendment, please signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chalrperson:** In my opinion, the Nays have it.

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

Yeas 3, Nays 6.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 137, as set out in section 5 of the Bill, be amended by striking out "may" and substituting "shall".

**[French version]**

Il est proposé que l'article 137 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "peut prendre", de "prend".

**Motion agreed to.**

**An Honourable Member:** There was one abstention, Mr. Chairperson.

**Mr. Chalrperson:** Was there an abstention? No, the motion was unanimous.

Clause 137 as amended—pass; Clauses 138 through 141—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 142, as set out in section 5 of the Bill, be amended by renumbering it as subsection 142(1) and by adding the following as subsection 142(2):

**If employer does not provide information**

**142(2)** If the employer does not provide proof of earnings within six days, the corporation shall consider the claim on the basis of information provided by the claimant until such time as the employer provides the proof of earnings.

**[French version]**

Il est proposé que l'article 142 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 142(1) et par adjonction de ce qui suit:

**Non-production de renseignements de la part de l'employeur**

**142(2)** Si l'employeur ne lui fournit pas l'attestation du revenu au cours du délai de six jours prévu au paragraphe (1), la Société procède à l'étude de la demande d'indemnisation d'après les renseignements que lui a fournis le demandeur tant que l'employeur ne lui fournit pas l'attestation du revenu.

**Motion presented.**

**Mr. Leonard Evans:** The intent of this amendment is to ensure that the claimant is not penalized because his employer, for whatever reason, legitimate or illegitimate, is not able or does not provide the proof within six days. It seems to me that there can be various circumstances where the proof may not be forthcoming, and in the meantime, the claimant is discriminated against and is hurt because he or she is not able to receive compensation.

Therefore, it seems to me reasonable for the corporation to take the word of the claimant. It could be an oath, a signed declared statement with a notary public or whatever. Then subsequently the corporation would obtain the proof from the employer when that information was available directly from the employer.

**Mr. Cummings:** Would the member consider a subamendment, that following the word "claimant" adding "and acceptable to the corporation", continuing on to "until such as time as the employer provides the proof of earnings"?

In other words, in principle, there is no disagreement with what he is saying, but let us not make it a carte blanche approval.

**Mr. Leonard Evans:** Agreed.

**Mr. Cummings:** I am reminded that it has to be more than a note from mother.

**Mr. Leonard Evans:** By way of clarification, Mr. Chairperson, do I have to re-read this into the record?

**Mr. Cummings:** Can we accept the amendment and then amend the amendment?

I would make a motion to amend the amendment.

**Mr. Leonard Evans:** That is fine. We will amend it and pass your amended version.

**Mr. Chairperson:** On the proposed amendment moved by the member for Brandon East

THAT the proposed section 142, as set out in section 5 of the Bill, be amended by renumbering it as subsection 142(1) and by adding the following as subsection 142(2):

**If employer does not provide information**

**142(2)** If the employer does not provide proof of earnings within six days, the corporation shall consider the claim on the basis of information provided by the claimant until such time as the employer provides the proof of earnings.

**[French version]**

Il est proposé que l'article 142 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 142(1) et par adjonction de ce qui suit:

**Non-production de renseignements de la part de l'employeur**

**142(2)** Si l'employeur ne lui fournit pas l'attestation du revenu au cours du délai de six jours prévu au paragraphe (1), la Société procède à l'étude de la demande d'indemnisation d'après les renseignements que lui a fournis le demandeur tant que l'employeur ne lui fournit pas l'attestation du revenu.

All those in favour of the amendment, please signify by saying yea.

**Mr. Cummings:** We have to amend it before we— can we speak to—[interjection] You mean, amend it now before it is voted on?

**Mr. Leonard Evans:** Or I could just agree to put it in, whatever you want.

**Mr. Chairperson:** As a point of clarification, it would be easier for the member for Brandon East to withdraw the proposed amendment and then reintroduce it with the proper wording in it.

We will withdraw it in English and in French, and we will introduce it with both English and French.

Is there agreement to withdraw this amendment?  
[agreed]

Mr. Evans will then reintroduce the amendment with the proper wording in English and French.

\* (2140)

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 142, as set out in section 5 of the Bill, be amended by renumbering it as subsection 142(1) and by adding the following as subsection 142(2):

### If employer does not provide information

**142(2)** If the employer does not provide proof of earnings within six days, the corporation shall consider the claim on the basis of information provided by the claimant and acceptable to the corporation until such time as the employer provides the proof of earnings.

#### [French version]

Il est proposé que l'article 142 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 142(1) et par adjonction de ce qui suit:

#### Non-production de renseignements de la part de l'employeur

**142(2)** Si l'employeur ne lui fournit pas l'attestation du revenu au cours du délai de six jours prévu au paragraphe (1), la Société procède à l'étude de la demande d'indemnisation d'après les renseignements que lui a fournis le demandeur et qu'elle juge acceptables tant que l'employeur ne lui fournit pas l'attestation du revenu.

#### Motion agreed to.

**Mr. Chairperson:** Clause 142 as amended—pass; Clauses 143 to 144(2)—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed subsection 145(1), as set out in section 5 of the Bill, be amended by striking out "and on any other related matter requested by the corporation".

#### [French version]

Il est proposé que le paragraphe 145(1) énoncé à l'article 5 du projet de loi soit amendé par suppression de "et sur toute autre affaire connexe précisée par la Société".

#### Motion presented.

**Mr. Leonard Evans:** There is a concern expressed again by one of the delegations that the corporation may—the petitioner may look into other matters that are not truly related to the accident in question. The intent, therefore, of this is to attempt to ensure that the corporation is zeroing in on the accident and conditions pertaining to the victim as a result of that accident.

Again, the suggestion was made, I guess in keeping with the experience of workers compensation, where there is always an argument as to other matters that may or may not have affected the person's particular physical condition. It is based on that experience and a

recommendation of one of the delegations appearing before the committee.

**Mr. Cummings:** The concern seems to me to be not founded inasmuch as the phrase "related matter" is constricting in terms of what can be supplied to the corporation or what the corporation can request. It is not intended to be providing capacity for a fishing trip. It is in fact intended to be a directive in the way it is written. We are looking at 145(1).

**Ms. Barrett:** Mr. Chairperson, should a claimant feel that the material or evidence from the practitioner is being asked to go beyond the bounds of what the claimant feels is appropriate related issues, is this something that could be appealed? Is this part of what could be appealed?

**Mr. Cummings:** If it came to a situation where information was not supplied, and through the process, the claimant's benefits were then somehow endangered, they would have the ability to appeal at that point. In other words, if it is brought down to where they refused information that was deemed relevant and they could no longer support their claim, in other words, they started to lose their benefits because of a decision by the corporation, that would be appealable.

**Ms. Barrett:** Then would the obverse as well be true, that if there was information that was requested by the corporation from a practitioner and a practitioner, I suppose the word is either refused or grudgingly, gave that information, and the end result was something that was a determination of benefit that the claimant felt was unfairly arrived at because material was used in making that determination that was outside the scope of what the claimant feels is relevant, is that an appealable condition as well?

**Mr. Cummings:** It would be appealable. There might, however, be a circumstance where the commission would have to make a decision as to whether or not something was relevant or not relevant at that juncture and that would be one of their responsibilities.

**Mr. Gerry McAlpine (Sturgeon Creek):** Mr. Chairperson, my concern with this 145(1) is in relation to the specific information that could be obtained, medical information particularly, medical information that would be specific to the accident. I do have some concern with that and giving some liberal latitude with the medical information that

may not pertain to the accident, but is on the record and could possibly prejudice a victim or a claimant's position. My concern would be some way to incorporate specific to the accident or something to that nature.

**Mr. Cummings:** I am told that it still hinges on the relevance and the relevance being the limiting aspect of it. Pre-existing conditions are relevant. I do not think anyone has really questioned that, but that is an example of where information beyond what damage occurred at the time of an accident is relevant. But the limiting words, I am told, are still "related matters," and those are quite meaningful in legal terms.

**Mr. McAlpine:** I have some comfort in that in terms of related to the accident, but in the case where in pre-existing conditions, I can concur with that. But what I am talking about is a situation where information that is not related to the accident is brought forward and is put on the record by way of authorization and put in there by the medical practitioner.

**Mr. Cummings:** Two aspects to that question. It is quite important in terms of the protection of people's privacy.

That is one example, I suppose, that relates to a question that was asked earlier about whether or not the corporation might in fact end up with information that should not be released. This might be an example of something that, if they inadvertently acquired it, they should never release.

Secondly, they cannot use it if it is not related. If someone appeals the benefit level that they are receiving to the commission, and the corporation should cite that as relevant information, and the commission deems it not to be, then they cannot use it.

\* (2150)

**Mr. McAlpine:** Yes, I have some comfort with the minister's explanation. Thank you.

**Mr. Chairperson:** On the proposed motion of the member for Brandon East (Mr. Leonard Evans)

THAT the proposed section 145(1), as set out in section 5 of the Bill, be amended by striking out "and on any other related matter requested by the corporation".

**[French version]**

Il est proposé que le paragraphe 145(1) énoncé à l'article 5 du projet de loi soit amendé par suppression de "et sur toute autre affaire connexe précisée par la Société".

All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

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

Yeas 3, Nays 6.

**Mr. Chairperson:** Clause 145(1)—pass.

**Mr. Cummings:** Mr. Chairperson, I have an amendment, 145(2).

I move

THAT the proposed subsection 145(2), as set out in section 5 of the Bill, be amended by adding "the person and" after "the medical report to".

**[French version]**

Il est proposé que le paragraphe 145(2) énoncé à l'article 5 du projet de loi soit amendé par adjonction, après "la présente partie à", de "la personne et à".

It is to make sure that the claimant gets a copy of his medical report.

**Mr. Leonard Evans:** I am sorry, what was the explanation again?

**Mr. Cummings:** Mr. Chairperson, I said, this is to assure that it goes to the claimant. What I should have said, to be more specific, is that it goes to the practitioner requesting the information and the claimant. In other words, the claimant will receive any information that is being used.

**Motion agreed to.**

**Mr. Chairperson:** 145(2) as amended—pass. Clause 146. This is an addition.

**Mr. Leonard Evans:** I move

THAT the proposed section 146, as set out in section 5 of the Bill, be amended by renumbering it as subsection 146(1) and by adding the following as subsection 146(2):

**Consideration of claim not to be delayed**

**146(2)** The corporation shall not delay

consideration of a claim by reason of a delay in receiving a report under subsection (1).

**[French version]**

Il est proposé que l'article 146 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son numéro, du numéro de paragraphe 146(1) et par adjonction de ce qui suit:

**Report de l'étude de la demande d'indemnisation**

146(2) La Société ne peut reporter l'étude d'une demande d'indemnisation du fait qu'elle a reçu en retard le rapport visé au paragraphe (1).

**Motion presented.**

**Mr. Leonard Evans:** This is, I guess, parallel to the matter of an employer not coming forward with the report within six days and therefore the claimant possibly being penalized on that account.

In this case, we are dealing with a doctor, perhaps, or other health practitioner or a hospital that for whatever reason has delayed or was not able to get it in within six days. You can think of a number of instances where this could happen, the doctor away being ill or being on a holiday or whatever, so we think it is reasonable to allow the corporation to not delay consideration by virtue of the fact that the medical report did not come in within the six days requested.

**Mr. Cummings:** Mr. Chairperson, this is a little bit of a two-edged sword. While it seems like a reasonable request, this, in fact—146 refers to the practitioner or hospital who has been treating. If they cannot delay, the corporation might, in fact, by way of making this amendment actually find themselves in the position of having to deny, is the flip side of doing this.

In other words, where there is some question, this could lead to a response that would not necessarily be in favour of the claimant, even though this would seem to be a reasonable amendment to put in. You have to balance whether or not in the long run, it comes out in the best interests of the claimant to include it, because what you are referring to is 146. This might more adequately refer to 145.

**Ms. Barrett:** I am not going to speak to which section this might refer to, but in the interests of fairness to the claimant, and I understand what the minister is saying, that without this bit of

information, the claim might not be adequately addressed.

Is it possible to come up with an amendment or some clarification that would say if the hospital or attending physician has not provided the information within the six days, that when the hospital does provide that information, the claim would be deemed to have started as though there had been no delay, so you would backdate the benefits?

What I am trying to get at, and I do not know how to state this very clearly, is the claimant's responsibility—he or she has done all that is important. Is there a way we can retroactively deal with this potential problem?

**Mr. Cummings:** I would refer the members to Section 151(1). If you read that section, it does put an obligation on the corporation to pay if there is a well-founded reason to pay.

**Ms. Barrett:** Yes, I understand what the minister is saying, but the minister stated in his earlier discussion of the amendment brought forward by the member for Brandon East that the corporation might, in the absence of medical information, be required to deny a claim, should this amendment pass.

Well, I do not understand how 151(1) would be any different. The corporation does not have any documentation.

**Mr. Cummings:** I think the view held here is that 151 addresses the concerns that you are raising, plus you raised a question regarding the retroactivity of benefits. They in fact are. There is no question about that.

If the information was not received, your benefits would not—it is not the case of them not going back past the date the information was received. That is not the criteria for the time they would be paid. It is just justifying or quantifying what should be paid.

**Ms. Barrett:** For clarification then, what the minister is saying is that 151(1), where it talks about the corporation may pay an indemnity or reimburse an expense, it could be used to say to a claimant, yes, we know the hospital or the physician has not delivered the needed documentation within the time frame that the hospital shall deliver it, so we will give you a sum of money to tide you over in a sense. Is that what 151(1) is saying in this case?

**Mr. Cummings:** If there was enough information to show that there was a claim, that they would begin making payments. They might not be at the level they would ultimately rise to, but they would begin payment.

This would allow them to begin payment, I guess, is what it is intended to do; in other words, not keep someone waiting because someone else has not put it in the mail, as it were.

**Mr. Chairperson:** On the proposed motion by the member for Brandon East that the proposed Section 146 as set out—

**Mr. Leonard Evans:** I will withdraw that amendment 146(2) based on the explanation by the minister that it might hurt the claimant.

**Mr. Chairperson:** Okay. Is there agreement of the committee that this amendment be withdrawn? Is it unanimous? [agreed]

Shall 146 pass? It is accordingly passed.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 147, as set out in section 5 of the Bill, be amended by striking out "whose application for review or appeal under this part is allowed" and substituting "who applied for a review or appealed a review decision under this Part".

**[French version]**

Il est proposé que l'article 147 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "dont le recours en révision ou en appel est accueilli", de "qui ont demandé une révision ou fait appel d'une révision en application de la présente partie".

**Motion presented.**

\* (2200)

**Mr. Leonard Evans:** I think we are concerned here that there will be a reimbursement only if there is an agreement that an appeal will be forthcoming, that the appeal will be allowed, and we wanted to ensure that this medical report would be paid for whether or not the appeal was in the favour of the claimant. We are concerned that the claimant may be penalized if the appeal is not allowed.

**Mr. Cummings:** Mr. Chairperson, I would be prepared to accept this amendment.

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East (Mr. Leonard

Evans), all those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** It is unanimous that the amendment be carried.

**Mr. Cummings:** Was that unanimous? Oh, great.

**Mr. Chairperson:** Section 147 as amended—pass; 148—pass; 149.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 149, as set out in section 5 of the Bill, be amended by renumbering it as subsection 149(1) and by adding the following as subsection 149(2):

**Benefit of doubt to claimant**

**149(2)** Where the evidence favouring the payment of a benefit to a claimant is evenly balanced by evidence contrary to the claim, the benefit shall be paid to the claimant.

**[French version]**

Il est proposé que l'article 149 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 149(1) et par adjonction de ce qui suit:

**Bénéfice du doute**

**149(2)** En cas de partage des preuves quant à la recevabilité de la demande d'indemnisation, la Société accorde l'indemnité au demandeur.

This was a recommendation of Legal Aid Manitoba who in their presentation to the committee just recommended this as an amendment or drew the committee's attention to this matter. It is simply a matter of ensuring that we bend over backward to favour the claimant. I think it is a reasonable suggestion by Legal Aid, and I put it forward on that basis.

**Mr. Cummings:** Mr. Chairperson, while this is well intentioned, I think in terms of administering it, it replaces one problem with another. I am sure that a judge or commissioners from time to time have always said, gee, could we not just call this a draw? But this is not set out to be a confrontational process, and that is the other aspect to this bill that—you know I think we are all of the mindset, and I find myself occasionally sliding back into that thinking as well.

We are not in a confrontational situation when we have an appeal of a benefit. What we have is a

discussion of the facts as to their authenticity, if you will, and their relevance to the claim.

I do not disagree with the intent of this, but I frankly do not know that we have done any more than replace one difficulty for the appeal body with another.

**Mr. Chairperson:** On the proposed motion by the member for Brandon East (Mr. Leonard Evans), all those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** The amendment is accordingly defeated.

**An Honourable Member:** Recorded vote.

**Mr. Chairperson:** Recorded vote.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** The motion is accordingly defeated.

**Mr. Leonard Evans:** I am now bringing forward 149.1(2) which was agreed earlier in the evening. You remember that we made reference to The Freedom of Information Act. So that is what this is, and it is now numbered 149.1(2), Exempt information.

I guess my motion is this

THAT section 5 of the Bill be amended by adding the following after the proposed section 149:

**Exempt Information**

**149.1(2)** Subsection (1) does not apply to exempt information as defined under The Freedom of Information Act—

**Mr. Chairperson:** Mr. Evans, if you could read the whole amendment into the record.

**Mr. Leonard Evans:** I am sorry. I apologize.

I move

THAT section 5 of the Bill be amended by adding the following after the proposed section 149:

**Disclosure of documents to claimant**

**149.1(1)** A claimant may, on giving reasonable notice to the corporation, examine and copy any document in the corporation's possession respecting the claim and is entitled, on request, to

one copy of the document without charge, but the corporation may prescribe a fee for providing more than one copy of the document.

**Exempt Information**

**149.1(2)** Subsection (1) does not apply to exempt information as defined under The Freedom of Information Act.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 149, de ce qui suit:

**Transmission de documents au demandeur**

**149.1(1)** A la condition de donner un préavis raisonnable à la Société, le demandeur peut examiner et copier tout document qui a trait à sa demande d'indemnisation et dont la Société est en possession. Il a droit, sur demande, à une copie gratuite du document. Toutefois, la Société peut prévoir, par règlement, des frais pour les copies supplémentaires.

**Renseignements privilégiés**

**149.1(2)** Le paragraphe (1) ne s'applique pas aux renseignements privilégiés au sens de la Loi sur la liberté d'accès à l'information.

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** The amendment is unanimously carried—pass.

Shall Section 149 as amended—oh, pardon me, we are still on 149.

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT section 5 of the Bill be amended by adding the following after the proposed section 149:

**Claimant advocates**

**149.1(1)** Claimant advocates and other employees necessary to enable the claimant advocates to carry out their duties effectively shall be appointed or employed in accordance with The Civil Service Act.

**Role of claimant advocates**

**149.1(2)** The claimant advocates may provide claimants with information, advice and assistance, including

- (a) assisting a claimant in a review under section 170 or an appeal to the commission, including making representations on behalf of the claimant in the review or appeal;

(b) advising claimants as to the interpretation and administration of this Act and any regulation made under this Act, and of the effect and meaning of decisions made under this Act; and

(c) performing such other duties and functions as the minister may require.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 149, de ce qui suit:

**Représentants des demandeurs**

**149.1(1)** Sont nommés ou employés conformément à la Loi sur la fonction publique des représentants du demandeur ainsi que les autres employés dont les représentants du demandeur ont besoin pour s'acquitter efficacement de leurs fonctions.

**Fonctions des représentants du demandeur**

**149.1(2)** Les représentants peuvent fournir des renseignements, des conseils et de l'aide aux demandeurs qu'ils représentent et notamment:

a) les aider, y compris les représenter, dans le cadre d'une révision entreprise en vertu de l'article 170 ou d'un appel interjeté devant la Commission;

b) les conseiller en matière d'interprétation et d'application de la présente loi et de ses règlements et en ce qui concerne l'effet et la portée des décisions rendues en vertu de la présente loi;

c) accomplir toutes les autres fonctions que le ministre peut prescrire.

Mr. Chairperson, this goes back to the Workers Compensation Board organization again. In the early '80s, a worker advocacy system was set up to assist persons appealing decisions of the Workers Compensation Board. It has worked very well.

These are not lawyers necessarily, these are people who become proficient in rules and regulations under The Workers Compensation Act and act as a guide, provide guidance and advice to the claimants. In many cases, claimants who, under Workers Compensation, go through the appeal process do not necessarily have the ability to present their case, they do not have the ability to do the research and so on.

It has worked very well. It is quite economical. It has provided a degree of fairness, I believe, that

was not there before, and it certainly enhances fairness, it enhances consideration in a rational way.

So we are taking a leaf out of the book, you might say, of Workers Compensation in suggesting that it would be useful if the corporation could provide some type of advocacy service to those people who would be appealing before the appeal commission and who do definitely need advice and assistance in providing an appeal in a suitable fashion and in a manner that enables them to make an effective case before the appeal body. So I think this is a positive recommendation.

\* (2210)

I believe, again I do not know, I cannot give you all the implications for cost, the number of staff and so on but, at any rate, my understanding is that it is well-established in Workers Compensation now and has proven its value, and it is worthy of consideration by this committee.

**Mr. Alcock:** Just for clarification, I would like to ask Mr. Evans, would these be seen to be staff of the same corporation, and the second part of that, how large an organization is this? How many?

**Mr. Leonard Evans:** Okay, again, I do not pretend to be an expert in this area. Maybe somebody around the table has more information than I. I do not think that there is a legion of worker advocates. I know there is only like a half-time person available for all of western Manitoba, so I do not think it is a large group.

I believe the organization is such that they tend to be more or less apart from the regular staff of the Workers Compensation Board. I am told here that they are appointed under The Civil Service Act, but I understand in the organization they more or less stay apart from the regular staff processing the various applications by workers who have been injured.

**Mr. McAlpine:** I have some concern for the amendment. I see what the honourable member is trying to put forward, but I do have some concern of the fact that I think we are setting up another bureaucracy that is really unnecessary. I cannot support the amendment as it is here.

**Mr. Leonard Evans:** Just as another item, there was a suggestion by one delegation that we consider making monies available for hiring of some legal advice, et cetera. I believe that this is the more economical of the ways to go and, in the

long run, it is based on successful experience with Workers Compensation, but perhaps the minister would like to comment.

**Mr. Cummings:** I think, again, we are still confusing an adversarial system against what we are proposing under these amendments to The MPIC Act. Even the Workers Compensation process has an element of adversarial action in it. You have a forum for adversarial debate leading to decision making.

First of all, the internal appeal within the corporation is intended to be virtually the equivalent of a victim advocacy because it is their role to sit down face to face with the claimant and to make sure that they are made knowledgeable of all of their rights and that in the opinion of that person being given all of the benefits that they are entitled to, and the decision of that internal appeal is binding on the corporation.

I think this is where we are at this juncture still having difficulty explaining to the public that this is intended to be a group of independent people who will advise the claimant and will make decisions that will be accepted by the corporation as being binding. Even their decision is appealable to the commission.

The commission is not intended to act in an adversarial manner either. In fact the act references, I cannot quote the clause, the requirement that the corporation must provide all relevant information that the commission requests.

It is not a case of the person needing to have legal advice or extensive advice to appear. It is their right to appear to ask if, in the view of the commission, they have been treated adequately under the system. We are going out of our way to try and avoid creating an adversarial system.

The Quebec system, if I could take a second, I am told that they made changes in recent years in regard to the internal appeal where it is not a phone call, it is not a letter, it is an opportunity for the claimant to sit down with someone of independent stature within, in that case, the régime to deal with the appeal or the complaint of the victim. The number of complaints and appeals that went beyond that level dropped dramatically, that it was an effective way of approaching people's concerns.

While your proposal, and I have discussed this with a number of people in the Legislature who have raised this question, my colleagues and

others, I believe that we need to give this process a try.

We are not reinventing the wheel. We are taking what we hope is the best of other processes that we know are working and try this nonadversarial approach and we will, all of us, whether those of us in this room or future governments or future considerations by the public will be watching to see how this system works in terms of being user friendly and being fair in terms of how the rights of the individual are protected within the framework of benefits that are made available.

While I do not reject this out of cussedness, I do reject it believing that we have a system in place that will adequately address the concerns of the claimants.

**Mr. Leonard Evans:** I am encouraged by what the minister has said. In many, many ways it would be very good if you could do this in an unadversarial way. I appreciate that.

I gather from the minister's remarks, because the administrative appeal level tends to be helpful to the claimants, there is no claimant advocacy system in Quebec under the Quebec plan.

At any rate, Mr. Chairperson, we put it up for consideration. We would like to vote on it and we can dispense with it.

**Mr. Alcock:** As the minister knows, I oppose this change in total so it is a little difficult for me to speak too supportively about a lot of this.

I just want to raise one thing with the minister relative to this particular amendment. I think the minister is being excessively naive. I think he really is missing the point when it comes to how large organizations—[interjection] The minister has made the comment about falling off the turnip truck before and I think if he chooses to characterize it in that way, I would certainly support that definition.

I would ask him just to think for a minute, just to stop for a second and think about other large organizations, whether it be medical rehab, or benefits available under Income Security, not just a benefit, but any time you have a large bureaucracy that has little external scrutiny, we have moved over the years to provide some sort of check and balance. We have done that because we have found through long experience that bureaucracies tend to over time override the rights of individuals. I am surprised, frankly, that the government does not have a little more concern about this. We have

seen it, and we have introduced things. The police are all charged with acting responsibly and most of them do in 99 percent of the cases, but they do mess up and so we do build in a process that allows for some check and balance on this.

\* (2220)

Now the minister has this sense that this corporation is going to act benevolently on behalf of everybody and I wish him well. I suspect that a lot of people there will do exactly that, but when people are serving two masters and that is the board of the corporation at times saying, hey, we have to hold down costs, there is a subtle pressure on people to do the things that produce a reduction in costs. One way to do that is to produce a reduction in benefits.

In a system that is as complex as assessing the needs of individuals, there are lots of ways to do that with the best of intentions because there are a lot of judgment calls along the way. So the minister says, well, that is no problem. People can appeal. Well, what if the person in fact did fall off a turnip truck. What if they are like that first guy who came here and spoke I thought very eloquently saying, you know, I am head injured. I do not know what is going on other than six hours a week. How does he know that he is even in a position to begin to appeal? How does a person who is so severely injured—and he made the case and it is a fact that a lot of the serious injuries are in fact head injuries. So how does he know? He just comes in and acts at the behest of the individual.

So I think the member for Brandon East (Mr. Leonard Evans) is raising an issue that is an important issue. You are depriving people of their rights through this legislation. You are depriving people of the right to individual representation, and I think this is a very poor replacement for it. Can you not give people something that allows them to press back against the corporation?

**Motion presented.**

**Mr. Chairperson:** All those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it. The amendment is accordingly defeated.

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

Yeas 4, Nays 5.

**Mr. Chairperson:** The clause is accordingly defeated. Clause 149 as amended—pass; Clause 150(1)—pass.

**Mr. Leonard Evans:** I move

THAT the proposed subsection 150(2), as set out in section 5 of the Bill, be amended by striking out "the first seven days after the day of the accident" and substituting "the day after the accident".

**[French version]**

Il est proposé que le paragraphe 150(2) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "des sept premiers jours qui suivent", de "du jour qui suit".

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Well, simply we do not believe that a person should be deprived of income because he or she had an accident and was therefore, according to after he had applied or she had applied, was entitled to income replacement indemnities that he or she should be denied of virtually a week's wages. I believe the Workers Compensation Board, once you have been successful in your application, does pay you on Day One so you do not lose any income whatsoever. We have taken that into account and this is why we suggest the day after the accident so that there is no penalty.

Why should a person be penalized because they had an accident? Why should they be deprived of a week's income? Under the plan, they are entitled to this income replacement indemnity and, for the life of me, I do not know why we should be different here than Workers Compensation. We should pay them from the time that they no longer can perform their duties or perform their work.

**Mr. Cummings:** This is the existing time frame that is in the present MPIC regulations, have been for, I suppose, 17 years. So it is deemed to be a reasonable waiting period. I suggest that we are not inclined to shorten it at this juncture. If I could add, Mr. Chairperson, this is always confused when we are shifting from one system to another. This does not preclude, however, all of the other benefits that the person is entitled to begin immediately. Rehab, for those who are seriously injured, of course, is one that is always referred to,

but probably not a problem in the first seven days. All of the medical care and assistance where anything that they would have to go to for out of pocket is in fact covered.

**Mr. Alcock:** Mr. Chairperson, it strikes me as odd that we have a deductible of one week's salary and the only justification for that is because it exists in the existing bill.

What is the rationale for that? If a person is harmed through no fault of their own, why do they have to give up a week's salary? [interjection]

It is easy to say, that is the way it was. You are making the decision. You are changing the legislation. You are introducing a new act. If the act is intended to provide all of the benevolent kind of support to people that you say it is, why are you docking them one week's pay? Defend it.

**Mr. Cummings:** I hate to admit this, but actually the member might be right when he refers to this as a one-week deductible.

Does he want to make an amendment?

**Mr. Alcock:** There is an amendment before us right now that the member for Brandon East (Mr. Leonard Evans) has brought forward. It addresses the issue.

I would like the minister to defend his position, to explain why he thinks it is in a person's interest to lose a week's pay because they have been hit by a truck or they have been in a car accident. How is that justifiable in any reasonable scheme? You are taking away fault. Let us forget about the at-fault person for a minute. Let us just assume that it is a two-for-one ratio, as was suggested. Why should somebody, through no fault of their own, who has been involved in an accident, who has had their life messed up in a pretty serious way, lose a week's salary? Give me a rational reason for supporting that, and I will support it. Simply because it is practice, I think, is nonsense.

**Mr. Cummings:** I gave him one additional reason which he chose to ignore.

**Mr. Alcock:** The deductible?

**Mr. Cummings:** The member raised the question, is this a one-week deductible? Frankly that is probably what it—this is a very normal clause where there are accident—the member has suddenly come awake. He sat for two days through committee hearings and presenters and did not ask one question. He sat here all night and

has not asked a question until this juncture, and all of a sudden he is an expert.

Mr. Chairperson, the seven-day waiting period is a reasonable waiting period. Certainly, under WCB they have an immediate benefit. No one has ever said that this plan was not in some ways restrictive in terms of its operation, but it is meant to be beneficial to those who are injured. The process of a short waiting period before the income replacement begins to flow is an entirely reasonable approach to the payment of benefits.

**Mr. Alcock:** Mr. Chairperson, the minister indicated that this was a benevolent plan. We were removing the adversarial system. We recognize—and if I can use a term that he used in the debate—we were going to attempt—we could not make people whole, but we would do everything we could to prevent them suffering losses as a result of an accident.

In the case of the tin, there has been a deductible for some time, and it has been, as I understand it, in place to prevent small claims and to provide some counter pressure against people claiming. Is that what he is attempting to do here? What is the justification for the loss of one week? Just practice?

**Mr. Cummings:** There can also be the other aspect to this that the member chooses to ignore. Very often some claims are not even evident until a period following the accident. Those are a number of claims that we deal with today of a minor nature which become increasingly evident after two or three days. We have had lots of instances where people are sort of the walking wounded for two or three days and do not realize the seriousness of what their accident may have been.

That is not meant as a justification. The process we have is that there is a waiting period. It has been long accepted, not only in this plan but in others, as a reasonable way of administering these plans. It seems to me that we are amending an act. The member is asking me to amend it further to increase the benefits so that they are payable Day One. That is not a contemplated change at this juncture.

**Ms. Barrett:** I would like to ask the minister a question.

Mr. Chairperson, 150(2), the seven-day waiting period or deductible or whatever it is called, is this found in the Quebec plan?

**Mr. Cummings:** Yes.

**Mr. McAlpine:** Mr. Chairperson, I can appreciate the member's concerns for a one-week waiting period, and the minister has explained this I think to some extent. I think it also has to be noted that we are separating, with this, very minor injuries with the more serious ones. It is not designed to deprive those people who have sustained serious injuries but to separate those that are of a minor nature.

It is very difficult to try to anticipate that aspect of it. I think we have to have something in there that is going to enable the corporation to deal with the serious—and when we consider insurance, what is the purpose for insurance? It is to satisfy those who are severely injured. I think the one-week waiting period is going to enable that to happen.

\* (2230)

**Mr. Chairperson:** On the proposed amendment by the member for Brandon East (Mr. Leonard Evans)

THAT the proposed subsection 150(2), as set out in section 5 of the Bill, be amended by striking out "the first seven days after the day of the accident" and substituting "the day after the accident".

**[French version]**

Il est proposé que le paragraphe 150(2) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "des sept premiers jours qui suivent", de "du jour qui suit".

All those in favour, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** Accordingly defeated.

A recorded vote.

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

Yeas 4, Nays 5.

**Mr. Chairperson:** The amendment is accordingly defeated.

Clause 150(2)—pass; Clauses 150(3) to 156(1)—pass.

**Mr. Cummings:** Mr. Chairperson, I move

THAT the proposed subsection 156(2), as set out in section 5 of the Bill, be amended

(a) in the heading, by adding "or reimbursement" after "indemnity"; and

(b) by adding "or reimbursement" after "administer the indemnity".

**[French version]**

Il est proposé que le paragraphe 156(2) énoncé à l'article 5 du projet de loi soit amendé:

a) par adjonction, après "Versement" dans le titre, de "ou remboursement";

b) par adjonction, après "les sommes en question", de "ou le remboursement".

This is intended to be a technical amendment, not changing any intent.

**Motion agreed to.**

**Mr. Chairperson:** Clause 156(2) as amended—pass; Clauses 156(3) to 157(3)—pass.

**Mr. Cummings:** I move

THAT the proposed section 158, as set out in section 5 of the Bill, be amended by striking out clause (b) and substituting the following:

(b) refuses or neglects to produce information, or to provide authorization to obtain the information, when requested by the corporation in writing;

**[French version]**

Il est proposé que l'article 158 énoncé à l'article 5 du projet de loi soit amendé par substitution, à l'alinéa b), de ce qui suit:

b) refuse ou néglige de lui fournir un renseignement ou de lui donner l'autorisation d'obtenir un renseignement qu'elle a demandé par écrit;

This is a recommendation, I believe, made by Legal Aid recommending that this be included, so there is no misunderstanding, and it hopefully emphasizes to the person that there is an obligation to provide information.

**Motion agreed to.**

**Mr. Chairperson:** Clause 158 as amended—pass.

**Mr. Cummings:** I move

THAT the proposed subsection 159(1), as set out in section 5 of the Bill, be amended

(a) in the English version of the part preceding clause (a), by striking out "convicted of" and substituting "convicted under";

(b) in clause (d)

(i) by adding "or subsection 249(2)" after "clause 249(1)(a)";

(ii) by striking out "294(4)" and substituting "249(4)"; and

(c) by striking out clause (f) and substituting the following:

(f) section 253 or subsection 255(1) (operating a motor vehicle while impaired), or subsection 255(2) (impaired driving causing bodily harm) or subsection 255(3) (impaired driving causing death);

**[French version]**

Il est proposé que le paragraphe 159(1) énoncé à l'article 5 du projet de loi soit amendé:

a) par substitution, à "convicted of", de "convicted under", dans la version anglaise du passage qui précède l'alinéa a);

b) à l'alinéa d)

(i) par adjonction, après "alinéa 249(1)a)", de "paragraphe 249(2)",

(ii) par substitution, à "294(4)", de "249(4)";

c) par substitution, à l'alinéa f), de ce qui suit:

f) article 253, paragraphe 255(1), paragraphe 255(2), paragraphe 255(3);

I am told these amendments are being made so there is no ambiguity, because when charges are being laid, they may be laid in referring to two different sections, and we wanted to make sure that both sections were included in here so that on a technicality, someone so charged would not be able to avoid the penalty that is included in this act.

**Motion agreed to.**

**Mr. Chalrperson:** Clause 159(1) as amended—pass; Clauses 159(2) to 165(1) on page 46—pass.

**Mr. Cummings:** I move

THAT the proposed section 165(2), as set out in section 5 of the Bill, be amended by striking out "under 164" and substituting "under section 164".

**[French version]**

Il est proposé que la version anglaise du paragraphe 165(2) énoncé à l'article 5 du projet de loi soit amendée par substitution, à "under 164", de "under section 164".

**Mr. Chalrperson:** Mr. Minister, to explain.

**Mr. Cummings:** In all of this some 70 pages, the drafters left out a word, and we have reinserted it.

**Motion agreed to.**

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 165, as set out in section 5 of the Bill, be struck out and the following substituted:

**Cap of 6% on adjustment**

**165** Where the ratio computed under section 164 exceeds 1.06, the ratio is deemed to be 1.06.

**[French version]**

Il est proposé que l'article 165 énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Facteur de rajustement de 6 %**

**165** Le coefficient calculé conformément à l'article 164 est fixé à 1,06 s'il est supérieur à ce chiffre.

**Mr. Chalrperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Well, I read it, but it is not exactly, I think, what I wanted. At any rate, let me tell you what I am up to.

The point is, the way the bill is now, it does provide for indexation, which is great. It is great, but there is a cap of 6 percent inflation. That is what this says, although I believe, by regulation, the corporation could look at it if there were, say, runaway inflation to 10 or 12 percent. God forbid, but supposing there was, then by regulation, the corporation could adjust it.

What we are doing here is simply putting in legislation requiring the corporation to not, and that was the intent, although I do not know whether the wording is quite correct, and I am not blaming anybody but myself, but what we are saying is that 106, or the 6 percent should not be a cap, in effect. The corporation should be allowed to recognize inflation and index the benefits accordingly with the information they have on inflation.

\* (2240)

**Mr. McAlpine:** One question. The minister moved an amendment and we did not receive a copy.

**Mr. Chalrperson:** Oh, well, then just ask the Clerk.

**Mr. Leonard Evans:** Maybe we could discuss the issue even though there is some difficulty with the wording. I think you know what I am talking about.

**Mr. Cummings:** This amendment would in fact create a cap, which the member said he does not intend, but I am sure his intent is that he wants the cap more flexible or removed.

There has to be, in my opinion, these types of controls in place or we start to lose the predictability of the system. Now, you could argue what the impacts may be on claimants. The larger argument, however, is that under the tort system, awards attempt to recognize future inflation, and sometimes they are a long way off the mark.

I have to say that this comes a lot closer to being a more reasonable reflection of what inflationary cost and future costs are. It is more current on behalf of the claimant because none of us are, well, I guess there are some exceptions, but most of us can remember when we thought that 18 percent interest would be virtually impossible to live with or that it would ever occur.

What this simply does is allow recognition, as in WCB. Alternately, we want to refer to or not refer to WCB. It is my view that if we allow this to be changed, we will be taking away some of the predictability, and ultimately you put at risk the invested savings, if you will, on behalf of the victims.

**Mr. Alcock:** Mr. Chairperson, you also assist the investments. I mean, they start to be invested at a higher rate of interest. There are other ways in which inflation is controlled than by limiting the benefits available to people who have been injured in accidents.

**Mr. Cummings:** This does not limit their benefits. This is an indexed benefit, which is an enhanced benefit, in fact. What it does is put some reasonable limitations around the enhancement.

**Mr. Alcock:** The purpose in enhancing the benefit is to keep it current to today's conditions, and as soon as inflation exceeds 6 percent, this benefit erodes. I do not understand why you do it.

**Mr. Cummings:** Mr. Chairperson, the member made the comment a moment ago that investment profits would reflect inflationary cycles as well, and that this is thereby some Machiavellian theory in here to deprive someone of a deemed benefit and yet we are running around calling it an enhanced benefit. That is not the case at all.

If there is not some protective mechanism in here, there very well can be an example of where you have stagflation. There are lots of examples

where the corporation would not be able to protect the investment on behalf of the claimant.

Let us be very clear about this process. By changing to this type of a system, we are also changing the manner in which we manage funds in order to benefit those who in many cases are the most traumatically injured.

We are talking about very large benefits for long term which are not handled in this manner today. This is a very important principle because the principle of indexing provides that keeping current aspect. However, it does not guarantee to the injured person any more than the working person is guaranteed that his salary will keep up with inflation. We have lots of examples of where salaries have not kept up with inflation, so while we protect to the large extent the inflationary impacts that the claimants may be exposed to, we do not necessarily totally protect them against some erosion of standard of living which all of society might get under certain economic standards.

It goes a long way toward achieving that and, I believe, exceeds the present system in achieving that, but there does have to be some cushion in here, not to protect the corporation, but to protect the interests of those who will be receiving money from the corporation. If the corporation does not have the revenues in place on a continuous and ongoing basis, they will not be able to make sure that 50 years down the road—and God help us, we hope it does not happen—that if somebody is injured on March 2 under this program in that dramatic a fashion, we are talking about protecting benefits 50 years out.

**Mr. Leonard Evans:** Mr. Chairperson, we have had a good discussion on this. Really, the intent of my motion was really to remove any cap, so to put that into effect, I should have just voted against 165(1) and (2).

I want to withdraw my motion because I take full responsibility for it. It did not properly express my intention of removing the cap. What we should have done was simply ask for 165(1) and (2) to be removed. However, I would withdraw—

**Mr. Chairperson:** Is it agreed to withdraw this amendment?

**Some Honourable Members:** Agreed.

**Mr. Chairperson:** Agreed. It is unanimous.

Shall Clause 165(2) as amended pass? All those in favour of the amendment—

**Mr. Leonard Evans:** We have already voted on 165(1)?

**Mr. Chairperson:** Yes, we are voting now on 165(2), the amended one. The minister amended 165(2)—as amended.

Shall Clause 165(2) as amended pass? All those in favour, please say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Yeas have it. A recorded vote requested—

**Mr. Cummings:** Did we vote on—

**Mr. Chairperson:** What we had was two amendments for 165(2). We had the minister's amendment first, which was passed, and then we had the amendment that was brought forth by the member for Brandon East (Mr. Leonard Evans), which was withdrawn. Now, I am asking them to approve the clause as amended by the minister.

What I am asking now, will Clause 165(2) as amended be passed? All those in favour, please say yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay. The clause is passed unanimously.

Clauses 166 to 170(1)—pass.

**Mr. Cummings:** I move

THAT the proposed subsection 170(2), as set out in section 5 of the Bill, be amended by striking out "appeal" and substituting "apply for a review of the decision".

**[French version]**

Il est proposé que le paragraphe 170(2) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "interjeté appel", de "demandé une révision de la décision".

**Motion presented.**

**Mr. Cummings:** If you compare this to the one in the written bill, which says: ". . . may extend the time set out . . . if it is satisfied the claimant has a reasonable excuse for failing to appeal . . ." What we are changing—it is to make sure that this is

referred to as the review section, not the appeal section. It was a wrong reference.

**Ms. Barrett:** Just a question for clarification. So this is the first process. The first step is the review, and then the appeal comes later.

**Mr. Chairperson:** All those in favour of the amendment by the honourable minister, please signify by saying yea.

**An Honourable Member:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

The amendment is accordingly passed.

Clause 170(2) as amended—pass; Clauses 171(1) to 173—pass.

\* (2250)

**Mr. Leonard Evans:** Mr. Chairperson, I move

THAT the proposed section 174, as set out in section 5 of the Bill, be amended

(a) in subsection (1), by adding ", on the recommendation of the Standing Committee of the Assembly on Privileges and Elections," after "shall";

(b) in subsection (4), by adding ", by the Lieutenant Governor in Council on the recommendation of the Standing Committee of the Assembly on Privileges and Elections," after "appointed";

(c) by adding the following after subsection (4);

**Recommendations of committee on privileges and elections**

**174(4.1)** Where the position of the chief commissioner, a deputy chief commissioner or another commissioner is vacant or

(a) the term of the position will expire within 12 months; or

(b) the person in the position has tendered his or her resignation to take effect within 12 months;

the President of the Executive Council shall convene a meeting of the Standing Committee of the Assembly on Privileges and Elections which shall consider persons suitable and available to be appointed to the position and shall make recommendations in that respect to the President of the Executive Council.

**Meetings of Standing Committee**

**174(4.2)** The Standing Committee of the Assembly

on Privileges and Elections may, for the purposes of performing its functions under this section, meet during a session of the Legislature or during the recess after prorogation.

#### **Officers of the Legislature**

**174(4.3)** On appointment the chief commissioner, any deputy chief commissioners and the other commissioners shall be officers of the Legislature.

(d) by striking out subsection (5) and substituting the following:

#### **Removal or suspension**

**174(5)** The Lieutenant Governor in Council, on a resolution of the assembly carried by a vote of 2/3 of the members of the assembly voting thereon, may remove the chief commissioner, a deputy chief commissioner or a commissioner from office or suspend him or her.

#### **Suspension when Legislature not in session**

**174(5.1)** Upon written advice of the majority of a committee consisting of the President of the Executive Council and the recognized leaders of the members belonging to the several political parties in opposition, the Lieutenant Governor in Council may, at any time the Legislature is not in session, suspend the chief commissioner, a deputy chief commissioner or a commissioner for cause; but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

#### **Definition of "political party"**

**174(5.2)** For the purposes of subsection (5.1), "political party" has the meaning assigned to it under The Elections Act.

(e) in subsection (8) by striking out "Minister of Consumer and Corporate Affairs" and substituting "Speaker of the Assembly".

#### **[French version]**

Il est proposé que l'article 174 énoncé à l'article 5 du projet de loi soit amendé:

a) dans le paragraphe (1), par adjonction, après "nomme", de ", sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée législative,";

b) dans le paragraphe (4), par adjonction, après "nommés", de "par le lieutenant-gouverneur en conseil, sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée législative,";

c) par adjonction, après le paragraphe (4), de ce qui suit:

#### **Recommandations du comité permanent**

**174(4.1)** Le président du Conseil exécutif convoque une réunion du Comité permanent des privilèges et élections de l'Assemblée législative s'il y a vacance aux postes de commissaire en chef, de commissaire en chef adjoint ou de commissaire ou si, selon le cas:

a) le mandat de ces personnes expire dans les douze mois;

b) le titulaire du poste a donné un préavis de douze mois de sa démission.

Le Comité établit une liste des personnes qu'il estime convenables et disponibles pour le poste; il fait ensuite ses recommandations au président du Conseil exécutif.

#### **Réunions**

**174(4.2)** Le Comité permanent des privilèges et élections de l'Assemblée législative peut, aux fins de l'accomplissement du mandat qu'il a reçu en application du présent article, se réunir au cours d'une session de l'Assemblée ou lorsque celle-ci a été clôturée.

#### **Cadres de l'Assemblée**

**174(4.3)** Le commissaire en chef, les commissaires en chef adjoints et les commissaires, dès leur nomination, sont des cadres de l'Assemblée législative.

d) par substitution, au paragraphe (5), de ce qui suit:

#### **Destitution ou suspension**

**174(5)** Le lieutenant-gouverneur en conseil peut, à la suite d'une résolution de l'Assemblée adoptée aux deux tiers des voix exprimées, destituer ou suspendre le commissaire en chef, un commissaire en chef adjoint ou un commissaire.

#### **Suspension lorsque l'Assemblée n'est pas en session**

**174(5.1)** Sur avis écrit de la majorité d'un comité composé du président du Conseil exécutif et des chefs reconnus des partis politiques d'opposition, le lieutenant-gouverneur en conseil peut, lorsque l'Assemblée n'est pas en session, suspendre, pour un motif valable, le commissaire en chef, un commissaire en chef adjoint ou un commissaire. La suspension ainsi décidée ne peut se poursuivre au-delà de la fin de la session suivante.

**Définition de "parti politique"**

174(5.2) Pour l'application du paragraphe (5.1), "parti politique" a le sens que lui donne la Loi électorale.

e) dans le paragraphe (8), par substitution, à "ministre de la Consommation et des Corporations", de "président de l'Assemblée".

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Mr. Chairperson, what we are doing here is appointing the appeal body on the same basis as the Ombudsman is appointed; that is, as I understand it, there is a decision made by the Standing Committee of the Assembly on Privileges and Elections. They receive names or whatever. They make a decision and recommend to the Lieutenant Governor who then appoints them, but then only the two-thirds vote of the Assembly can disappoint them and this is true for the Ombudsman. You cannot remove the Ombudsman. The cabinet cannot remove the Ombudsman. It has to be by at least a two-thirds vote, a majority of the Legislative Assembly. So this is just parallel to that.

Now the point is to make this appeal body as independent as possible—and maybe a lot of what we deal with in this world is perception. But the fact is, what we are proposing here is to definitely make—there is no question that it will make the appeal body far more independent, I believe, than it is outlined in the present act. So I think this is worthy of consideration. There is already a model to look at, as I said, the Ombudsman model. It has worked. I think the people of Manitoba are satisfied, and I believe that they would be satisfied with this proposed amendment on the appointment of the automobile injury compensation appeal commission.

**Mr. Alcock:** Mr. Chairperson, actually Mr. Evans has answered one of my questions that the process be the same as that for appointing the chief electoral commissioner and the Ombudsman and the Auditor as the third officer of the Assembly that is appointed. I think it is a legitimate amendment. I think it addresses the concerns about all the eggs being under the control of the body that has both responsibility and some political motivation for affecting rate settings and controlling the costs within the corporation. I think it does make the appeals process more independent of government and would be interested in seeing it passed.

**Mr. Cummings:** Mr. Chairperson, members of the opposition have served notice from the start that they were concerned about the make-up of the appeal body. It has always been my contention that the position and the quality of that position is protected by the fact that it is long enough that it will exceed any political interference in terms of the electoral process, that the person appointed to the body is given security of appointment removal only for cause, and that the quality of the people that we appoint will, in fact, be the criterion upon which the process will be judged, particularly the permanent commissioner which will be a full-time position of some very significant responsibility, obviously, but at the same time will require a very qualified person of independent stature to fill it.

That is not incompatible with a number of other very important bodies that we have in this province. In fact, it is more stringent in its separation, if you will, from Executive Council by virtue of length of tenure and independence of stature. It seems to me it exceeds the requirements for the chairman of the Public Utilities Board. It does, in many respects, reflect on the quality of the—pardon me, the quality of the appointee will reflect on the respect with which the board is viewed. The government of the day, be it this one or future ones, will be judged on the quality of person they are able to attract to that position as well.

I guess ultimately, you cannot legislate the morals and the standards of people that go into these positions, as we cannot legislate the thinking, if you will, of the judges of the day and other people of equally important position. Those who pin their hopes over long periods of time on the tort system and the judicial system, I do not think there is any way that we could ever satisfy them that someone else is equal to a judge.

We have examples. The other thing that has been done in order to demonstrate and to protect the independence of this commission is that it will report to a separate ministry. It will not be, as many people tried to imply during the presentations, and as those who are critical of the process have tried to imply, that this is just another arm of MPIC. It is anything but. Frankly, the relationship with MPIC will be quite separate and apart in their operations. The act sets out that the new chief commissioner will, in fact, lay out his ground rules of operation. I am satisfied that this will be a highly regarded commission.

**Hon. Linda McIntosh (Minister of Consumer and Corporate Affairs):** Mr. Chairperson, just for the member's comfort, the Department of Consumer and Corporate Affairs has a number of arm's-length bodies that are impartial that do come under the jurisdiction of the Department of Consumer and Corporate Affairs and under the responsibility of a certain minister but are independently functioning bodies: the Manitoba Securities Commission, the Public Utilities Board—the Public Utilities Board frequently making decisions relating to Crowns, quite independent of any ability to be influenced by Crowns. It is a regulatory department that has much of its work in this type of area. It also has a housing corp set up that has a chief commissioner of a similar-type situation.

This particular one, of course, would be even more removed because of the total independence that the minister here has just described. I think it is a very appropriate place to have this particular appeal court set up.

With respect to your intent here, which I understand, I believe that the independence does exist in the current wording.

**Mr. Alcock:** Mr. Chairperson, certainly if you were to place it within government, I think placing it where you have chosen to, within the Consumer and Corporate Affairs, would be a legitimate place.

However, the minister has made much of this sense of independence and separation from the normal decision making of government. It seems to ascribe qualities to this position and support the need for separation in a manner that is very consistent with what some of the opposition members are saying and certainly what some of the presenters were saying.

What I do not understand, given all of that, given the tenure of the position and the desire for independence and all that, what is the downside to having him appointed in the same manner as the Ombudsman or chief electoral commissioner or the Auditor? What do you lose in doing that? What is your concern? I ask that question—I do what understand what the problem is.

**Mr. Cummlings:** Mr. Chairperson, it is not a matter of what you lose or gain. The operation of the commission is separate and apart. Its independence cannot be called into question by any elected body other than for cause. So once

they are up and operational, they send their bill to the corporation. They make the final decision.

\* (2300)

Many other commissions that are held in very high regard and by some people are deemed to be certainly on a par—although I would not personally set them on that basis—to the CC and the PUB as an example, they recommend. This commission does not recommend. It makes a decision.

I have yet to meet a commission that once set off on an independent course that does not act independently. I am not uncomfortable with the view and frankly even appointment of judges. Eventually, they are appointed and put into an independent setting, but they are appointed. They go off into an independent setting, and they act accordingly.

I am not trying to wax philosophical, but frankly, the quality of people and the confidence that we would have in people we have put forward into these positions is the only test that once can apply to these bodies.

I know it is an area that those who are critical of the entire process point to as something they believe is less than what they desire. Nevertheless, I am confident this will produce the results, and as we will likely be discussing shortly, this is an area that will be under considerable scrutiny and subject to report and review in a specified timetable.

**Mr. Leonard Evans:** I have a question to the minister, and that is, how does the government propose to find these people, the chief commissioner, the deputy and the other members of the appeal body, and how are they selected in Quebec?

**Mr. Cummlings:** This is one area where we have not been able to completely follow the Quebec example because they have an amalgamated commission that hears all manner of appeals, not just the régie. So we have chosen, in a rough sense, to reflect what we think is a good model, one of which is residential tenancies, one that is working particularly well at this particular juncture, that there are other models that follow very much on the heels of that.

I know one of the presenters was not pleased when he drew the analogy that it reflected that model, but that need not deter if we believe that it is

proper, but we will undoubtedly be more than willing to accept nominations.

As I recall, and perhaps the minister who is ultimately going to be responsible may wish to elaborate because it is certainly a question that we have no intention of hiding our light under a bushel, but the process that was followed in Consumer Affairs is, as I understand it, quite an open process to find that chief commissioner.

**Mr. Leonard Evans:** What I understand then is the the minister of whichever department—perhaps the Minister of Consumer Affairs—would use the Civil Service Commission to find the chief commissioner, or is it some person that may be recommended to you from a group of people that you feel would be adequate for that job?

**Mrs. McIntosh:** The exact method we are going to follow has not been determined yet, but we are looking at a number of models. The one model we followed with residential tenancies was an open competition-type model with the final appointment being made by the minister on a recommendation from a selection committee.

That would be one model we could follow. If we have high-calibre candidates presented to us from a series of venues, a direct appointment could be made if the person is of sufficient high calibre and acceptable to the community at large. There are a number of ways we could do it.

With residential tenancies, as I say, we went through that full, complete search. It was a cross-Canada search, as a matter of fact. It ended up with a local lawyer being appointed to be the chief commissioner, to act as the judge in that capacity.

So, you know, we could bring that full range of spectrum for selecting. We are in the process right now to try to determine which would be the very best vehicle to choose.

**Mr. Chalrperson:** On the proposed amendments by the member for Brandon East (Mr. Leonard Evans)

THAT the proposed section 174, as set out in section 5 of the Bill, be amended

(a) in subsection (1), by adding ", on the recommendation of the Standing Committee of the Assembly on Privileges and Elections," after "shall";

(b) in subsection (4), by adding ", by the Lieutenant Governor in Council on the recommendation of the Standing Committee of the Assembly on Privileges and Elections," after "appointed";

(c) by adding the following after subsection (4);

**Recommendations of committee on privileges and elections**

**174(4.1)** Where the position of the chief commissioner, a deputy chief commissioner or another commissioner is vacant or

(a) the term of the position will expire within 12 months; or

(b) the person in the position has tendered his or her resignation to take effect within 12 months;

the President of the Executive Council shall convene a meeting of the Standing Committee of the Assembly on Privileges and Elections which shall consider persons suitable and available to be appointed to the position and shall make recommendations in that respect to the President of the Executive Council.

**Meetings of Standing Committee**

**174(4.2)** The Standing Committee of the Assembly on Privileges and Elections may, for the purposes of performing its functions under this section, meet during a session of the Legislature or during the recess after prorogation.

**Officers of the Legislature**

**174(4.3)** On appointment, the chief commissioner, any deputy chief commissioners and the other commissioners shall be officers of the Legislature.

(d) by striking out subsection (5) and substituting the following:

**Removal or suspension**

**174(5)** The Lieutenant Governor in Council, on a resolution of the assembly carried by a vote of 2/3 of the members of the assembly voting thereon, may remove the chief commissioner, a deputy chief commissioner or a commissioner from office or suspend him or her.

**Suspension when Legislature not in session**

**174(5.1)** Upon written advice of the majority of a committee consisting of the President of the Executive Council and the recognized leaders of the members belonging to the several political parties in opposition, the Lieutenant Governor in Council may, at any time the Legislature is not in

session, suspend the chief commissioner, a deputy chief commissioner or a commissioner for cause; but the suspension shall not continue in force beyond the end of the next ensuing session of the Legislature.

#### Definition of "political party"

174(5.2) For the purposes of subsection (5.1), "political party" has the meaning assigned to it under The Elections Act.

(e) in subsection (8) by striking out "Minister of Consumer and Corporate Affairs" and substituting "Speaker of the Assembly".

#### [French version]

Il est proposé que l'article 174 énoncé à l'article 5 du projet de loi soit amendé:

a) dans le paragraphe (1), par adjonction, après "nomme", de ", sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée législative,";

b) dans le paragraphe (4), par adjonction, après "nommés", de "par le lieutenant-gouverneur en conseil, sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée législative,";

c) par adjonction, après le paragraphe (4), de ce qui suit:

#### Recommandations du comité permanent

174(4.1) Le président du Conseil exécutif convoque une réunion du Comité permanent des privilèges et élections de l'Assemblée législative s'il y a vacance aux postes de commissaire en chef, de commissaire en chef adjoint ou de commissaire ou si, selon le cas:

a) le mandat de ces personnes expire dans les douze mois;

b) le titulaire du poste a donné un préavis de douze mois de sa démission.

Le Comité établit une liste des personnes qu'il estime convenables et disponibles pour le poste; il fait ensuite ses recommandations au président du Conseil exécutif.

#### Réunions

174(4.2) Le Comité permanent des privilèges et élections de l'Assemblée législative peut, aux fins de l'accomplissement du mandat qu'il a reçu en application du présent article, se réunir au cours d'une session de l'Assemblée ou lorsque celle-ci a été clôturée.

#### Cadres de l'Assemblée

174(4.3) Le commissaire en chef, les commissaires en chef adjoints et les commissaires, dès leur nomination, sont des cadres de l'Assemblée législative.

d) par substitution, au paragraphe (5), de ce qui suit:

#### Destitution ou suspension

174(5) Le lieutenant-gouverneur en conseil peut, à la suite d'une résolution de l'Assemblée adoptée aux deux tiers des voix exprimées, destituer ou suspendre le commissaire en chef, un commissaire en chef adjoint ou un commissaire.

#### Suspension lorsque l'Assemblée n'est pas en session

174(5.1) Sur avis écrit de la majorité d'un comité composé du président du Conseil exécutif et des chefs reconnus des partis politiques d'opposition, le lieutenant-gouverneur en conseil peut, lorsque l'Assemblée n'est pas en session, suspendre, pour un motif valable, le commissaire en chef, un commissaire en chef adjoint ou un commissaire. La suspension ainsi décidée ne peut se poursuivre au-delà de la fin de la session suivante.

#### Définition de "parti politique"

174(5.2) Pour l'application du paragraphe (5.1), "parti politique" a le sens que lui donne la Loi électorale.

e) dans le paragraphe (8), par substitution, à "ministre de la Consommation et des Corporations", de "président de l'Assemblée".

All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

A recorded vote has been asked.

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

Yeas 4, Nays 5.

**Mr. Leonard Evans:** Mr. Chairperson, I have another amendment to this. If the government was not prepared to accept the Ombudsman model, I have a fallback position here. So I have another amendment. It is a little briefer.

**Mr. Chairperson:** On Section 174?

**Mr. Leonard Evans:** THAT section 5 of the Bill be amended by adding the following after the proposed section 174:

**Application of Civil Service Superannuation Act**  
**174.1(1)** The chief commissioner, any deputy chief commissioner and the other commissioners are employees within the meaning of The Civil Service Superannuation Act.

**Commissioners not under Civil Service Act**  
**174.1(2)** The chief commissioner, any deputy chief commissioner and the other commissioners are not subject to The Civil Service Act, except sections 42 to 44 thereof which apply to them.

**Salaries**

**174.2(1)** The salaries of the chief commissioner, any deputy chief commissioner and other commissioners

(a) shall be fixed by the Lieutenant Governor in Council; and

(b) shall not be reduced except on resolution of the Assembly carried by a vote of 2/3 of the members of the Assembly voting thereon.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 174, de ce qui suit:

**Loi sur la pension de la fonction publique**

**174.1(1)** Le commissaire en chef, les commissaires en chef adjoints et les autres commissaires sont des employés au sens de la Loi sur la pension de la fonction publique.

**Loi sur la fonction publique**

**174.1(2)** La Loi sur la fonction public, à l'exception des articles 42 à 44, ne s'applique pas au commissaire en chef, aux commissaires en chef adjoints ni aux autres commissaires.

**Rémunération**

**174.2(1)** La rémunération du commissaire en chef, des commissaires en chef adjoints et des autres commissaires:

a) est fixée par le lieutenant-gouverneur en conseil;

b) ne peut être réduite que par une résolution de l'Assemblée adoptée aux deux-tiers des voix exprimées.

**Motion presented.**

**Mr. Leonard Evans:** Very briefly, what this does, as I understand it, is require the government to use

the Civil Service Commission to seek someone or some people to put on the commission, and then also, as it is explained here, the government or the cabinet will fix the salaries, but they shall not have their salaries reduced except on the resolution of the Assembly with a two-thirds vote majority.

Now that is not as good in my opinion as the first model, but it is a fallback model. I guess what I am really proposing here is that the government look to the Civil Service Commission to seek competent people and to hire them thereunder.

**Mr. Cummings:** Is there an implication that they would have tenure?

**Mr. Leonard Evans:** No, I would imagine—let me check with my legal adviser here.

Okay, we have a technical problem. This has a bearing on the previous amendment so I guess I will not proceed with this one.

But nevertheless, I want to make the point—because I do not think that you would have accepted it anyway, but this was subsequent to the other amendment. I still make the point that the government should consider using the Civil Service Commission for selection of personnel. So I withdraw this.

**Mr. Chairperson:** Is it unanimous that this amendment be withdrawn? [agreed]

**Mr. Cummings:** I have an amendment, Mr. Chairperson.

THAT the proposed subsection 174(1), as set out in section 5 of the Bill, be amended

(a) in the heading, by striking out "deputies" and substituting "other commissioners"; and

(b) by adding "and other commissioners" after "deputy chief commissioners".

**[French version]**

Il est proposé que le paragraphe 174(1) énoncé à l'article 5 du projet de loi soit amendé:

a) par adjonction, après "en chef" dans le titre, de "et d'autres commissaires";

b) par substitution, à "et un ou plusieurs commissaires en chef adjoints", de "et peut nommer un ou plusieurs commissaires en chef adjoints ainsi que d'autres commissaires".

**Mr. Chairperson:** Mr. Minister, to explain.

**Mr. Cummings:** That is just to make it clear from a procedural point of view as to how there would be appointment.

\* (2310)

**Motion agreed to.**

**Mr. Chairperson:** Clause 174(1) as amended—pass; Clause 174(2)—

**Mr. Leonard Evans:** Yes, I have an amendment to one, which is 177(2).

**Mr. Chairperson:** We have not got there yet.

**Mr. Leonard Evans:** I am sorry.

**Mr. Chairperson:** Clauses 174(2) to 177(1) on page 50—pass.

**Mr. Leonard Evans:** I move

THAT the proposed subsection 177(2), as set out in section 5 of the Bill, be amended by striking out "and if there is not a majority, the decision of the chairperson of the panel is the decision of the commission".

**[French version]**

Il est proposé que le paragraphe 177(2) énoncé à l'article 5 du projet de loi soit amendé par suppression de la dernière phrase.

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Well, it is felt, as it is worded now, it seems that the chair has a great deal of power, that the chair virtually can make the decision of the commission. The idea here is to make it more democratic.

**Mr. Cummings:** Mr. Chairperson, this is not meant to enhance the powers of the chairman of the commission. The example that is given to me is that if there were debate over a particular amount of eligibility for IRI, and there were two different views of the commissioners, the chief commissioner would ultimately make the decision, because his would be the third voice, and he is the chair.

Well, it is to make sure that there is not a procedural wrangle in the end over the ability of the commission to make a decision. Because obviously if two people agree, then that is not at issue, but if there is a disagreement, or possibly three opinions at the commission, then the chair ultimately has to break the impasse.

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

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

Yeas 3, Nays 5.

**Mr. Chairperson:** The amendment is accordingly defeated.

**Mr. Leonard Evans:** I move

THAT the heading "Appeal to Court of Appeal On Question of Law or Jurisdiction" preceding the proposed subsection 185(1), as set out in section 5 of the Act, be struck out and "Appeal to Court of Appeal" substituted—

**Mr. Chairperson:** 178? The bottom of 178?

**Mr. Leonard Evans:** No, I am dropping 178.

**Mr. Chairperson:** Oh, I am sorry.

**Mr. Leonard Evans:** You called 178, and I thought you called 185. I am dropping 178.

**Mr. Chairperson:** Okay, then. Just for clarification.

Clause 177(2)—pass; 178(1)—pass; 178(2)—pass.

**Mr. Cummings:** I move

THAT the proposed section 179, as set out in section 5 of the Bill, be amended by striking out "section 172" and substituting "this Part".

THAT the proposed subsection 180(1), as set out in section 5 of the Bill, be amended by striking out "section 172" and substituting "this Part".

**[French version]**

Il est proposé que l'article 179 énoncé à l'article 5 du projet de loi soit amendé par substitution, à "l'article 172", de "la présente partie".

Il est proposé que le paragraphe 180(1) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "l'article 172", de "la présente partie".

**Mr. Chairperson:** Mr. Minister, to explain.

**Mr. Cummings:** These are technical amendments to make sure that it jives with the rest of the bill.

**Motions presented.**

**Mr. Chairperson:** All those in favour of the amendments, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please signify by saying nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** Passed.

**Mr. Cummings:** Mr. Chairperson, I do not want to delay things but my explanation was not quite complete. There are other appeals that are referred to in other sections. That is why it refers to this part.

**Mr. Chairperson:** Clause 179 as amended—pass; Clause 180(1) as amended—pass; Clauses 180(2) through to 184(5)—pass.

**Mr. Leonard Evans:** I move

THAT the heading "Appeal To Court of Appeal On Question of Law or Jurisdiction" preceding the proposed subsection 185(1), as set out in section 5 of the Act, be struck out and "Appeal to Court of Appeal" substituted.

THAT the proposed subsection 185(2), as set out in section 5 of the Act, be amended by striking out "only on a question of jurisdiction or of law and".

**[French version]**

Il est proposé de substituer, au titre "Appel devant la Cour d'appel—question de droit ou de compétence—" qui précède le paragraphe 185(1) énoncé à l'article 5 du projet de loi, "Appel devant la Cour d'appel".

Il est proposé que le paragraphe 185(2) énoncé à l'article 5 du projet de loi soit amendé par suppression de "uniquement sur une question de compétence ou de droit et".

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** This is a very, very important amendment, Mr. Chairperson. It is an amendment based on reading of the Kopstein report. When Judge Kopstein proposed the no-fault system, he emphasized that it was extremely critical that appeals from the appeal commission or whatever the appeal body was to be perceived to a court of law, he suggested that it be the Court of Appeal. He also said it should be on question of law and of fact. This is what this amendment does. It allows a person who is not satisfied with the appeal commission decision to go to the Court of Appeal not only on matter of jurisdiction and law but also on matter of fact.

I think it is critical that we agree to this. I know the minister may be worried that we are reinventing the wheel and going over facts and so on, but I do not think that would be the case with the Court of Appeal. I do not think they would go to a case de

novo. They would have all the information from the appeal body, so it would be a matter of simply looking over the matters of fact and law a second time, if you will, because all that information particularly on fact is presented to them.

It is a senior body. I think there is every reason why it should be accepted.

**Mr. Chairperson:** Before the minister responds, we have to change the tape again on the machine, so we will take just a very short two-minute break.

The committee recessed at 11:18 p.m.

### After Recess

The committee resumed at 11:23 p.m.

**Mr. Cummings:** Mr. Chairperson, yes, this is a recommendation from the Kopstein review, but it is not one that I ever totally appreciated or agreed with, because when you refer to it as fact and law, in fact everything that is brought forward is eligible to go to the court. This level of court is set up to deal with law, interpretation of jurisdiction, but to go into a review of the fact of cases, what they would simply do is be starting from square one. I suggest that we have a series of levels of appeal through the entire process. By appealing to the court on a matter of law and jurisdiction, it would be a better reflection of a fairer process rather than restarting the process, which is likely what would happen in review of fact.

We have been very careful about setting up with the commission that it is not seen in any way to be improperly structured in its responsibilities and that it is seen to be fair in its operation. The courts will provide the additional background if it is limited to their review in law that we have put in place enough safeguards to make sure that the claimants have their claims handled in a reasonable way.

It strikes me that this would have the effect of opening things up wide open. Frankly, I do not recall very many presenters that saw this as much of an option.

**Mr. Leonard Evans:** I do not want to rag this around, but this is very critical. I think Judge Kopstein was very concerned that there would be every appearance of fairness provided. In fact, I think the whole workers compensation set up could be looked at by the members of the public as being more fair if there were some court appeals there allowed. I believe that is not allowed under the

Workers Compensation Board. You go to the appeal board and that is it. You cannot go beyond that.

My understanding—and I am not a lawyer. I have been in court—really I have very little experience. I understand that the Court of Appeal does not go de novo, does not go through all the facts, et cetera. My understanding is they sort of accept that, because the appeal body has gone through that, so that would not be a major problem in front of them. That is my understanding, so that we would not be reinventing the wheel, so to speak. There are the facts that have been dealt with by the appeal board. It would not be a matter of bringing in witnesses again and getting evidence of the case, the accident and so on. That should not have to happen necessarily.

**Mr. Cummings:** Because of the nonconfrontational process that we believe we are embarking upon, it likely will not be the equivalent of a court record from which the courts could start. Nevertheless, I am suggesting that we are not going to accept this amendment. It has been certainly considered, a lot more argument one way or another even than what we are having this evening about it, but we look forward to the process that is in place and believe it will stand up.

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

**An Honourable Member:** A recorded vote please.

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

Yeas 4, Nays 5.

**Mr. Chairperson:** The amendment is accordingly defeated. Clauses 85(1) and 85(2)—pass.

**Mr. Cummings:** I move

THAT the proposed subsection 185(3), as set out in section 5 of the Bill, be amended by striking out "14 days" and substituting "30 days".

**[French version]**

Il est proposé que le paragraphe 185(3) énoncé à l'article 5 du projet de loi soit amendé par substitution, à "14 jours", de "30 jours".

**Mr. Chairperson:** Mr. Minister, to explain.

\* (2330)

**Mr. Cummings:** Mr. Chairperson, it is to provide more time for the applicants. This was a recommendation of Legal Aid and no reason to disagree.

**Mr. Chairperson:** The amendment—pass; subsection 185(3) as amended—pass; subsection 185(4)—pass; subsection 185(5)—pass; subsection 185(6)—pass.

**Mr. Leonard Evans:** I move

THAT section 5 of the Bill be amended by adding the following after the proposed subsection 185(6):

**Corporation to pay victim's costs**

**185(7)** Where a victim applies for and obtains leave to appeal under subsection (2), the corporation shall pay the costs of the victim in respect of the appeal in accordance with the tariffs set out in the rules of The Court of Appeal.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction après le paragraphe 185(6), de ce qui suit:

**Paiement des frais des victimes**

**185(7)** La Société paie, en conformité avec les tarifs fixés par les Règles de la Cour d'appel, les frais d'appel des victimes qui demandent et obtiennent l'autorisation d'appel prévue au paragraphe (2).

**Mr. Chairperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** This is another recommendation, I believe, out of the Legal Aid report and it is a matter of fairness and so forth. So we are putting it forward in that spirit.

**Mr. Cummings:** I am told that the court if it chooses will award costs. They will also, even if the victim were to lose, might still leave the costs with the corporation. It is the decision of that court.

**Mr. Leonard Evans:** I thank the minister for that information, but what this does is remove that option.

**Motion presented**

**Mr. Chairperson:** All those in favour of the motion, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chalrperson:** All opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chalrperson:** In my opinion, the Nays have it.

**An Honourable Member:** A recorded vote.

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

Yeas 4, Nays 5.

**Mr. Chalrperson:** The amendment is accordingly defeated.

Clauses 186 through to 192—pass.

**Mr. Cummlings:** I move

THAT the proposed subsection 193(1), as set out in section 5 of the Bill, be amended by striking out "an industrial accident" and substituting "accidents arising out of and in the course of employment,".

THAT the proposed subsection 193(2), as set out in section 5 of the Bill, be amended

(a) in the part preceding clause (a) by adding "or any other Act that is in force in or outside Manitoba and that relates to the compensation of a person who is a victim of an accident arising out of and in the course of employment" after "The Workers Compensation Act"; and

(b) in clause (b), by adding "and subject to section 78 of this Act" after "(7.1) of The Workers Compensation Act".

THAT section 5 of the Bill be amended by adding the following after the proposed subsection 193(2):

**Effect of election under this Part**

**193(3)** A person who elects compensation under this Part is no longer entitled to compensation under The Workers Compensation Act in respect of the bodily injury.

**Corporation and W.C. Board to make agreement**

**193(4)** The corporation and the Workers Compensation Board shall make an agreement respecting the allocation and reimbursement between them of compensation paid by them under this section.

**[French version]**

Il est proposé que la version anglaise du paragraphe 193(1) énoncé à l'article 5 du projet de loi soit amendée par substitution, à "an industrial

accident", de "accidents arising out of and in the course of employment".

Il est proposé que le paragraphe 193(2) énoncé à l'article 5 du projet de loi soit amendé:

a) par adjonction, après "Loi sur les accidents du travail" dans le passage qui précède l'alinéa a), de "ou de toute autre loi en vigueur au Manitoba ou ailleurs qui porte sur l'indemnisation des victimes d'accidents du travail";

b) par adjonction, après "Loi sur les accidents du travail", de "et sous réserve de l'article 78 de la présente loi".

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après le paragraphe 193(2), de ce qui suit:

**Effets du choix de l'indemnisation en vertu de la présente partie**

**193(3)** Les personnes qui choisissent de se faire indemniser en vertu de la présente partie n'ont plus le droit à des indemnités en vertu de la Loi sur les accidents du travail à l'égard des dommages corporels.

**Entente**

**193(4)** La Société et la Commission des accidents du travail concluent une entente concernant la proportion et le remboursement des indemnités versées en vertu du présent article que chacune d'elles doit absorber.

\* (2340)

**Mr. Chalrperson:** Mr. Minister, to explain.

**Mr. Cummlings:** Let me start from the bottom. The WCB board and the MPIC board, this is to address any unforeseen shifts that might occur, some of which were referenced in presentations where there were concerns, and certainly we expect that the two corporations will be able to work together to deal with this issue.

The 193(3) reads as it says, that they cannot have benefits under both parts. If they choose one they cannot go to the other body, which is also written to match up with subsection 193(2).

In the first amendment, the term "an industrial accident", I am told, is an archaic term, not used in The WCB Act anymore and is being cleaned up. The first ones are technical, the last two are important. It allows for an agreement to be made.

**Ms. Barrett:** I have a question on the part (a) of 193(2). What other acts might there be in effect in

Manitoba that would relate to compensation arising out of a course of employment?

**Mr. Cummings:** This is not a long list, but an example is federal unemployment insurance or workers compensation through federal authorities, and workers who are outside of the province might receive benefits who would also be eligible for benefits within the province.

**Mr. Chairperson:** On the proposed amendments brought forth by the honourable minister, that proposed Sections 193, 193(1), 193(2), 193(3) and 193(4) be amended. All those in favour of the amendments, please signify by saying yea.

**An Honourable Member:** Yea.

**Mr. Chairperson:** All opposed, say nay. Carried.

Clauses as amended—pass.

**Mr. Cummings:** I move

THAT the proposed subclause 194(1)(a)(i), as set out in section 5 of the Bill, be amended

(a) by striking out "an income replacement indemnity" and substituting "compensation"; and

(b) by striking out "a wage loss benefit" and substituting "compensation".

THAT the proposed subsection 194(2), as set out in section 5 of the Bill, be struck out and the following substituted:

**Person may appeal under either Act**

**194(2)** The corporation or the Workers Compensation Board shall give written notice of the joint decision made under subsection (1) to the person, and the person may appeal the joint decision either to the commission or under The Workers Compensation Act within 90 days after receiving the notice or within such further time as the body to which the appeal is made may allow, and the decision made on the appeal is binding under this Part and The Workers Compensation Act.

**[French version]**

Il est proposé que le sous-alinéa 194(1)a)(i) énoncé à l'article 5 du projet de loi soit amendé:

a) par substitution, à "une indemnité de remplacement du revenu est payable", de "des indemnités sont payables";

b) par substitution, à "prestations d'assurance-salaire", de "indemnités".

Il est proposé que le paragraphe 194(2) énoncé à l'article 5 du projet de loi soit remplacé par ce qui suit:

**Appel**

**194(2)** La Société ou la Commission des accidents du travail donne avis par écrit de la décision conjointe prise en application du paragraphe (1) à la personne visée; celle-ci peut interjeter appel soit devant la Commission, soit en vertu de la Loi sur les accidents du travail dans les 90 jours qui suivent la réception de l'avis ou dans le délai supplémentaire qu'accorde l'organisme devant lequel l'appel est interjeté. La décision rendue en appel est exécutoire sous le régime de la présente partie et de la Loi sur les accidents du travail.

To explain, there can be a joint decision made between WCB and MPIC. The worker has a right to appeal to either body if they object to that decision. In other words, the original words, earlier words I believe are just technical.

**Mr. Chairperson:** The proposed amendments brought forth by the honourable minister regarding amendments to Clauses 194(1), 194(2)—pass. Clauses as amended—pass.

Clause 194(3)—pass.

**Mr. Cummings:** I move

THAT the proposed section 195, as set out in section 5 of the Bill, be amended

(a) by striking out "this Act" and substituting "this Part"; and

(b) by adding ", the Unemployment Insurance Act (Canada)" after "Canada Pension Plan (Canada)".

**[French version]**

Il est proposé que l'article 195 énoncé à l'article 5 du projet de loi soit amendé:

a) par substitution, à "la présente loi", de "la présente partie";

b) par adjonction, après "Régime de pensions du Canada", de ", de la Loi sur l'assurance-chômage (Canada)".

The first one is similar to a previous one indicating that there is more than one part, that appeals can be registered. The second one reflects that the corporation can offset the benefits received under these acts against our benefits, our IRI.

**Ms. Barrett:** Mr. Chairperson, I know this particular section of the legislation came under some scrutiny by at least one presenter at the public hearings. The question was raised by that individual, and I would raise it here again: Why is the government saying here that benefits such as Canada Pension Plan or Unemployment Insurance Plan benefits, which are supported by payments into the system by the person so they are a form of insurance or a form of pension, being deducted dollar for dollar, when private insurance plans that an individual may have the financial wherewithal and can choose to put into place to add to the benefits that they will receive under this particular piece of legislation, benefits and insurance plans which the government is suggesting they do, why those benefits are not deducted as well, and why only the federal and the legislated insurance and pension schemes that workers are obligated to put into are deducted?

Can the minister explain the difference between those two types of insurance and pension schemes?

**Mr. Cummings:** We are only talking about the disability benefits, but the occurrence in Quebec and what we suspect will happen in most cases is that the private insurance companies will change their benefit package to make them always the secondary insurer, because it is private and it is an arrangement between that company and the person to whom they are insuring. That means if you are getting \$25,000 a year and you have \$50,000 a year worth of private insurance, salary replacement in case of accident, they will deduct what you are getting from the public corporation.

So we would be unable essentially to deduct against what the person is earning from that other group because it always comes in second. It is quite normal and it is an accepted practice. As you think it through it also reflects probably in lower costs to the person who wishes to buy that top-up additional benefit, because the private company coming in second can sell you \$50,000 worth of coverage but they know they have only got to come over for \$25,000, using the example that I gave. Therefore, competition should lead and invariably does, particularly in this industry, to a more reasonable premium, because they are not going to be exposed to the full cost when you are under a public, compulsory program such as this.

**Ms. Barrett:** Mr. Chair, I may not have made myself clear. I am not quarreling at this point in time with the concept of the top-up insurance and what happens with the private insurers. What I am saying is that the government says that whatever arrangement private insurers make with an individual, the benefits, the compensation that this legislation is going to provide to an individual is not reduced by whatever amounts of money the person who has been able to put in private insurance is getting, but they are saying, this section does say that we are going to claw back, dollar for dollar—

**Mr. Cummings:** Do not use that term.

**Ms. Barrett:** Well, I am sorry, the minister does not want me to use that term, but the way I am reading this particular section, that is exactly the effect it is having, and if the minister can explain to me that that is not the case, I will be more than happy to hear from him. But my understanding from reading this is that the person who cannot afford to pay or chooses not to get top-up insurance and has, because they are required by law to do so, put into CPP and UI, this legislation will take that money back that they have been required by law to do, but it will not take back or take into account in determining benefits, if you want to use it that way, the money that they are going to get from a private insurance. I do not understand the distinction there.

**Mr. Cummings:** There is an aspect of double recovery from a publicly supported program but, more importantly, I believe that the member is not accepting my argument that there is no ability to offset against the private ones because they will make, in this case, MPIC, as they do right now with the existing program, they make a primary; they make MPIC primary. Therefore, they do the reverse. They deduct the benefits that the person is getting from MPIC from the benefits that they pay. So there is no ability to do, considering what we are trying to do with this program, which is provide as much coverage at a lower cost. It would be very convenient to offload some of those costs. We have no ability to do it.

**Mr. Leonard Evans:** You see, what you have done here, and you have explained why you would have CPP, because it is another publicly funded plan and they are getting disability as a matter of double payment, but I do not understand the UI because, I would think, normally you would not be able to have UI if you are, you know, disabled from

an accident. You cannot work, so you cannot collect UI, because one of the conditions is, you have to be available for work. So are we not, you know, doing something that is unnecessary? Maybe there is an angle that—

**Mr. Cummlings:** There is a unique aspect to this, I am told, and it is a 15-week benefit only that this would likely happen. The benefit is paid for a sickness benefit. If you are getting the 15-week sickness benefit while you incur these other benefits, that is the one time you would be double eligible, if you will.

**Mr. Chairperson:** On the proposed amendment brought forth by the honourable minister,

THAT the proposed section 195, as set out in section 5 of the Bill, be amended

(a) by striking out "this Act" and substituting "this Part"; and

(b) by adding ", the Unemployment Insurance Act (Canada)" after "Canada Pension Plan (Canada)".

**[French version]**

Il est proposé que l'article 195 énoncé à l'article 5 du projet de loi soit amendé:

a) par substitution, à "la présente loi", de "la présente partie";

b) par adjonction, après "Régime de pensions du Canada", de ", de la Loi sur l'assurance-chômage (Canada)".

All those in favour of the motion, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All opposed, say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Yeas have it. Pass. A recorded vote has been requested.

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

Yeas 6, Nay 3

**Mr. Chairperson:** Amendment—pass; Clause 195 as amended—pass; Clauses 196 through 199(2)—pass.

**Mr. Cummlings:** I move

THAT the proposed section 200, as set out in section 5 of the bill, be amended by adding the following after clause (p):

(p.1) increasing the ratio referred to in subsection 165(2);

**[French version]**

Il est proposé que l'article 200 énoncé à l'article 5 du projet de loi soit amendé par adjonction, après l'alinéa p), de ce qui suit:

p.1) augmenter le coefficient visé au paragraphe 165 (2);

**Mr. Chairperson:** Mr. Minister, to explain.

**Mr. Cummlings:** This needs to be included in order to have the ability to deal with the ratio that we debated earlier about the 1.06.

**Mr. Chairperson:** Amendment—pass.

**Mr. Leonard Evans:** Mr. Chairperson, I move,

THAT the proposed section 200, as set out in section 5 of the bill, be amended by renumbering it as subsection 200(1) and by adding the following subsection 200(2):

**Annual review of any cap on expenses**

**200(2)** Where a regulation provides that the reimbursement of an expense is subject to a maximum amount, the corporation shall review the maximum amount at least once in each year to determine whether it should be increased.

**[French version]**

Il est proposé que l'article 200 énoncé à l'article 5 du projet de loi soit amendé par substitution, à son actuel numéro, du numéro de paragraphe 200(1) et par adjonction de ce qui suit:

**Révision annuelle des plafonds applicables aux dépenses**

**200(2)** La Société revoit au moins une fois par année les plafonds prévus par règlement et applicables au remboursement de certaines dépenses afin de déterminer s'il y a lieu de les élever.

**Mr. Chairperson:** To explain this, Mr. Evans.

**Mr. Leonard Evans:** This again comes out of the recommendation of the Legal Aid Manitoba. They felt that it would be a reasonable request to ensure that the corporation kept up with reimbursement of expenses and therefore require it to make this annual review. It is possible that the corporation might do this anyway, but what this does is require the corporation to do this.

**Mr. Cummlings:** Well, I think that, Mr. Chairperson, this is work that is already being done within the corporation. The only thing that would

make this compatible would be to add behind "increased" the word "decreased." Really all that would do is reflect what the corporation has to do anyway, which is review, so I would suggest that this is not an essential amendment.

\* (2350)

**Motion presented.**

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** In my opinion, the Nays have it.

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

Yeas 3, Nays 7

**Mr. Chairperson:** The amendment is accordingly defeated.

**Mr. Leonard Evans:** I move that Section 5 of the bill be amended by adding the following after the proposed Section 200.

**Mr. Chairperson:** Section 200?

**Mr. Leonard Evans:** No. After the proposed Section 200. This is an add-on.

**Mr. Chairperson:** Just before you get into your amendment, which is after 200, shall Clause 200 as amended pass?

**Some Honourable Members:** Pass.

**Mr. Leonard Evans:** I move

THAT section 5 of the Bill be amended by adding the following after the proposed section 200:

**Review of Part 2 by Public Utilities Board**

**201(1)** On or before June 1, 1997, the corporation shall file a report with The Public Utilities Board, reviewing the experience of the corporation in the previous three years with respect to claims under this Part and, without restricting the generality of the foregoing, the report shall consider the following:

(a) the fairness and adequacy of the compensation available to victims under this Part;

(b) the financial impact, including the impact on premiums and the corporation's projections of future financial impact, experienced by the

corporation as a result of the compensation scheme established under this Part;

(c) the fairness and effectiveness with which the corporation administers claims;

(d) the fairness and effectiveness of the review and appeal processes under Division 10 of this Part;

(e) such other matters as the corporation considers necessary or advisable or the minister may direct.

**Commission to prepare submission on appeal process**

**201(2)** For the purpose of clause (1)(d), the report to The Public Utilities Board shall include a submission prepared independently by the commission respecting the operation of the appeal process under Division 10.

**Public hearing by P.U.B.**

**201(3)** Upon receipt of the corporation's report, The Public Utilities Board shall give reasonable notice to the public of a hearing to consider the matters referred to in subsection (1) and such other matters as it considers necessary or advisable for a comprehensive public review of the compensation scheme established under this Part.

**Application of other Acts**

**201(4)** For the purpose of this section, The Public Utilities Board Act and The Crown Corporations Public Review and Accountability Act apply, with necessary modifications.

**P.U.B. to prepare report for minister**

**201(5)** Following the public hearing referred to in subsection (3), The Public Utilities Board shall forward to the minister a report and recommendations respecting the compensation of victims under Part 2, including any recommendations for amendments to this Part.

**Minister to make report public**

**201(6)** The minister shall make the report of The Public Utilities Board available to the public within seven days of receipt.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 200, de ce qui suit:

**Révisions par la Régie des services publics**

**201(1)** Au plus tard le 1<sup>er</sup> juin 1997, la Société dépose, auprès de la Régie des services publics, un rapport faisant état du bilan des demandes

d'indemnisation présentées en vertu de la présente partie au cours des trois années précédentes. Il est notamment tenu compte dans le rapport:

- (a) du caractère équitable et de la pertinence des indemnités accordées aux victimes en vertu de la présente partie;
- (b) des conséquences financières, notamment les prévisions financières de la Société à long terme, ainsi que du bilan des demandes d'indemnisation présentées en vertu de la présente partie;
- (c) du caractère équitable et de l'efficacité du processus d'indemnisation;
- (d) du caractère équitable et de l'efficacité du processus de révision et d'appel établi en vertu de la section 10 de la présente partie;
- (e) des questions que la Société juge indiquées ou que le ministre peut ordonner.

#### **Observation de la Commission**

**201(2)** Pour l'application de l'alinéa (1)(d), le rapport présenté à la Régie des services publics comprend les observations que la Commission rédige sur le déroulement du processus d'appel visé à la section 10.

#### **Audiences publiques**

**201(3)** Dès qu'elle reçoit le rapport de la Société, la Régie des services publics donne un avis public raisonnable de l'audience sur les questions qui lui ont été renvoyées en application du paragraphe (1) et sur les autres questions qu'elle juge indiquées aux fins d'une révision publique en profondeur du régime d'indemnisation établi en vertu de la présente partie.

#### **Application des autres lois**

**201(4)** Pour l'application du présent article, la Loi sur la Régie des services publics et la Loi sur l'examen public des activités des corporations de la Couronne et l'obligation redditionnelle de celles-ci s'appliquant avec les adaptations nécessaires.

#### **Rapport de la Régie**

**201(5)** Après les audiences publiques visées au paragraphe (3), la Régie des services publics fait parvenir au ministre un rapport et des recommandations sur l'indemnisation des victimes en application de la partie 2, y compris des recommandations sur les modifications à apporter à la présente partie.

#### **Divulgateion du rapport**

**201(6)** Le ministre met le rapport de la Régie des

services publics à la disposition du public dans les sept jours qui suivent sa réception.

**Mr. Chalrperson:** Mr. Evans, to explain.

**Mr. Leonard Evans:** Now, this was a major recommendation of Legal Aid Manitoba and one that I think many of the presenters agreed with, and I think it is a reasonable request that, after three years of experience, the whole operation be looked at. We are embarking on a new system here, one that we support. We think that it is in keeping with the Kopstein report. It does embody the philosophy of the Kopstein report, and I think it will be fairly successful.

Nevertheless, I think it is not unreasonable to ask some body, and it is suggested by Legal Aid that Public Utilities Board would be the appropriate body to consider the operation of the new system in terms of fairness and adequacy of compensation, in terms of fairness and effectiveness with which the corporation administers claims and to determine the fairness and effectiveness of the review and appeal processes.

So I think this is a critical review and one that should be welcomed by government to ensure that the new system is working fairly, and that if necessary, changes are necessary in the way it operates, and those changes should be forthcoming through the minister from the government of the day.

**Mr. Cummings:** There has been some considerable discussion, and going back to early introduction of this concept on the part of Legal Aid and others that Public Utilities Board should be the body that does a review ultimately, I have to say that I have always been puzzled by the idea that it would be the Public Utilities Board that would review.

I do not at all object to the concept that we should have a mandated review that would report in a public fashion through probably the appropriate reporting mechanisms to the Legislature, but I am puzzled by the approach that the mandate be extended to the Public Utilities Board as the designated review.

The corporation and others go there for a number of aspects of review primarily to the cost consciousness and value that the public is receiving for various services and to set that value. In fact, the Public Utilities Board has made some fairly broad hints about the fact the corporation

needed to change its method of insurance or method of offering insurance to the public.

I am prepared to make an amendment, not as this one is, but to mandate a review. I do not believe that mandating the Public Utilities Board to do that review is the approach that I am prepared to accept. I have always, as I said, had some difficulty accepting that that would be the best body. I know that we are introducing a significant change in the way accident injuries are compensated for in this province. I think it is only responsible that the government of the day be required to have a review and receive it and have it report publicly so that changes can be made, if necessary.

Certainly the corporation is going to be reviewing, on an ongoing basis, their process as they get up and operating. That is why a three-year review, I think, would be an acceptable window. I am prepared to make an amendment to that effect indicating that the minister shall be required to have a comprehensive review, but I am reluctant to accept the definition of this amendment and the requirement that it be the Public Utilities Board.

**Mr. Leonard Evans:** Just by way of clarification, is the minister prepared to make an amendment to the amendment, because this is fairly comprehensive? Again, it has been thought out by Legal Aid in Manitoba, and I guess the Public Utilities Board was suggested because it is an ongoing public body that people know exists and has had some experience in dealing with the MPIC. I guess our main concern is that there be a review, that it be open and be fair, and let us find out what the problems are and make the corrections.

So I am just asking the minister how he is going to proceed. Does he want to make an amendment to this?

**Mr. Cummings:** I would make a separate proposal on an amendment that would mandate a comprehensive review of the operation of this part, Section 5, and that the review is undertaken within such further time as to begin before the end of the third year.

**Mr. Leonard Evans:** Is the minister suggesting he will do this at report stage of the bill?

\* (0000)

**Mr. Cummings:** No, I am suggesting I will make one right now but I—

**Mr. Leonard Evans:** Oh, you will. I see. This is what I was wondering, whether you had it.

**Mr. Cummings:** We have to deal with your amendment first.

**Mr. Leonard Evans:** Oh, I see.

**Mr. Chairperson:** On the proposed amendment brought forth by the honourable member for Brandon East (Mr. Leonard Evans)

THAT section 5 of the Bill be amended by adding the following after the proposed section 200:

**Review of Part 2 by Public Utilities Board**

**201(1)** On or before June 1, 1997, the corporation shall file a report with The Public Utilities Board, reviewing the experience of the corporation in the previous three years with respect to claims under this Part and, without restricting the generality of the foregoing, the report shall consider the following:

- (a) the fairness and adequacy of the compensation available to victims under this Part;
- (b) the financial impact, including the impact on premiums and the corporation's projections of future financial impact, experienced by the corporation as a result of the compensation scheme established under this Part;
- (c) the fairness and effectiveness with which the corporation administers claims;
- (d) the fairness and effectiveness of the review and appeal processes under Division 10 of this Part;
- (e) such other matters as the corporation considers necessary or advisable or the minister may direct.

**Commission to prepare submission on appeal process**

**201(2)** For the purpose of clause (1)(d), the report to The Public Utilities Board shall include a submission prepared independently by the commission respecting the operation of the appeal process under Division 10.

**Public hearing by P.U.B.**

**201(3)** Upon receipt of the corporation's report, The Public Utilities Board shall give reasonable notice to the public of a hearing to consider the matters referred to in subsection (1) and such other matters as it considers necessary or advisable for a comprehensive public review of the compensation scheme established under this Part.

**Application of other Acts**

**201(4)** For the purpose of this section, The Public Utilities Board Act and The Crown Corporations Public Review and Accountability Act apply, with necessary modifications.

**P.U.B. to prepare report for minister**

**201(5)** Following the public hearing referred to in subsection (3), The Public Utilities Board shall forward to the minister a report and recommendations respecting the compensation of victims under Part 2, including any recommendations for amendments to this Part.

**Minister to make report public**

**201(6)** The minister shall make the report of The Public Utilities Board available to the public within seven days of receipt.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 200, de ce qui suit:

**Révisions par la Régie des services publics**

**201(1)** Au plus tard le 1<sup>er</sup> juin 1997, la Société dépose, auprès de la Régie des services publics, un rapport faisant état du bilan des demandes d'indemnisation présentées en vertu de la présente partie au cours des trois années précédentes. Il est notamment tenu compte dans le rapport:

- (a) du caractère équitable et de la pertinence des indemnités accordées aux victimes en vertu de la présente partie;
- (b) des conséquences financières, notamment les prévisions financières de la Société à long terme, ainsi que du bilan des demandes d'indemnisation présentées en vertu de la présente partie;
- (c) du caractère équitable et de l'efficacité du processus d'indemnisation;
- (d) du caractère équitable et de l'efficacité du processus de révision et d'appel établi en vertu de la section 10 de la présente partie;
- (e) des questions que la Société juge indiquées ou que le ministre peut ordonner.

**Observation de la Commission**

**201(2)** Pour l'application de l'alinéa (1)(d), le rapport présenté à la Régie des services publics comprend les observations que la Commission rédige sur le déroulement du processus d'appel visé à la section 10.

**Audiences publiques**

**201(3)** Dès qu'elle reçoit le rapport de la Société, la Régie des services publics donne un avis public raisonnable de l'audience sur les questions qui lui ont été renvoyées en application du paragraphe (1) et sur les autres questions qu'elle juge indiquées aux fins d'une révision publique en profondeur du régime d'indemnisation établi en vertu de la présente partie.

**Application des autres lois**

**201(4)** Pour l'application du présent article, la Loi sur la Régie des services publics et la Loi sur l'examen public des activités des corporations de la Couronne et l'obligation redditionnelle de celles-ci s'appliquant avec les adaptations nécessaires.

**Rapport de la Régie**

**201(5)** Après les audiences publiques visées au paragraphe (3), la Régie des services publics fait parvenir au ministre un rapport et des recommandations sur l'indemnisation des victimes en application de la partie 2, y compris des recommandations sur les modifications à apporter à la présente partie.

**Divulgateion du rapport**

**201(6)** Le ministre met le rapport de la Régie des services publics à la disposition du public dans les sept jours qui suivent sa réception.

All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chalrperson:** All opposed please, signify by nay.

**Some Honourable Members:** Nay.

**Mr. Chalrperson:** In my opinion, the Nays have it. Recorded vote.

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

Yeas 4, Nays 6.

**Mr. Chalrperson:** The amendment is accordingly defeated.

**Mr. Cummlngs:** I move

THAT section 5 of the bill be amended by adding the following after the proposed section 200:

**Review**

**201** The minister shall, within three years after the coming into force of this Part, undertake the comprehensive review of the operation of this Part and shall, within one year after the review is

undertaken or within such further time as the Assembly may allow, submit to the Assembly a report of the review.

**[French version]**

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après article 200, de ce qui suit:

**Révision**

**201** Dans les 3 ans qui suivent l'entrée en vigueur de la présente partie, le ministre entreprend une révision détaillée de l'application de la présente partie et soumet à l'Assemblée, dans l'année qui suit le début de la révision, un rapport faisant état des résultats de la révision.

**Ms. Barrett:** Several of the elements that were in the amendment that was just defeated by the government as proposed by the member for Brandon East included the Public Utilities Board as an independent, external arm's-length organization, and the second element, major element, was that there would be public hearings, a public input part of the review, the comprehensive review. Neither one of those elements, neither an arm's-length external component nor a requirement for public input, is stated in this amendment brought forward by the minister.

I would suggest that he needs to flesh out, if he is prepared to do, what a comprehensive review means. According to the amendment put forward by the member for Brandon East, two major elements of a comprehensive review were an external group organizing it and doing it and facilitating it and the ability of the public, through public hearings, to participate in that review. Again, as I say, neither of those elements appear to be in this amendment. Can the minister explain why neither of them are here?

**Mr. Cummings:** Mr. Chairperson, we have not got the ink dry yet on this act. There may well be most of the elements of the proposal the member for Brandon East has put forward as part of the review. There may well be a lot of other things that will be added as well, and the people responsible for the process at that time may well not be the same ones after five years. As the member responsible for MPIC, I know full well that very likely one of my colleagues will be responsible in three years time.

**Ms. Barrett:** I know, Mr. Chair, that the hour is late, and we are concluding the clause-by-clause review, but this is perhaps, well, if not the single

most important element of this clause by clause, and the amendments that have been put forward are certainly one of the most important.

The minister knows full well that any legislation that is passed by the House binds the future people who are going to implement it and that the government of the day makes changes to the legislation as they see fit. So the argument that he cannot put anything more specific into this amendment is spurious at best.

The minister has a responsibility, I argue, to explain to the people of Manitoba the process by which that review will be undertaken, not in exquisite detail, but certainly to include how the minister is prepared to deal with the public input, and how the minister is prepared to deal with the issue of this review being seen as fair, unbiased, outside and external to the minister's office, whomever that minister may be.

**Mr. Cummings:** Well, I am not going to let the member indicate that it is improper to refer to a required review. I am also responsible for The Environment Act which has a required review in it put in by the predecessors to our government, and it was not specific.

It has the requirement for the review. That is quite an onerous requirement in and of itself and to not flush out the details at this juncture is not a disservice to the public. The government of the day will be judged upon how well it has that review proceed. Obviously when you have got it in the act, it is not going to be like a review of public school boundaries which has been put off by innumerable administrations, most of which were not Conservative.

**Mr. Leonard Evans:** The exasperation, I guess, by the member for Wellington (Ms. Barrett) and maybe others is that whereas my amendment more or less outlines terms of reference, if you will, my amendment involving the Public Utilities Board more or less had terms of reference. This does not. The minister is saying trust me; a comprehensive review will look into all the important elements.

What I would like to do is propose a friendly amendment here because I really am anxious for the government to commit themselves to a review. I would like them to have done this procedure or this approach, but they are not agreeable. So I would like to suggest to the minister, to the

committee, that we add three words to this amendment. It is not an amendment to the amendment; it is an original amendment because the other one was defeated.

Where it says here ", undertake a comprehensive review of the operation of this Part" and you go on to say "and shall, within one year . . ." So what I would like to insert after "this Part", are the three words "involving public representation".

Now that is pretty general, pretty broad, but it still commits the government to say we are going to give the people an opportunity to present briefs and present views. So that would be my amendment to the proposed amendment, the addition of those three words.

I will read it again. The minister shall, within three years after the coming into force of this Part, undertake a comprehensive review of the operation of this Part involving public representation and shall, within one year after the review, et cetera.

I am not putting it forward; I am offering it as a friendly amendment. Maybe the minister would like to include it in his motion.

**Mr. Cummings:** Mr. Chairperson, this administration is not about to undertake anything that it is not prepared to have reviewed publicly, so we will put it in.

**Mr. Chairperson:** What we will do then is we will withdraw this amendment and the minister will resubmit the amendment. Is it agreed that this amendment be withdrawn? Agreed unanimously? [agreed]

Mr. Minister, to resubmit the amendment.

**Mr. Cummings:** Is it the procedure to reread the amendment from the top?

**Mr. Chairperson:** Yes.

**Mr. Cummings:** I move

THAT section 5 of the Bill be amended by adding the following after the proposed section 200:

**Review**

201 The minister shall, within three years after the coming into force of this Part, undertake a comprehensive review of the operation of this Part involving public representation and shall, within one year after the review is undertaken or within such further time as the Assembly may allow, submit to the Assembly a report of the review.

[French version]

Il est proposé que l'article 5 du projet de loi soit amendé par adjonction, après l'article 200, de ce qui suit:

**Révision**

201 Dans les 3 ans qui suivent l'entrée en vigueur de la présente partie, le ministre entreprend une révision détaillée de l'application de la présente partie, révision qui comprend une consultation publique, et soumet à l'Assemblée, dans l'année qui suit le début de la révision, un rapport faisant état des résultats de la révision.

\* (0010)

**Mr. Chairperson:** All those in favour of the amendment, please signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** Passed unanimously.

Clause 6—pass; Clause 6(2)—pass; Clause 75.1(2)—pass; Section 6(3)—pass. Shall 7 pass?

**Point of Order**

**Mr. Leonard Evans:** Mr. Chairperson, we do not propose to move any amendments, although I did have one for Schedule 3. When will you be dealing with that?

**Mr. Chairperson:** We will be coming to your amendment.

\* \* \*

**Mr. Cummings:** I move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

[French version]

Il est proposé que le conseiller législatif soit autorisé à modifier les numéros d'article et les renvois internes de façon à donner effet aux amendements adoptés par le Comité.

**Mr. Chairperson:** All those in favour of the proposed amendment?

**Some Honourable Members:** Agreed.

**Mr. Cummings:** I move that the Title—

**Mr. Chairperson:** Shall Schedules 1, 2 and 3 pass? Oh, pardon me, shall Schedules 1 and 2 pass? No?

All those in favour of Schedules 1 and 2 pass, signify by saying yea.

**Some Honourable Members:** Yea.

**Mr. Chairperson:** All those opposed, please say nay.

**Some Honourable Members:** Nay.

**Mr. Chairperson:** A recorded vote has been requested. Those in favour, please raise their hands.

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

Yeas 6, Nays 3.

**Mr. Chairperson:** Schedules 1 and 2 are accordingly passed.

Shall Schedule 3 pass?

**Mr. Leonard Evans:** Mr. Chair, originally I had an amended Schedule 3 in keeping with my proposal earlier on to increase indemnities for dependants of deceased victims. By way of explanation, this is why we voted against 1 and 2 as well, because we believed that the payments to widows and dependants is inadequate, and we really again urge the government to look at that to be a bit more generous.

At any rate, instead of my proposing an amendment to Schedule 3, we will simply vote against Schedule 3.

**Mr. Chairperson:** Shall Schedule 3 pass?

**Some Honourable Members:** Pass.

**Mr. Chairperson:** No? All those in favour of Schedule 3 passing, please signify by raising their hands.

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

Yeas 6, Nays 3.

**Mr. Chairperson:** Schedule 3 is accordingly passed.

Preamble—pass; Title—pass.

**Mr. Cummings:** I move

THAT the title of the French version of the Bill be amended by striking out "d'autres lois" and substituting "une autre loi".

**[French version]**

Il est proposé que le titre de la version française du projet de loi soit amendé par substitution, à "d'autres lois", de "une autre loi".

**Mr. Chairperson:** All those in favour of the amendment brought forth by the honourable minister, pass?

**Some Honourable Members:** Pass.

**Mr. Chairperson:** It is accordingly passed.

Title as amended—pass. Bill as amended be reported.

The time being 12:13 a.m., committee rise.

**COMMITTEE ROSE AT:** 12:13 a.m.