



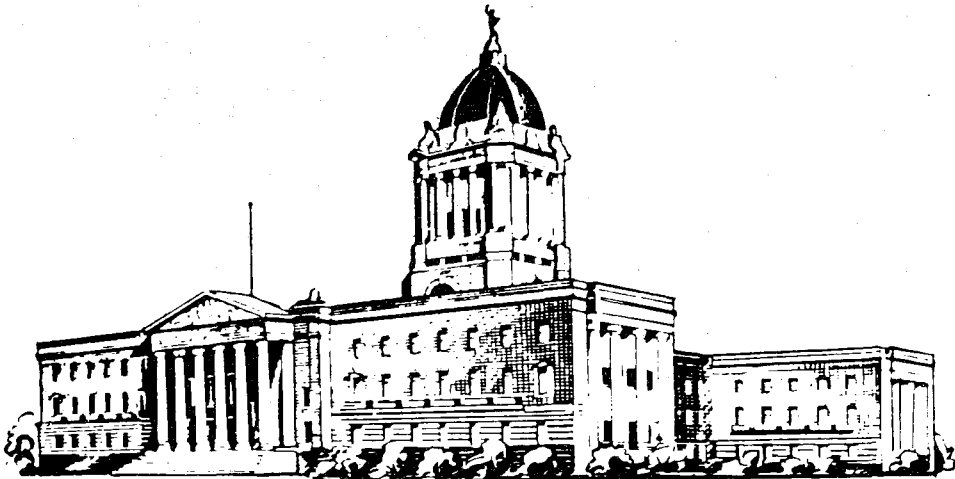
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

**Chairman
Mr. William Jenkins
Constituency of Logan**



8:00 p.m., Friday, June 6, 1975.

LAW AMENDMENTS COMMITTEE
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CHAIRMAN: Mr. William Jenkins.

MR. CHAIRMAN: Order please. The Committee will come to order. When we broke off the other evening we had finished some presentations but I understand that there may be some more presentations this evening. I'll read off the bills that are - they're the same bills that were before the Committee the other evening.

Bills No. 2, 3, 5, 6, 8, 13, 14, 15, 17, 20, 21, 22, 26, 31, 34, 42, 43, 52 and 53.

Are there any members here from the public who wish to make representations on any of the bills I've called this evening? Would you come forward to the microphone please and give me your name and the bill that you'll be making representation on please.

MR. THORVALDSON: My name is Thorvaldson, Herman Thorvaldson. I am Chairman of the Nursing Home Association and the bill in question is Restriction on Sale of Real Property, Bill 43.

MR. CHAIRMAN: What was your initial again?

MR. THORVALDSON: H. O. - Herman.

MR. CHAIRMAN: Are there any other?

MR. LYON: Sterling Lyon, Mr. Chairman, appearing as solicitor for the Manitoba Health Organizations Incorporated with respect to Bill No. 43, Section 7.

MR. CHAIRMAN: Thank you. Anyone else? No one else? Then I'll call upon Mr. Thorvaldson. Would you come forward, please. Do you have a copy of your brief?

MR. THORVALDSON: Yes.

MR. CHAIRMAN: Bill No. 43.

BILL NO. 43 - AN ACT TO AMEND THE HEALTH SERVICES INSURANCE ACT

MR. CHAIRMAN: Would you proceed please, Mr. Thorvaldson.

MR. THORVALDSON: The Nursing Home Association of Manitoba and its members have studied the proposed form of Section 96.1 relating to the restriction on the sale of real property and request clarification relating to the following words in the legislation:

1. No hospital - The opening words of the Section speak of "no hospital or personal care home," and accordingly purport to be of general application. In point of actual fact, personal care homes are of two types, namely non-proprietary and proprietary. Proprietary personal care home operators do not belong in the non-proprietary portions of this statute. No public money is invested or placed in a proprietary institution. Proprietary institutions are accordingly different and should be treated in accordance with their position and not grouped together with hospitals or non-proprietary personal care homes whose financial structure is totally different. The Government of Manitoba has a proper vested interest in hospitals and non-proprietary personal care homes where public money is involved, and this section should properly apply to those situations, but it is improper to apply the proposed section to proprietary personal care homes in which no public monies are involved. Proprietary personal care homes should be treated either by way of separate act relating to proprietary personal care homes only, or in the alternative, a separate Part of this act should be drafted applicable to private homes only. The legislation itself recognizes the distinction between proprietary and non-proprietary homes, e.g. Sections 84 to 87, relating to budgetary accounting. The proposed amendment fails to recognize the distinction. To fail to differentiate proprietary personal care homes from non-proprietary homes in a statute which already recognizes the distinction between the two is inconsistent, and the Association proposes that the form of the proposed amendment should continue to recognize the distinction which is already enshrined in the governing statute.

The Association suggests amendment to 96.1 by inserting the words "non-proprietary" after the word "or" in line 1, so that the opening words read "no hospital or non-proprietary personal care home". Now if the Government will do this, the Association need go no further with this brief.

While the legislation purports to be of general application, in actual fact, it is of limited application to proprietary nursing homes only and accordingly discriminatory. No hospital or

(MR. THORVALDSON cont'd) non-proprietary home will be sold in the ordinary course of its business, but will continue through successive boards or governing committees. Now this is not true of a proprietary home.

Secondly. Has - The word "has" preceding the words "received payments" is subject to clarification. Now does this word "has" refer to any prior time and if so, how far back does it go? Is the first day of application July 1, 1973 when the Manitoba Health Services Commission took over the administration of Health Services, which included the private nursing homes? What is the position of a home which formerly received payments but which is presently not licensed? Can the real estate of such a home be sold if it has received money in the past? Is such a property forever contaminated in a way to prohibit its sale, either as a nursing home or for some other purpose?

3. Payments - What kind of payments are intended to be included in the meaning of this word? Does this word include per capita grants, a per diem grant for services rendered, or loans or other financial assistance of any kind whatsoever received from or under this Act, or does the word payments include all the above in an overall encompassing inclusive basis? Non-proprietary homes receive grants up to \$2,000.00 per bed and proprietary homes do not receive any grant per bed. Because the vested interests of government are properly directed at areas in which government money has been invested, it is proper for payments as above described to apply to non-proprietary homes or hospitals, but not to proprietary homes which have not received per capita grants.

4. Dispose - Does the word "dispose" include: (i) a lease of real estate, (ii) a bequest received by a beneficiary on the death of an owner of real property which is a personal care home?

And what happens when an owner of real property, which is a personal care home, dies? And on the death of a partner in real property which is a personal care home, does a disposition occur from partner to partner?

5. Real Property - Many of the nursing homes have acreage much in excess of what is required for the actual nursing home operations; for example, the home may have a four acre site of land with 30 - 40 percent of such land devoted to nursing home functions. Where land is not used in the delivery of the health service function, the Association suggests that the excess of land should be able to be sold by the owner.

6. Consent - The Association wishes clarification on the intention of the legislation relating to the conditions under which consent to sell or dispose of real property would be granted. For example, will a consent be granted on a sale by a non-proprietary home to a non-proprietary home. Further, will consent be granted where a proprietary home is to be sold to a non-proprietary home. Further, when will the consent not be granted. Is it the intention to refuse to grant such consent on the sale from a proprietary home to a proprietary home. Will it be permissible for a private owner to sell real estate to an out-of-province chain, to a non-proprietary home, to a government endorsed philanthropic organization, or to an "acceptable purchaser." Who and what is an acceptable purchaser and what will be the criteria for determining an acceptable purchaser. Finally, to whom can a private owner sell in the light of the answers to the above questions.

7. Conditions - What type of conditions may be granted in support of a consent to sale or disposition. Will the conditions relate to character, finances, or any other term. What will be the criteria for the establishment of such conditions.

Now when the Minister refuses to grant consent to a sale or disposition, the Association wishes to draw to the attention of the Committee members that this effectively will destroy the right and ability of the owner to sell his real estate. Furthermore, it is most unlikely in view of the proposed amendment, if passed, that the private personal care home operator will be able to have the ability to sell his real estate to a buyer. For this reason, the Association suggests that an automatic put position should be established, whereby an operator could compel at any time the government to purchase his institution for the fair market value at the time the put is exercised. In addition, a right of first refusal should also be embodied in the legislation so that if the Minister refuses to grant his consent to a proposed sale of the real property, the Crown or its agent should be required to purchase the property on terms and conditions no less favourable. To deny the owner of real property the right to sell is to single out private persons for uniquely discriminatory treatment. If this occurs, the legislation is clearly an attempt to regulate the sale of real property for the purpose of confiscation at a later date at less than its

(MR. THORVALDSON (cont'd) . . . fair market value, and is simply setting the stage now for a later takeover. In singling out a citizen and restricting him from dealing with his own assets, an iron curtain is being dropped on the free entry into and exit from the nursing home industry.

The Association wishes to draw to the attention of the Committee that for many years, it has devoted itself exclusively to the care of aged and sick Manitobans, and it is to be noted that politicians and civil servants do not have a monopoly on dedication and concern for their fellow man.

I'd like to repeat that the Association believes that Section 96.1 (1.6) should be amended by adding after the word "or" in line 1, the words "non-proprietary" so that the opening words of the proposed amendment would read as follows: "No hospital or non-proprietary personal care home."

In conclusion, the Association suggests that Section 96.2 be added by way of amendment to apply to proprietary homes only which would set forth that the private personal care home owner has a right to sell or dispose of his real property to an acceptable purchaser, and the meaning of acceptable purchaser could be handled in a manner similar to the transfer of real estate and license under the Liquor Control Commission procedures.

Respectfully submitted. Thank you.

MR. CHAIRMAN: Thank you, Mr. Thorvaldson. There may be some questions that members of the committee may wish to ask. Are there any questions? Hearing none, thank you. Oh, Mr. Miller.

MR. MILLER: Yes, Mr. Chairman, through you. The statement is made that although the government has an interest in hospitals and non-proprietary personal care homes because public money is involved, that in fact the suggestion is that there is no public moneys involved in the proprietary personal care homes. Would it be a fair question to ask whether in fact the per diem which is now paid to all personal care homes, be it proprietary or otherwise, that that per diem has within it an amount to pay out grants of money to retire some of the capital debt?

MR. THORVALDSON: No, we don't feel that way. We feel that when an outright grant is given to initiate the building of a non-proprietary home when taxation is relaxed and exemptions are made from that and sales tax and building tax these are the funds or the funding that perhaps you're referring to. The matter of the per diem rate is merely, in our view, the payment of services rendered.

MR. MILLER: Mr. Chairman, through you again. The per diem rate is paid, it's for services rendered but we have to assume, because we have no other way of knowing, that in fact the mortgage or whatever other financing has been arranged is being repaid through the per diem which is paid to the proprietary home.

MR. THORVALDSON: We feel, Mr. Chairman, I reiterate, we feel that the per diem rate is not applicable this way. I could say then that for the desks and tables and so on that the government buy and the gas and the cars, there must be money in everything that government money goes into then. If this applies to us in this way for goods and services rendered then it would apply to every other supplier of goods and services to homes and to governments and so on.

MR. CHAIRMAN: Mr. Spivak. Is that all, Mr. Miller?

MR. MILLER: Yes.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Thorvaldson, I'd like to get back to the question that Mr. Miller asked. Right now your total funding comes from per diem from government.

MR. MILLER: Could I clarify?

MR. SPIVAK: Well let's understand something. Anyone - I'm sorry. --(Interjection)-- Yes. Okay. Right now at this time in terms of the patient, the payment for the patient comes through the government, through per diem.

MR. MILLER: Yes. Talking about the per diem. The patient or the individual pays part of the per diem and the government picks up the balance.

MR. SPIVAK: All right. But the substantial part of it comes from the government, that was the point that you were making with respect to the government's contribution of its per diem, or the per diem is in fact a public contribution. This is what Mr. Miller I think is basically saying. But until the nursing home program was brought under Medicare which was what? - a year and a half ago, two years ago - July 1st, 1973, until that time, in effect, the income received by the nursing home was both from private individuals paying their own money plus those

(MR. SPIVAK cont'd) who were receiving assistance from government for whom a per diem was being paid, by welfare at that time. That's correct?

So that in effect the nursing home operator who was a private nursing home operator, entered into his business, which was a business, and this service, raising his own capital by way of loan or by way of direct payment into whatever venture they were undertaking and receiving income from moneys paid from private individuals plus those who were welfare recipients for which the government was paying per diem, and the nature of the business changed when the government program came in in July, so that to the extent that Mr. Miller says it is now a public contribution, it's a public contribution really as a result of legislation and not particularly because of the action per se of the owner of the nursing home who was operating in a different way before. Is that correct?

MR. THORVALDSON: Mm-mm.

MR. SPIVAK: So that in effect today, as a result of government action, there is a contribution on a per diem basis given to the proprietary owners, but that really was an action that the government took, not an action that was given at the request of the nursing home operators. So to the extent that public money is involved, it comes as a result of their direct action and their direct programming rather than the action of those people who entered the business at an earlier stage.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, the next question I have is this: Was there anything that occurred July 1, 1975, (sic) which forced you to come under the provincial plan? Could you not have stayed out and simply made your accommodation available to any people who could afford to pay your rates, and be totally outside of the provincial plan?

MR. THORVALDSON: Mr. Chairman, frankly, this didn't cross our minds. We were automatically, I'll add, invited to participate by way of meetings with government officials, Manitoba Health Services Commission officials, insofar as they took it for granted that we were going to be in the plan. I might add there's 2,400 beds involved. In our own minds we had no idea of - it didn't cross our minds that we should go contrary to the plan. As a matter of fact we assisted and co-operated to the fullest.

MR. MILLER: No, but you've answered the question that in fact you could have just stayed out of the plan. Thank you.

MR. THORVALDSON: Yes.

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSEN: Mr. Thorvaldson, do you see yourself in the same position now as the owner of an apartment house who is accommodating welfare recipients? If the argument that Mr. Miller has just posed is to be equally applicable across the board, then because a welfare recipient is boarding in an apartment block because that is government money involved, the government then can assume that they have the right to confiscate that apartment block.

MR. THORVALDSON: Yes. If his theory is valid.

MR. JORGENSEN: Did you know at the time . . .

A MEMBER: Don't give him any more ideas.

MR. JORGENSEN: Did you know at the time that when you entered into this plan that the whole thing was going to be used as a device for confiscation of your property?

MR. THORVALDSON: No. No, we didn't. Can I ask - I have a correction to make on that last comment. The question was posed apparently at a meeting, and we were told that not more than 10 percent of our beds could be opted out. As a matter of fact I think that's in legislation. I think that's in the program, by letter.

MR. MILLER: Are you talking . . . beds?

MR. THORVALDSON: Beds in a given nursing home.

MR. MILLER: Are you saying that you were forced into this, and that beyond 10 per cent - that only 10 percent could be allowed?

MR. THORVALDSON: Yes, that's right.

MR. MILLER: Are you not confusing the 10 percent with the percentage which you could make available for, as the hospitals do, you know, private rooms?

MR. THORVALDSON: No, that's a 20 percent figure. No, this was a straight 10 percent. I know it's in writing. I should have looked it up.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd like to ask Mr. Thorvaldson if the association he

(MR. AXWORTHY cont'd) represents has had any extensive discussion or consultation with officials of the Department of Health and Social Development concerning this new legislation and in fact if there were any details as to the kind of program that might be executed under this particular piece of legislation.

MR. THORVALDSON: Mr. Axworthy and Mr. Chairman, we have been asking - and this is a reply to this - we have been asking almost since the NDP Government came - or, pardon me, since July, since we came under the plan - we have been asking for a clarification of our role and for a clarification of our ability to work freely within the framework of the Health Services. There's been a lot of apprehension on the part of private owners and we did ask As Mr. Miller has mentioned in releases previous; there has been a freeze, just an absolute freeze on expansion, on any programs dealing with transfer of licence, and we've been asking and we asked the Commission, and all they ever said to us was "It's not in our hands, it's in the hands of the policy makers," and we're here tonight because of comments made about non-transferability of licence and certain absolute restrictions about private enterprise and the restrictions on the sale of this property now.

MR. AXWORTHY: Mr. Chairman, just to continue. I take it, then, from what you're saying between the lines, is that you have to assume or the Association assumes that this bill is tantamount to a takeover of the proprietary nursing homes.

MR. THORVALDSON: Well yes, this is true. We would like to clarify who we can sell to. I think we asked this question and we would like to get an answer to it. Who can a private nursing home operator sell to? Because if it's completely restricted, then it's game over. Yes, and it certainly amounts to a masking until such time as they will take us over.

MR. AXWORTHY: Mr. Chairman, continuing. You said that nursing homes, private nursing homes, have been subject to restraints up to this point. What's been the nature of those restraints? Have they been again detailed? You said there was restraints on transactions, expansion - I mean, have these been clearly articulated?

MR. THORVALDSON: Oh definitely. Definitely. We have a situation where one private concern approached a private operator with intent to transact the sale of the property, and he no more got down to the officials of the Health Services Commission than that was the end of the transaction. He was in fact told that there is a complete freeze, that private enterprise involvement in personal care homes in this province is very limited, and the property can't be sold. There's a complete freeze on the transfer of a licence.

MR. AXWORTHY: Has that resulted in a decline in the number of beds private nursing homes would have been offering during this period? Has it ended up in a net loss of beds, or places?

MR. THORVALDSON: Well there's no new private operator since the plan has come in. There's no new private operator who has wanted to build nor has he the right to build. The Government has said there will be no further expansion in the private sector in the personal care home field in Manitoba. Now this is

MR. AXWORTHY: Have people gone out of business? I mean, have people just simply closed their places down?

MR. THORVALDSON: Yes, there has been two older operations that have gone out of business. We have felt that we should have had about 80 beds - we should have had the right to transfer those 80 beds from old and build new. But the government says, "No. The moment they want to go out of business" - for health reasons in both cases - "you can't use the fact that there are 80 people in private homes and you can't build."

MR. AXWORTHY: Mr. Thorvaldson, the thing I'm trying to also understand is that with this present restraint that you've been working under for a matter of about a year and a half now, plus the new legislation, has there been any discussion between members or officers of your association and senior policy makers in the government to discuss the reasons why this would be happening? I mean, have they outlined that they don't think you're providing proper service or that there is problems in the operation, or - I mean, has the rationale been laid out? Have you been able to ask why and find out why? What has been going on in terms of this kind of process?

MR. THORVALDSON: What we did ask, we asked that we have the right to transfer a licence. We asked that we have the right to sell our real estate, our nursing homes, and the reply was simply that it's a policy decision and any discussion - and this is discussion at the Manitoba Health Services level, the officials at that level - they said it's out of their hands. They can't answer those questions because there's a freeze on, and a freeze is precisely what

(MR. THORVALDSON cont'd) it is. No, there was no rationale. As a matter of fact, just in relationship to that, they have said that the service in private homes is well equal now to other homes.

MR. AXWORTHY: Who said this? Or where was this assessment made?

MR. THORVALDSON: This assessment was made on April 9th by Reg Edwards, the Executive Director of the Manitoba Health Services Commission.

MR. AXWORTHY: So Mr. Edwards has stated that, as far as the Commission is concerned, there's no particular criticism of the operation of the private nursing homes.

MR. THORVALDSON: Yes, that's right.

MR. AXWORTHY: I'm still trying to - maybe it's because I don't believe it, but maybe just to underline it, you're telling the Committee that the members of the Association have not discussed either the existing restraint or the new legislation with any Minister of Health over the past two years or any, say, Deputy Minister of Health and Social Development of so-called policy-making?

MR. THORVALDSON: Well, remember that this bill is here before us now. All we were ever told is that there is a freeze on, and a freeze is an indecisive period, a postponement. Now, we were getting into the plan and there was a lot to be organized, and we are existing operators. So in the first year we weren't keenly pushing for the transferability of licence or the buying and selling of a home because we weren't, frankly, buying and selling and so on. But now the question - we're a year and a half into it, and the question - there are certain health conditions that exist now and somebody has been asking how can - as I mentioned in here, what happens in the case of a death and so on? So we're up against this question. And four months ago, just before Larry Desjardins, the current and Honourable Minister, left as Chairman, we asked him, can he clarify the matter of the freeze, the matter of the non-transferability of licence, and the sale and purchase of private homes? And he said he would definitely do this with the ministers at that time. And then the election came and then he became Minister, and this is the answer. But the answer is so vague that we need answers to these questions.

MR. AXWORTHY: Just one final question, Mr. Chairman. In respect then to the provision of services that your Association and members of the Association are presently offering, how does that relate in terms of the demand for services? Is it a matter that public or non-proprietary nursing homes are able to take all the demand, or is there an excess of demand to the supply presently available?

MR. THORVALDSON: Well that's almost an understatement. There is actually a tremendous, tremendous demand for care home beds. And just to elaborate, when I hear that hospitals are putting on long-term geriatric care at the price that has to be paid or will be paid through the hospitals, and when you can get that same care and better care in a personal care home for the aged than you can get in a hospital, I don't know what the government is thinking. But there is a tremendous need. Offhand I would think in the area of 500 beds could be used up just like this. In fact, to go on just a little farther on that, there are people who are not getting personal care home attention that they need. They're on second floors in rooming houses, in wheelchairs, and 8 and 10 people are cluttering, you know, just cluttering into boarding houses, and if ever an exposé was made of that; you know - I feel sorry for them, really I do, because there is such a need for personal care home beds. And 25 percent or more of people in active treatment hospitals don't need to be there. I was in the General Hospital a month and a half ago and 40 people on the floor - I was in post surgery - and 40 people were holding up active treatment hospital beds at over \$100.00 a day, and I'm saying to myself, "I got in by a fluke because I took somebody else's spot." And I thought if I was held up, if I was held up a month - in fact I was asked to wait six weeks on a condition that couldn't have waited more than a week, and I had to go in as an emergency. But I don't want to get going on that because that turns me on.

MR. AXWORTHY: Just a final question then. In terms of your Association, is it basically self-regulating? Are there certain standards set in terms of medical care that's available, therapeutic care, food care and so on, so that there is a way of measuring the performance of, maybe to . . . if I may put in parenthesis, that there is always in some public minds the impression that some private nursing homes are simply using old people and giving them poor service and so on? To a degree is that self-regulating or administered under the Association?

MR. CHAIRMAN: Order please. Mr. Axworthy, you're drifting off what the honourable gentleman here has made his presentation on. I know you're fairly new in the Legislature but the procedure that has always been . . .

MR. AXWORTHY: Mr. Chairman, for God's sakes . . .

MR. CHAIRMAN: Order please.

MR. AXWORTHY: On a point of order, Mr. Chairman . . .

MR. CHAIRMAN: ORDER! ORDER! I'm just trying to bring the honourable member to order.

MR. AXWORTHY: Mr. Chairman . . .

MR. CHAIRMAN: Order please. Order please.

MR. AXWORTHY: I want to raise a point of order, Mr. Chairman.

MR. CHAIRMAN: I just wanted to tell the honourable member that he mustn't stray off what the honourable gentleman is presenting here. Now you're going off into other fields.

MR. AXWORTHY: Mr. Chairman, if I may address myself to a point of order, which are, under the rules of this Assembly, my right to do, I would like to remind the Chairman, if I may, that the presentation on this particular piece of legislation has a direct bearing upon the operation and organization of proprietary nursing home care. In order to determine the validity of those particular proposals and amendments, it is necessary to understand what kind of organization and regulation they're presently adhered to or operated by. And if we have to make judgments we have to get some kind of facts. And that was the intention of my questioning. If I may be allowed to continue.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, on the same point of order. In Law Amendments we deal with the bill before us and the sections of the bill before us, and I think your suggestion that the member was straying from the contents of the bill before us is well taken.

MR. CHAIRMAN: Mr. Patrick.

MR. PATRICK: Mr. Chairman, on the same point of order. Is the Chairman and the Minister who just spoke, is he indicating to us that we have no right to ask any questions that's pertaining to this bill. I think that's what the witnesses are here for. I think it's our duty to ask them questions and our responsibility. That's the first time that I - and I've been on this committee for many years, Mr. Chairman.

MR. MILLER: Providing he stays to the contents of the bill and doesn't wander all over the place.

MR. PATRICK: Well anything that the Member for Fort Rouge asked has been pertaining to this bill.

MR. CHAIRMAN: I don't know how. We are now drifting into hospital care and whatnot. That is not what this bill is here for.

MR. JORGENSEN: On the point of order. Section 96.1 deals with a section that is pretty encompassing, all-encompassing, and I don't know how we're going to be able to properly examine the witnesses on the subject matter of the presentation that has been made before us unless we're permitted to deal with the impact and the ramifications of the contents of that particular section. And they are far-reaching. I don't know how you are going to be able to limit discussion on this particular subject any more than you can limit discussion on the first item of the bill, because it is all-encompassing. It involves the take-over of personal care homes, their means of livelihood and the whole gamut of hospital care and personal care. It is not a limiting one, it's a very broad subject. I suggest, sir, that the Member for Fort Rouge was not straying in his line of questioning. He was very much to the point.

MR. CHAIRMAN: If the honourable member keeps to the brief that's before us and the bill that's before us he will not be out of order, but if he starts straying he will be out of order and I will rule.

MR. AXWORTHY: Mr. Chairman, I'll state my question again to the witness. Mr. Thorvaldson, could you indicate whether at the present time the organization of proprietary nursing homes which comes under the proposal of Section 96.1 of this particular Act, at the present time are your homes in any way, do they set standards and regulate operation in relation to different kinds of care within those homes themselves?

MR. THORVALDSON: We don't set our own standards as an association because in the last 12 years there has been a marked advancement in facilities and the government control over standards, licensing, monitoring of patient care and facility performance as well as the

(MR. THORVALDSON cont'd) . . . control over the per diem rates paid to every home in this province is done by the government agencies. And that standard incidentally is hopefully equal - I know we perform up to standard and give adequate service in relationship to, as I say, equal standards for all homes in the province.

MR. AXWORTHY: Are these standards examined or inspected - do you have government inspectors from the Hospital Services Commission or some other agency that actually visit the homes?

MR. THORVALDSON: Yes. I might add that the standard of care in personal care homes in Manitoba is I would say the highest in the country and this is a benefit and a credit to all concerned; and zoning in on exactly what you say, certainly there are public health nurses, there are sanitation people, there are every sort of inspection made very frequently in all the homes.

MR. CHAIRMAN: The Honourable Minister of Labour.

MR. PAULLEY: Mr. Chairman, on a point of order if I may. The brief makes reference to Section 96.1 precisely which is dealing, as I read the section, with the authority to sell or not to sell the property. My point of order, Mr. Chairman, is that I do not see the relationship between the internal operation of a proprietary home or a non-proprietary home to whether or not a provision should be made governing the sale of the property, and I would suggest that that is the point before us.

Now if questions were asked as to the number of people that you are representing as far as the Association is concerned I would suggest, in all due respect to my colleagues, that that would be within the ambit of the bill itself and the section of the bill. But I cannot see quite frankly - I have been around a little while, the same as my colleague from Assiniboia - the relationship between the internal operation of the proprietary home under regulations for garbage collections and other points that you raise, Mr. Thorvaldson, as to Section 91 (sic) on which you are making precise representation. That's my point of order, Mr. Chairman.

MR. CHAIRMAN: The point is well taken.

MR. AXWORTHY: . . . Mr. Speaker, before the last speaker interrupted me for the point of order.

MR. PAULLEY: The last speaker, Mr. Chairman, for the edification of the Honourable Member for Fort Rouge can intercede at any time on a point of order. And as I suggested this afternoon maybe you will become educated before you leave the House.

MR. CHAIRMAN: Order please. Order please. I think the point is well taken.

MR. JORGENSEN: You should draw the Minister's attention to it.

A MEMBER: Which point?

MR. CHAIRMAN: Order please. The point I called the honourable member before on was that he was drifting off into . . .

MR. SPIVAK: On the point of order, Mr. Chairman, and particularly the remarks of the Minister of Labour. I would ask him through his years of experience, where he can cite me a situation in which the individual could not sell his property without the consent of the government where the government itself is not going to be involved in the purchasing of it, or the government itself has not a program which is announced of which the purpose would be to hold it pending whatever the government's policy decision is to be made.

MR. CHAIRMAN: Order please. Order please.

MR. SPIVAK: Mr. Chairman, I'm on . . .

MR. CHAIRMAN: Would the honourable member state his point of order.

MR. SPIVAK: Yes, I'm going to state a point of order. I'm saying . . .

MR. CHAIRMAN: Then state it as briefly and quickly as possible.

MR. SPIVAK: Mr. Chairman, I think that I am entitled to deal with my point of order in my own way, and I am dealing with it. I am saying, through you to the Minister of Labour, I know of no other case of a similar situation in which a business operation is in fact prevented from dealing with their assets in a normal way. This is not a section dealing with the licensing and regulation; this is a section dealing with the basic right of the individual to be able to sell their assets and sell their real estate and to sell their private property, and for that reason, Mr. Chairman, it involves a fair understanding of the business operation of the association and of its relationships to the announced programs of government so that in fact the committee itself will be in a position to make judgment of what really is implied, not announced, by this particular section. Because this section as far as I know - and I would ask the Minister of Labour to be able to. . .

MR. CHAIRMAN: I thank you very kindly for the speech.

MR. SPIVAK: Well I would like to be . . .

MR. CHAIRMAN: ORDER PLEASE! I'd like to hear the point of order. What is the point of order?

MR. SPIVAK: The point of order very simply, Mr. . . .

MR. JORGENSEN: Let's not shout.

MR. SPIVAK: Mr. Chairman, the point of order is that because this involves the issue of confiscation directly the members who have come before us are entitled to be questioned on this, on the very nature of the business operation that they are undertaking and of their relationship with government and of what has been told to them privately by the officials, so that the committee can make a judgment as to whether this particular section should even be considered or not.

MR. WALDING: Mr. Chairman. . .

MR. CHAIRMAN: Order please. That was a nice speech and I thank the honourable member for it but that was no point of order.

MR. SPIVAK: Well, Mr. Chairman. . .

MR. CHAIRMAN: ORDER PLEASE! ORDER PLEASE!

MR. JORGENSEN: Mr. Chairman, will you please not shout us out?

MR. CHAIRMAN: Well if he will keep quiet I will try and keep quiet. But I'm not going to engage in a shouting match with the Honourable Leader of the Opposition.

MR. JORGENSEN: Then please don't start it.

MR. CHAIRMAN: I'm not going to sit here and have him interrupt me when I'm trying to make a point. I said that I thank the honourable member for the speech that he made but it's not a point of order. Nobody is arguing about any member asking questions concerning this brief. What the Honourable Member for Fort Rouge was asking was internal workings, which are not listed in the bill anywhere, not anywhere in this brief. The Honourable Member for Fort Rouge. Proceed.

MR. AXWORTHY: Mr. Chairman, the line of questioning is not pertained solely to the internal operation of nursing homes but does deal with the present operation of government regulation and procedure in relation to those nursing homes based upon the present fee schedule. This goes back directly to the point raised by the Acting Minister of Health when he said that because of the present transaction of fee for service that this gives him a certain degree of right under this particular bill. That is what we're trying to determine, to what degree is government rule and regulations being applied. That is why I was trying to determine from Mr. Thorvaldson, who has been most co-operative, the degree to which the Nursing Home Association is providing a service and how that service is being regulated.

So, Mr. Thorvaldson, if we can return back to the substance of what we are trying to discuss then I would simply ask, finally, that the examination and inspection therefore of nursing homes is presently conducted by government and that they have established certain criterion stands by which you operate for which you receive your fee of the per diem rate. Is that correct?

MR. THORVALDSON: Yes, that's right. And for the care and maintenance of the residents. The fee is received for the care and maintenance and to uphold the standards set out by government.

MR. AXWORTHY: I see. Has there ever been any example or case wherein a nursing home has had its ability to collect fees rescinded because of lack of performance of standards?

MR. THORVALDSON: No. I'm not just quite sure. Collect fees. No the fees were always paid and - yes the fees were always paid.

MR. AXWORTHY: Okay. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I'll pass this time, Mr. Chairman.

MR. CHAIRMAN: Mr. McGill.

MR. MCGILL: Mr. Chairman, to Mr. Thorvaldson. Mr. Thorvaldson, I get the impression, I wonder if your impression is the same as mine, that the Department of Health since they placed the personal care homes under the umbrella of our health system in July of 1973, feel that the proprietary care homes are sort of an anomaly in the whole health system, and they base that feeling on the fact that they're funding you now for your services, so if your revenues are coming from the government then what's the point in allowing the revenue

(MR. MCGILL cont'd). . . .to go into the hands of private operations. Is that your understanding of the reason for this legislation?

MR. THORVALDSON: Well I think the reason for this legislation is that private enterprise in the care home field has never been recognized by government. As you say, we're an anomaly and we were there, and the original H35, the Health Insurance Act, was primarily designed to comply and to cater to non-proprietary, a hospital and so on. You see we should actually be under the private hospitals act. There should be a private hospitals nursing home act. But we're not, we were just thrown in. But now the legislation is horning in on the very, you know, on the fundamentals of private ownership. We have no grants, we've asked for nothing and we abide by every standard and every rule. There's no grants and there's no - as I said earlier - no concessions. We should have a right to buy and sell with the understanding that we mustn't sell for example to the Mafia, something like that. It has to be an accreditable next operator.

MR. MCGILL: Mr. Thorvaldson, prior to July 1973 a lot of your revenue came directly from your occupants or patients or clients or whatever term you use, but at that time there was a percentage which came from the Department of Health?

MR. THORVALDSON: Yes.

MR. MCGILL: Have you any idea what percentage - you had about 2,400 beds I think.

MR. THORVALDSON: 2,400 beds. What makes a percentage figure difficult is that some homes had a preponderance of indigent patients, others had none. And I might add at this point that a great number of the new homes had a very small proportion of indigent patients certainly less than - I can say perhaps less than 50 percent indigent patients in the new homes, because people went to the new places as soon as they were built, those that had means went to the new homes. The older homes on the other hand often had quite a preponderance of indigent patients paid by welfare.

MR. MCGILL: You're not able to say though in total what percentage approximately came from private sources and what percentage came from public sources of your total revenues prior to . . .

MR. THORVALDSON: No I don't think so because as I said all the homes were different, all the homes had different numbers and so on. No.

MR. MCGILL: Now the situation presently is that a much larger proportion of the total revenues come from public sources. But is it true that you still get a percentage of your revenues from private sources?

MR. THORVALDSON: Oh yes certainly, certainly.

MR. MCGILL: About what percentage? Are you able to say?

MR. THORVALDSON: Well to give you an example, the resident now pays \$5.25 a day. Now if the total rate would be \$21.80, that's what? In the area of just around 25 percent paid by the . . . However there is a personal care rate which is lower and therefore there's a third paid, a third amount approximately is paid by the resident.

MR. MCGILL: And what about preferred accommodation?

MR. THORVALDSON: Preferred accommodation is restricted to 20 percent and we are allowed, again by government control and regulation, we are allowed to charge for a private room accommodation - needless to say similar to hospitals - and that mustn't exceed \$5.00 a day.

MR. MCGILL: Mr. Thorvaldson, prior to July, 1973, was there restriction on the sale of your assets?

MR. THORVALDSON: No.

MR. MCGILL: None at all.

MR. THORVALDSON: Oh wait just, wait, wait, wait. Prior to 1973? Well when did the NDP Government come in?

MR. PAULLEY: 1969. A glorious day for Manitoba.

MR. THORVALDSON: 1969, yes, thank you. I think my dad would like to hear you say that. The freeze almost started you know - I was going to say simultaneously.

MR. MCGILL: So, Mr. Thorvaldson, at that time you were receiving your funding from public and private sources and today you're receiving your funding from public and private sources.

MR. THORVALDSON: Yes.

MR. MCGILL: The only difference is the relative percentage has changed.

MR. THORVALDSON: Yes, right, right.

MR. MCGILL: So there has been a statement made by the Minister that because these services are now paid for at the public expense that there is a diminishing purpose served by the proprietary care homes, but really there is no basic difference except in the percentage of your revenues, that is being received from public sources as opposed to private sources?

MR. THORVALDSON: Yes. That's right.

MR. MCGILL: Thank you.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, through you. Mr. Thorvaldson, I believe you mentioned that officials of the Health Services Commission had been in touch with you and as a matter of fact you quoted them as saying they were very pleased with the operation of the proprietary nursing homes. Did they also, in discussions with regard to the per diem paid, was there not also a request that the personal care home, the proprietary ones, open their books so that the per diem rates could be properly established?

MR. THORVALDSON: Yes, I'd like to answer that question. Mr. Chairman, as far back as December 4, 1973 - and that was still in the prime period - we did enter into a discussion with Mr. Hans Schneider, the then chairman of the Manitoba Health Services Commission, with respect to budgetary method of setting per diem rates. We went on record as saying this: "The members of the Nursing Home Association are flexible in their approach to the per diem rates being set by the budgetary method, substantiated by the financial statement verification and the inclusion of deficiency payments outlined in Section 87(3)." Which draws my mind back to the fact that there are certain things in the Act that we are denied, that we are excluded from, and that is one of them.

So I reiterate the fact that in the Act it's recognized that there's a difference between proprietary and non-proprietary. But following this, we did say and we did ask at that time that that if we were to enter into, showing our financial statements and our records, would the government be prepared to tell us the return on investment, based on a fair market value for our business and our property and each operation calculated individually, and would they be able to tell us a method of handling the depreciation of buildings, furniture and equipment, and could they give us a formula for the reasonable management salary of owners? And would they treat us precisely like the non-proprietary homes are being treated? Would we be subject to a start-off grant?

Now I appreciate we have our situations. But we did, incidentally, draw the government's attention to the fact that this method may destroy personal initiative and interest contributing to reduced efficiency, and it would subvert conscientious effort to control expenses, and it would upset the present balance afforded by this arbitrary rate-setting method presently used as opposed to the budgetary rate-setting as in non-proprietary operations.

We were flexible. We could have gone over to budget, but the moment we asked four questions, that closed the discussion. Now if they really wanted us on budgets, why didn't they further the discussion, open it up, and give us the answers to equality, so to speak? And so on. But then we did remind the government that from the information gathered and tabulated of basic operating costs reflected in non-proprietary operations, the exact cost per patient day can be calculated. This cost is common to all homes, and the staffing patterns and the number of staff vary from home to home - that includes non-proprietary - and that a uniformity of staffing and mix is absolutely fine and so on. Maybe that's a little off the point. But anyway I think you were saying that we were sort of resisting it. We weren't resisting it.

MR. MILLER: Yes. I'm suggesting that in fact there was a disinclination on the part of the Association members to make their books available so that in fact the government would know what amount of public funds was retiring capital.

MR. THORVALDSON: Well there was a disinterest on the part of government to cooperate with me. We asked them certain points of importance to us and they felt it was not important to us. So it's a mutual thing.

MR. CHAIRMAN: No further questions? Mr. Spivak.

MR. SPIVAK: Mr. Chairman, this is not meant as a point of order and I don't want to in any way be admonished by you, but I think there is something unusual in this presentation and I wondered if, through you, I could address a question, well really to find out from Mr. Miller whether he would be prepared here - because I think it would be of benefit - to answer the questions really asked by the witness. This is not a situation in which we are going to be

(MR. SPIVAK cont'd) questioning the witness. He's basically listed a number of questions with respect to the bill which really involve policy matters of government, and I think from his point of view and from our point of view if we could have the answer, I think it would solve it. I don't mean it to lead to an argument between them but I think at least we --(Interjection)-- Well, I think there's a little difference when you say the bill comes clause by clause because, you know, realistically there must be 25 questions here. And I think that they . . .

MR. CHAIRMAN: I think the Minister is willing to co-operate.

MR. MILLER: Mr. Chairman, I can give one indication which perhaps I would have done earlier had I had the opportunity, but I couldn't in asking questions of the witness. Insofar as the word "payment" is concerned, what was meant here was "capital payments" and that's what really it should have been. In other words, no hospital or personal care home that has received capital payments, or payment for capital, under this Act shall etc. etc.

MR. SPIVAK: But then that raises the other question. Then you're simply saying that a per diem, which would have a capital component . . .

MR. MILLER: That's right.

MR. SPIVAK: . . . would be capital, which means that in effect that includes everybody in any case. Because obviously capital is being retired or an income - well obviously it has to be towards capital.

MR. MILLER: Well that's exactly what I'm saying. The word "capital" should be in there, because really we're talking about, not the operating costs of food, etc. - you know, the day to day operation - but the amount of public funds that is going towards the retirement of the capital debt. And that is the amount.

MR. SPIVAK: Well, in any case, I think then - I don't want to get involved in that argument. Okay we'll come back to that, because I don't quite understand it and I think a great deal of the legislation would have to be changed and altered even to accomplish that. Can I ask - there are other questions that were asked here: as an example, the question of a bequest in an estate. Has that been considered?

MR. MILLER: No.

MR. SPIVAK: If the Minister is prepared to say "Well look, there are questions here that we haven't considered and we're going to be considering them", then that's fine.

MR. MILLER: No, the other questions have not been considered. We haven't seen them until this particular representation was made. I can't speak for the Minister nor for the Health Services Commission on those aspects.

MR. SPIVAK: Well can I ask one thing? As an example, the consent to be granted for sale by a proprietary home to a non-proprietary home that is still also subject to approval. Is that right?

MR. MILLER: Yes. Well the way it reads, really, is that no hospital or personal care home that receives capital payments shall sell or dispose. I mean that's the only comment I can make at this point. The reference to payments should have been "capital".

A MEMBER: Will that be an amendment or . . . ?

MR. MILLER: Yes, I'll move that.

MR. SPIVAK: But that doesn't change anything.

MR. THORVALDSON: Can I say something here?

MR. CHAIRMAN: Well we're now starting to drift off into a clause by clause discussion.

MR. ENNS: Mr. Chairman, I would like to raise a point of order at this time. I am well aware that the responsible Minister undoubtedly has a very good reason for not being here, but it seems to be becoming more and more evident that we're dealing with a bill that is primarily his responsibility and that he should surely be present, Mr. Chairman. I don't raise this in any light manner. I don't know whether or not we anticipated some of the questions that have been raised by the committee members or indeed the excellence of the presentation being made, but I would ask the Chair to consider the question of whether or not the advisability of proceeding with this bill at this time in the absence of the responsible Minister is really fair game to all concerned.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, in response to that, when we come to Bill 43 we can determine how we deal with it - tonight - or we lay it over until the next meeting of Law Amendments Committee, but certainly we should hear the various witnesses that are here tonight.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I want a clarification if I might from the comments of the Minister. When he says that no. . .

MR. CHAIRMAN: Perhaps Mr. Spivak has something on the point of order.

MR. SPIVAK: I think probably it's the same questions.

MR. AXWORTHY: Well I was going to ask, when he says no hospital or personal care home has received "capital payments" - under that definition of capital payments, is he including the per diem that is presently given to nursing home care for patients in each of the homes? Is that considered a capital payment or not?

MR. MILLER: Obviously, if the proprietary nursing home is paying off its debt, its funds, its mortgage, and the sources available to it are the per diem rate, then obviously a certain percentage - I don't know what it might be because, as I gather, the Commission has not had access to the books and therefore they do not know what part if any of the per diem is going towards the retirement of a capital debt.

MR. THORVALDSON: I can answer that, Mr. Chairman. None. Just N-O-N-E because. .

MR. MILLER: Then how do you retire the mortgage?

MR. THORVALDSON: Well, because when you consider the amount that's paid - and that's two-thirds and 25 percent or 75 percent and 66 percent - I can assure you that's hardly covering the costs of just operating without mortgage payments and so on. So the amount of government money is only in fact two-thirds, so you're not even up there yet. The government money is not up there.

MR. MILLER: Well in that case you shouldn't worry about the proposed amendment then, if it refers to the capital debt.

MR. THORVALDSON: Yes. But this masquerade business, you know. Okay. Answer me this question. I think we asked: To whom can a private owner sell his property? In other words, we're not worrying about it, but the moment we sell our property to another private operator it gets stymied here in the government circles. Now if what you say is right, then fine, we'll go on the assumption that the whole thing is negated. In other words, it does not apply to private homes.

MR. MILLER: Oh, I didn't say that. I said, if the public moneys received are used to retire a capital debt, then that should be taken into account. And that's really what I was - in response to Mr. Spivak, I was trying to clarify that.

MR. THORVALDSON: So there'd be really no difference by saying that the line could easily read "hospitals and non-proprietary nursing homes" because it doesn't apply there.

MR. MILLER: No, I didn't say that.

MR. THORVALDSON: I know you didn't say that, but I'm saying that in reality. . .

MR. MILLER: Well, Mr. Chairman, until I see the books I'm not ready to accept that no public funds are going to retire a capital debt.

MR. THORVALDSON: Mr. Chairman. . .

MR. AXWORTHY: Mr. Chairman, I think I have the floor on the questioning, I'm not sure.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: I do think that a clarification is required under this proposed amendment that Mr. Miller is talking about. Would the Minister also commit that under this bill then there would be a procedure set out whereby the proprietary owner would demonstrate or be required to demonstrate which percentage of the per diem he receives is being used for operating as opposed to capital - and that if in fact it is demonstrated by that procedure that the total amount of the government grant, the per diem, is going for operating expenses, then they are not in fact included under a definition of this Act? Is that what the Minister means?

MR. MILLER: If indeed the books show that, then that's the way it might turn out. I'm sure that there are some proprietary or privately owned nursing homes which were paid for long ago. You know they're 20 years old - 15, 10 years old - in which case there may be no mortgage on it at all, it's totally paid off. --(Interjection)-- Then there is no capital debt.

MR. AXWORTHY: Mr. Chairman, I think with Mr. Thorvaldson's statement, that in fact the present per diem grant only covers in fact, not the full operating costs, but only 75 percent, 80 percent, whatever it may be - then that has no bearing on capital or is not a repayment of capital, even for those that carry a mortgage. I think it is necessary to clarify to the committee the exact meaning of the proposal the Minister is putting forward at this time, and also

(MR. AXWORTHY cont'd) that there be a very clear-cut procedure to insure that the proprietary owners would know exactly what their rights would be under this provision.

MR. MILLER: Mr. Chairman, as I indicated, the only thing I can indicate to the committee tonight, is that the term "payments" should have referred to payments towards capital, grants to retire a capital debt. That's the only indication I can make this evening.

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

MR. WALDING: On a point of order, Mr. Chairman. Mr. Chairman, this portion of the committee's proceedings are supposed to be for the questioning of a delegate appearing before us. The discussion seems to be developing into a debate between members and even a discussion of a proposed amendment. I would ask you to put the discussion back to questioning, which it should be.

MR. CHAIRMAN: I think the point is very well taken.

MR. SPIVAK: We have an unusual situation, because obviously in the drafting of the legislation - not in error, but something was left out. We have had that before and it has been corrected by amendments. I'm not suggesting, but the Minister has acknowledged that while the witness is on and - you know, it probably would have changed if the brief had been understood. I accept the Minister's explanation, but I want to be just clear of what he's saying - and I'm not trying to repeat what the others are saying, I'm simply saying, when he talks capital he's talking capital, he's not talking interest payments on that capital.

MR. MILLER: I'm talking about the grants, the payment, the per diem, or the part of that which is used to retire a capital debt. In other words, the financing incidental to the day-to-day operation of feeding people or caring for them, etc.

MR. SPIVAK: You're talking about interest on the capital as well as an expense?

MR. MILLER: The retirement of the debt. I'm not at this point going to talk about interest or the capital itself, but I recognize that capital should have been part of this payment.

MR. SPIVAK: Yes, but, Mr. Chairman, . . .

MR. CHAIRMAN: Order. Order. We are now really drifting into clause by clause consideration of the proposed amendment, and I really think I'm going to have to cut it off, because we are here to hear what the delegation is here to present to us, to ask questions of the delegation, but we're not here to have a discussion amongst ourselves. We're keeping the gentlemen standing here, and I think that I'm going to have to ask that questions be pertinent to what the delegation has presented, pertinent to the bill, and that's the way we'll proceed.

MR. THORVALDSON: Mr. Chairman, can I remark? It's easy enough to say that it refers to capital, but naturally the Acting Minister is quick to say that before a sale could be made or a transfer of a licence could be made, then the books would have to be opened in order to determine how much of that portion the government is paying, how much applies to capital. Am I right about that?

MR. MILLER: Yes, that's right.

MR. THORVALDSON: Yes, so we're back into that. Is the government prepared to meet us half-way?

MR. MILLER: Mr. Chairman, I'm sorry, that question I cannot or would not answer.

MR. CHAIRMAN: Order.

MR. SPIVAK: Mr. Chairman, on a point of order. I raise this on a point of order. No, but I raise this on a point of order because I think we will . . .

MR. CHAIRMAN: Let's hear your point of order.

MR. SPIVAK: We have a precedent in this committee, and the precedent is The Consumer Protection Act, where we went through almost the same procedure with the representatives of the various consumer groups who were present and who followed a procedure such as this - and out of this, ultimately the Act was refined and the Act met with the approval of all concerned. So I don't think that the procedure here is as unusual as some would suggest. I think the precedent is there and I think you know a brief has been presented on certain assumptions, and obviously those assumptions -- (Interjection) -- Well the brief has been presented on the basis of certain assumptions and those assumptions obviously were not correct, and the ability to try and communicate now is I think a very important element in trying to arrive at a situation in which the committee would understand fully what's intended. And as I say, we have had precedents for this, this is not the first occasion in this committee when the witness has asked for clarification when an explanation that has been given is very different to what was apparent from the legislation that had been drafted at that time.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, if I may on the point of order.

MR. CHAIRMAN: Same point of order?

MR. PAULLEY: Same point of order raised. There's no precedent to my knowledge been established that allows the type of questioning that is going on at the present time. The Honourable the Leader of the Opposition makes reference to The Landlord and Tenant Act or Consumers Act. In all respect to him, Mr. Chairman, I suggest that that was deliberate at that time because we were in the formation stages of compiling an Act. In this particular case however, the purpose of the amendment to the Act is dealing with a precise proposition, namely the sale of property. So in all due respect, I suggest as I did earlier, that is the proposition before the committee.

MR. CHAIRMAN: Mr. Thorvaldson.

MR. THORVALDSON: Mr. Chairman, the Acting Minister suggested that as a part of any possible transfer of licence or sale or disposition, one factor would have to be provided and that is verification of the percentage of public money, the daily rates paid - the percentage would have to be confirmed thusly, we would have to show our books. I would like to ask . . .

MR. CHAIRMAN: Order please. Now that is the point where you're going to get into trouble.

MR. THORVALDSON: Oh.

MR. CHAIRMAN: Because you cannot ask questions. I'm sorry, you . . .

MR. THORVALDSON: Oh that's right. Somebody in the group could ask, eh?

MR. CHAIRMAN: Right.

MR. THORVALDSON: I see. You know if they wanted to ask . . . Can I take a minute?

MR. CHAIRMAN: They can ask you.

MR. THORVALDSON: Oh yes, they can ask me if they want to.

MR. CHAIRMAN: Right. Any further questions? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, would Mr. Thorvaldson consider himself asked that question?

MR. THORVALDSON: Yes I would.

MR. WALDING: What question, Mr. Chairman?

MR. THORVALDSON: Didn't you hear it?

MR. WALDING: No, I didn't hear Mr. Axworthy.

MR. THORVALDSON: The question was . . .

MR. CHAIRMAN: Order please.

MR. PAULLEY: No subterfuge, please.

MR. CHAIRMAN: If Mr. Axworthy wants to ask a question, he may.

MR. AXWORTHY: Yes, Mr. Chairman. I thought to save time of the committee that I would simply . . .

MR. PAULLEY: Come off of that nonsense.

MR. AXWORTHY: Mr. Chairman, I was not asking a question that had any nonsense within it. It was bearing directly on this bill, if the Minister would like to listen more carefully. The question we had to ask him, was whether in fact the application of capital payments would require that kind of proof.

MR. THORVALDSON: Yes, I don't see . . .

MR. AXWORTHY: How would you go about proving that and demonstrating that kind of operation?

MR. THORVALDSON: Well the amount paid from the Manitoba Hospital Services Commission - or the amount paid by the government is not enough to cover the expenses, and therefore all we should have to do is to prove by way of expenses that if \$10.80 a day does not equal our expenditures to maintain a patient, then that should be adequate. I'd better say that again because - all I'm saying here is that the amount paid by the public purse is only a portion of the total. In other words, to be specific . . .

MR. AXWORTHY: Of operating.

MR. THORVALDSON: Yes. It only pays a portion of the operating cost and the portion paid out of the public purse is not enough to cover the operating. So we're not even up to the business of interest and mortgages and so on, we're still in the apples and the potatoes and the meat - we haven't got past. So the \$10.80 doesn't do it. In other words, take the \$5.25 away from us and we'd be operating at a complete deficit. Why shouldn't we just be able to give

(MR. THORVALDSON cont'd) them a statement of our operating and say, there your \$10.00 doesn't cover it, so why are you worrying about an amount that is of no consequence?

MR. CHAIRMAN: Thank you, Mr. Thorvaldson. Mr. Minaker.

MR. MINAKER: Yes. Through you, Mr. Chairman, to Mr. Thorvaldson. Mr. Thorvaldson, if you were to open your books to the government, what would you expect in return from the government if you were to do this?

MR. THORVALDSON: Well if we opened the books to the government, then we may as well be considered non-proprietary.

MR. MINAKER: What does that mean?

MR. THORVALDSON: That means that we would be subject to the grants that are paid to the non-proprietary; we'd be subject to - well I'm not sure if we'd be subject to the refund on the building tax or the refund of sales tax on anything we buy; we would be subject to deficit if we went into a deficit and the MHSC could pick up the deficit and send us a cheque at the end of the year. That's what they do to the non-props. The municipal taxes is about a half. In fact, if you had any idea how much is being picked up by the municipality of Winnipeg and being paid on behalf of non-proprietary homes. They don't pay a school tax and a school tax is a pretty healthy sum. We want this - why shouldn't we have this? And then you can have the books and we can become civil servants almost and, that's fine - but equality.

MR. MINAKER: Parity is what you want.

MR. THORVALDSON: They want us to coincide and concur with a public hospital and a non-prop set of regulations. And then they turn around and say, hey you're excluded from 87.3 because that's the payment of a deficiency payment if you run into the red. So it's okay, you know, if X over here who is non-prop runs in the red, we'll send him a cheque; if you run in the red, that's your tough luck. So all we want is equality. And if they want equality by way of our books and our audited statements then - you know fair is fair, that's how I figure it anyway.

MR. MINAKER: Mr. Chairman, through you to Mr. Thorvaldson, are there different rates now between the non-proprietary and proprietary?

MR. THORVALDSON: Yes there are. The non-proprietary are paid a higher rate. And how I can say this emphatically is simply that when - now this is by agreement and we make no thing about this - they are paid according to the budget. If there's a brand new home of 150 beds over here, they're paid by budget and now it's just newly been built and the capitalization is high and everything, they're paid a given rate, for example, \$26.00 a day. Now we have, because we don't provide our books - incidentally the government is kind of getting a little benefit from this - we have said that because you won't meet us half-way, how can we meet you half-way, so I'll tell you what we'll do. Add up the 26 homes or 20 homes on the non-proprietary, list all the payments that you make to them per day, divide it by the 20 and give us the median. The only thing about this is that there are new homes and there are very old homes by non-proprietary, so some will be \$26.00 and some will be you know down at \$16.00, so we break about here. But who really gets hit here is the two operations who are both new and who should actually be very close to the amount paid, and so on. But we accept that.

I want to mention one other thing. In setting our rates, the government has excluded a couple of the real high ones, so the rate wouldn't be too high when you take the median, and that's really not fair either. You know the Hospice Tache is at a good rate, it is personal care, but then they kind of twist it around I think to call it something else - I'm just not sure of that - but anyways, as far as we know it's a personal care home looking after the same kind of people we look after but it's not on the list to arrive at a median because it would lift our median rate. So that's about how that works.

A MEMBER: It's cooking the books.

MR. THORVALDSON: Well not really. It could come out right if we worked a little harder at it. I really think, you know, while I'm on this subject of private enterprise and public enterprise, we have a lot to give each other - if we prove our talent, it could come out a lot better than it is. Many years ago it was thought that oh, those, you know, those poor homes - but we have come such a long way, and I just don't see why the government should be so defensive about whether we expand - not out of context with non-proprietary, but I don't understand why there is this great worry. You control us here - you know, down the line - in fact I can't think of a better deal. You know, why buy the cow when you don't need to, because you get all the milk and you get all the services and you can tell us what kind of services you want. You can almost tell us what you're going to pay us. And you don't pay as much for it as you pay the non-proprietary. So gee, I think it's a good deal, really I do. And I do want to say that for

(MR. THORVALDSON cont'd) us to turn over our books and for you to agree that we would be treated as non-proprietary - the costs are going, they have to, they really have to because I just can't see - maybe I just can't see myself really working as hard as I work now at the home because it's different. You know, I don't have that interest any more, I have an incentive now . . .

MR. PAULLEY: Oh boy.

MR. THORVALDSON: . . . and so on. But anyway, that's . . .

MR. PAULLEY: Beside the point. We are all pretty hard workers, Mr. Thorvaldson.

MR. THORVALDSON: Yes, sure. For a profit. For a profit.

MR. PAULLEY: No, not for a profit, for service. Possibly alien to you.

MR. THORVALDSON: They should go hand in hand.

MR. CHAIRMAN: Order. Order. We are now drifting off the bill completely. We're having a philosophical debate - we'll have that later on. Are there any further questions?

MR. THORVALDSON: Yes I have a question.

MR. CHAIRMAN: Order please. No further questions? Thank you, Mr. Thorvaldson.

MR. THORVALDSON: I'm no wiser than when I came in really.

MR. AXWORTHY: That's the way we feel every day.

MR. PAULLEY: That's judgmental.

MR. CHAIRMAN: Mr. Lyon.

MR. STERLING LYON: Mr. Chairman . . .

MR. CHAIRMAN: Do you have copies of your brief?

MR. STERLING LYON: No, I will be making a very brief brief. My name is Lyon, I'm here as solicitor for the Manitoba Health Organizations Incorporated. I would imagine that most members of the committee are aware, Mr. Chairman, that that is an incorporated group which represents the operators of the non-profit personal care homes and the hospitals, most of the hospitals in Manitoba. You would perhaps be more familiar with Mr. Herman Crewson who is the Executive Director of that organization. Our clients wish to make one brief submission with respect to Section 7, the new proposed Section 96.1 of the bill which seeks to have Minister's approval where a hospital or a personal care home wishes to dispose of its real estate.

The Manitoba Health Organization Incorporated is concerned that this could as presently drawn lead to some abuse of the private property assets of these affiliated members of their organization. They do not, Mr. Chairman, quarrel with the Minister or with the department, if their intention is to seek consent for the disposition of real property in those cases where there has been direct capital funding of the asset of the hospital or the personal care home. Now the Minister and I might have a slight difference as to what capital funding is, arising from his description that I heard earlier this evening. But I want to make it clear that we have no objection to that - if that is the intent of the bill. Where the government has funded directly in a capital way the assets of one of the organizations, then of course our people say that the government should then have the right to give consent where that asset is disposed of. However, in the other case where the government has not made a direct financial contribution by way of funding to a capital asset, or to property or a capital asset on that property, then we feel that a distinction should be made - that if the granting of the consent is to be applied as the Minister suggests tonight, only in cases where capital funding has occurred, then perhaps the instrumentality for achieving that clarification of the section would be another subsection without trespassing on Mr. Tallin's talents, another subsection which would say that the consent would be given automatically in those cases where there was no direct capital funding. I should say by reason of the description of capital funding that has been applied by the Minister, that we would not treat payments made by way of depreciation or payments made for the retirement of debt, that is through a fee schedule as being a direct form of capital funding. That's an operating cost. And depreciation is too, in common business practice.

MR. MILLER: Okay. All right.

MR. LYON: But that is an argument that you gentlemen will have to solve and settle at your own time and at your own leisure. But we would wish to make that point, that with respect to "direct capital funding" we have no objection to the consent being obtained. Where there has not been direct capital funding, then we think the individual institution which may have been willed land, may have received land by way of bequest; which may have land which is not contiguous or adjacent to the hospital or to the personal care home, which is used perhaps for

(MR. LYON cont'd) revenue purposes unrelated to the home - that in those cases the Minister should make or should be required to give an automatic consent because the government as such has no direct capital involvement in the operation of that particular institution. That very briefly, Mr. Chairman, is the sum and substance of the submission that the Manitoba Health Organizations Incorporated wishes to bring before this Committee. Thank you.

MR. CHAIRMAN: Thank you, Mr. Lyon. I think Mr. Miller has a question.

MR. MILLER: Yes, Mr. Chairman, through you to Mr. Lyon. I take it that your definition of "capital funding" is direct grants in lump sum payments, but that you do not feel that the per diem which includes operating as well as capital to retire your debt, that you don't feel that that should be considered as payment towards capital.

MR. LYON: Not for the purposes of this bill, no.

MR. MILLER: In other words, where a hospital is built, let's say two years ago - or in the future - up until now, where 20 percent capital was raised by the hospital district let us say, or by the private hospital, the board, the 80 percent still outstanding is paid through the per diem received from the Manitoba Health Services Commission - that although that 80 percent is paid to you on a per diem basis, which includes your operating, you don't feel that that is a retirement of the capital debt from the public purse?

MR. LYON: That is retirement, Mr. Chairman, - in answering the Minister - but we do not feel that is the kind of "direct" capital funding that we feel should be envisaged or we thought was being envisaged by the Minister in this Act. Direct capital funding, no argument at all.

MR. MILLER: I see. Well there's a difference of opinion and I understand your position. Thank you.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, actually part of my question was really asked by Mr. Miller. Are there situations in which there are really other assets that have nothing to do with the actual - which are complementary to a hospital that in fact would not have been funded by government but nevertheless which could have been paid out of proceeds over a period of time, that you can identify, a specific example.

MR. LYON: None that I can identify tonight, Mr. Chairman, as such. I'm advised by Mr. Crewson that there may well be situations among his member organizations where they have property which was not acquired through any government grant whatsoever, which is perhaps extraneous even to the operation of the institution, may be used for revenue purposes, the revenues going in to the institution, but extraneous in all respects to the operation of the institution. They feel that in those cases if the consent is still to be required by legislation, then that that consent should be granted automatically because there is no direct government capital funding involved in it. In other words with respect, Mr. Chairman, if the Honourable Leader of the Opposition, or if the Honourable the Minister, wish to make a bequest to the Winnipeg General Centre of a piece of property, there was no government funding involved with respect to that asset being acquired, and the hospital board then saw the opportunity, or the personal care home saw the opportunity, to sell that property or to develop it, why then should they have to seek the consent of the Minister, or having sought it should not that consent be given automatically?

MR. CHAIRMAN: Any further questions? Thank you. That completes the presentations for the Committee.

Next is the consideration of the bills that were before the Committee. What is the will and pleasure of the Committee?

MR. PAULLEY: May I suggest, Mr. Chairman, we deal with the bills as they were listed by you earlier but may I make an observation in respect to Bills 52 and 53. We have given an undertaking - at least I may have stuck my neck out - a general undertaking that we would not deal precisely with those bills until the transcript of the representations that were made the other night are in our hands so that we can study. Now I trust that that statement is still valid and it will meet with the agreement of the committee, and the reason I'm raising it now, Mr. Chairman, is because if there's anyone still here that are interested in 52 and 53 and staying for that purpose, they would have the opportunity of leaving without having any fears of the bills being dealt with.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: We were successful in getting a draft copy. I just want the Honourable Minister of Labour to know that. However I would think if the Committee would agree that the

(MR. SPIVAK cont'd) . . . wisest procedure - because I gather the Minister of Health will be present at the next committee meeting, and we are going to be dealing with 43 at that time based on what the Minister has suggested, that 43, 52 and 53 be held over.

MR. PAULLEY: I didn't make my remarks - if I may, Mr. Chairman, I don't want to interject to my honourable friend - I didn't make my remarks on 53, I happened to be out of the room when a suggested possible amendment to 43 in respect of representations. As far as I am personally concerned if that meets with the pleasure of the committee, okay. Agreed?

MR. CHAIRMAN: (Agreed).

BILL NO. 2 - The Interprovincial Subpoena Act

MR. CHAIRMAN: We'll start then with Bill No. 2, The Interprovincial Subpoena Act.

A MEMBER: Page by page.

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

Page 1-passed; Page 2- The Honourable Member for Birtle-Russell.

MR. GRAHAM: Mr. Chairman, dealing with Section 4 on Page 2, I would like to ask the Minister if there are differences in the procedure in contempt of court from one jurisdiction to another, or would the contempt proceedings take place within this province or within the other jurisdiction?

MR. PAWLEY: It would be contempt of our courts here in Manitoba, Harry. Yes, he would be in contempt of the Manitoba court.

MR. CHAIRMAN: (The remainder of Bill 2 was read page by page and passed) Bill be reported.

BILL NO. 3 - The Extraprovincial Custody Orders Enforcement Act

MR. CHAIRMAN: Bill No. 3, The Extraprovincial Custody Orders Enforcement Act. Page by page? (Agreed)

Page 1 - The Honourable Member for Fort Rouge, Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, on debate at first reading a question was raised with the Attorney-General concerning the variation of the custody and whether there would be proper information given to the parties to the custody order in time so that there would be some ability to appear before court before the variance was made. I was wondering if the Attorney-General had looked at that particular question and had any comment on it.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Well the party would receive - now Gil you might want to dive in on this too, but it would certainly be my understanding that the party would have adequate notice of the material upon which the variation order was being sought prior to the hearing. There would be adequate notice.

MR. CHAIRMAN: Mr. Goodman.

MR. GIL GOODMAN: We would just follow normal court procedure really. And of course the parties would be notified, ample opportunity to come and be represented.

MR. AXWORTHY: Mr. Chairman, the question was raised that there seemed to be a contradiction between clause 2 and 3 where it may just be a matter of interpretation, but under clause 2 where it says: "A court on application shall enforce and make such orders to give the custody, orders as if the custody order had been made by the court." At the same time clause 3 says it may vary that order. Now does that mean that in the meantime the original decision, the original custody order put down by a court out of the jurisdiction isn't in force or in effect.

MR. PAWLEY: Yes. The original order would remain in effect until such a time as a court in our jurisdiction varied that order of the original jurisdiction.

MR. AXWORTHY: The problem that was raised, Mr. Chairman, was that if the original custody order, for example, say from the Province of Alberta, was to return the child to a domicile in Alberta and some application was made for variation on that, you'd already gone through the kind of procedure where the child had been returned to another province and then you had to start the proceedings all over again. It just seems that that would permit some hardship in terms of the dispute or the opportunity for the other party to the case to make some representation to the court in Manitoba to vary that order if the child had already been taken under custody and moved back to another province. And the question being raised is, that should there not be kind of a go in reverse order almost, that there be opportunity given

(MR. AXWORTHY cont'd) to make application to the court for variance before the original order is given enforcement?

MR. CHAIRMAN: Mr. Goodman.

MR. GOODMAN: There is the opportunity there. I fail to follow. I'm sorry. But certainly the idea is that you have the opportunity to be heard here in Manitoba. In effect, there's an order from Alberta. Now if you can show on the basis of Section 3, this gives the court the discretion, and the custody order has to be enforced here in the Province of Manitoba. And of course you will be dealing with someone who has the custody of that child here in Manitoba, and the custody will go to, let's say, the mother in Alberta and the father may be here in Manitoba with the child. So the father of course will be notified and he will be there in court, and he can make whatever representations that he wants, let's say, on the basis of Section 3.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Just to clarify. It would mean then that if there was application for variance on a custody order that the original enforcement wouldn't really take place until that had been adjudicated? Is that right?

MR. TALLIN: It's likely . . .

MR. AXWORTHY: That's what I want to have clarified under that Act.

MR. TALLIN: As long as the application was before the court they would see to it . . .

MR. AXWORTHY: So there would be opportunity for the variance to be considered before the original custody order would be enforced.

MR. GOODMAN: Certainly. The court here has to enforce it, and of course, let's say, in my example the father would be there in court, and the court would not enforce that order without giving the person who has custody the opportunity to be heard.

MR. AXWORTHY: Well, Mr. Chairman, I've asked one further question not only to be heard but, if he enters a plea for a variance would that mean . . .

MR. GOODMAN: Well, that's what I mean.

MR. AXWORTHY: Yes, that's the point is that there would not be the enforcement of the original custody order until those procedures had been completed.

MR. GOODMAN: Right.

MR. AXWORTHY: Okay. That's fine, Mr. Chairman.

MR. CHAIRMAN: (The remainder of Bill 3 was read page by page and passed) Bill be reported.

BILL NO. 5 - An Act to Amend The Vital Statistics Act

MR. CHAIRMAN: Bill No. 5. I believe there have been some amendments to this. . . Have the amendments been distributed?

MR. TURNBULL: Mr. Chairman, are you ready to proceed or not?

MR. CHAIRMAN: Just a minute. The Chair doesn't have any copy of the amendment so I'm really . . .

MR. MILLER: Neither does the Minister.

MR. CRAIK: Mr. Chairman, you're going to amend the large 2 there, are you not?

MR. TURNBULL: That's right, yes.

MR. CRAIK: The one prior to that, 2.1, the Definition of Death, that precedes that, right? The amendment you're proposing doesn't affect that part of the bill from what I see here anyway. I wanted to raise the question here on this definition of death. We passed it in the House saying that we hoped that at committee that we would get some further discussion and enlightenment on the reason for changing the definition of death. I know the Minister is not here but I know also that there is, you know, there's a large body in the medical world that is concerned about the redefinition as described here.

First of all the extent to which this applies. It says here, "within the competence of the Legislature of Manitoba." We trust that doesn't apply to . . .

MR. AXWORTHY: Politicians.

MR. CRAIK: Yes, to the people that are actually in the Legislature or we may, you know

. . .

MR. CHAIRMAN: I do appreciate the honourable member asking the question.

MR. CRAIK: That's not the concern of the medical world, that's our concern in the opposition for the well-being of the government. The concern in the medical world - and this is not a local, Manitoba problem apparently it's one that battles have been fought elsewhere -

(MR. CRAIK cont'd) is that what this does is that so far as those areas that come under the legislative jurisdiction of the province are concerned, a person is presumed dead when the brain ceases to function, and the very simple question that is associated with it, does this then allow a doctor to send a body to the morgue with the heart still beating? The real purpose of this was never really explained. I assume it's for transplants, and so on, that there's a legal technicality here but it's a very broad statement.

MR. PAWLEY: It's a recommendation that has come our way through the Law Reform Commission that this change be made. Now I think Saul you wanted to . . .

MR. CHAIRMAN: Mr. Miller.

MR. CRAIK: There are some pretty prominent neurologists that won't agree with this type of a definition, people that are specialists in this type of work, you know working with brain functions. They themselves don't in the literature agree with this definition of death. It seems to me that there must be a pretty significant move to define death as being, cease of brain function rather than the death of the person with the ceasing of his heart beat.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, I can't add any technical advice to committee here, but I do know that this came forward from the Law Reform Commission. I do know that the questions that are now being posed were referred back to the Commission in the light of a case in the United States, I believe, and as a result of that it was referred back to the Commission for their further study. Mr. Frank Muldoon, the chairman, then replied saying, that nonetheless the Commission still felt that this was an important amendment that should be brought into Manitoba, and it's my understanding that this is then in line with other jurisdictions in Canada. Now, you know, the definition of death is left to a doctor, and apparently it is the medical definition which they're trying to now achieve. The medical profession generally seems to accept the cessation of all brain activity as being a definition of death, and they do in other - "the irreversible cessation of brain function" is the way it's put, and that will make the requisite professional decisions in determining whether or not the patient be dead. This is, as I say, requested by the Commission, studied by the Commission, by the Law Reform Commission, and they came forward with it and when questioned again, they then reiterated their position and felt that it should be brought in to be in line with other jurisdictions in Canada.

MR. CRAIK: I wonder if Mr. Miller can indicate: Is there a particular group or interested body in the province that particularly wants this? Is this how it originated?

MR. MILLER: It originated with the Law Reform Commission - this is the odd part - as far as I know.

MR. CRAIK: But they usually react to some sort of a requirement in the community.

MR. MILLER: They might have reacted to a request through the medical associations, I don't know. I know I certainly didn't ask for it because I wouldn't know the difference.

MR. CRAIK: I wonder, is there any way we can get some substantiation of this? It seems like at this point we're dealing with something that is of, you know, pretty generic sort of concern generally, and we don't really have at this point any full explanation of it, except that the Law Reform Commission has recommended it. Clearly the medical world is not in unison on the definition of death.

MR. GOODMAN: Well I think it was generated perhaps by Mr. Muldoon because a number of doctors had approached him and said there was a need for this definition, and he wrote to the Attorney-General. I might say that there was consultation with the Manitoba Medical Association and they have approved of the definition.

MR. CRAIK: In general, we have.

MR. GOODMAN: Yes.

MR. CRAIK: Just out of interest I contacted the Chief Pathologist of the General Hospital on this to try and find out, you know, from him what was the importance of it, and he indicated that there - you know, he hadn't got mixed up in the controversy of it but he knew that there were some doctors that were concerned about it, and he referred me to one of the neurologists, a fairly well-known neurologist, who incidentally had wanted to come to the committee to present some information on it, but he has very deep concerns about it, and has in fact been involved in some of the international discussions on the definition of death as it applies, and is pretty solidly in disagreement with the recommendation I think of the MMA on it. Whether or not he was involved in their decision, I don't know. But it seems that there is

(MR. CRAIK cont'd) a pretty significant difference of opinion on it with regard to this, and I'm just wondering, regarding the generality of the clause we're putting in here, whether we should be passing it without having some further representation made to this committee or some sort of investigation.

MR. CHAIRMAN: Mr. Goodman.

MR. GOODMAN: Certainly the Law Reform Commission went through a long exercise and they came out with a very long report, and they were aware of the criticisms, and in fact since this legislation was introduced in the House I know that I brought to Mr. Muldoon's attention articles in the papers about some fellow who supposedly came back from the dead in Milwaukee, and there were certain articles I believe in Time Magazine. The definition really says nothing more than when there is irreversible brain function a person is dead. I don't think that any doctor will dispute that. I think the problem comes in when they start trying to determine, you know, how do you find when this irreversible cessation of that person's brain function occurs. Some people become concerned - well the doctor out on the street at a high-way accident he doesn't have all the facilities of the modern big city hospital, and the point is that when a man is dead a man is dead, and this is needed I would say more for say organ transplants than anything else. Of course this is something that happens more and more every day. I think doctors want to know, they want to legally know that they are safe in taking a person's organ in these circumstances.

MR. CRAIK: So the purpose then is pretty strictly for transplants then?

MR. GOODMAN: I would say that would be the main purpose as far as I can see.

MR. CRAIK: The question asked by the person - that I mentioned I had contacted - asked a very pertinent question. He said, you can ask any doctor anywhere if he would send a body, I guess you'd call it, to the morgue with his heart still beating. He says, you wouldn't find a doctor in the whole Province of Manitoba that would do that. And he says, if that's the case, if the beat of the heart is the criteria that has been universally accepted, and no doctor would send a person to the morgue with his heart still beating, why change the definition?

MR. GOODMAN: Well I don't know that you're ever going to have irreversible brain function where the heart is still beating.

MR. CHAIRMAN: Mr. Petursson.

MR. PETURSSON: Mr. Chairman, without having any medical knowledge at all . . .

MR. CHAIRMAN: Would you use the mike please. Could we just have the undertones down a little bit because it's going to make it very difficult for the girls typing out Hansard.

MR. PETURSSON: Without having any medical knowledge, I wondered whether it would satisfy Mr. Craik's problem by adding a single word there between brain and function. Say, "at which irreversible cessation of all that person's brain 'and circulatory' function occurs."

MR. PAWLEY: Well, I'm worried about that, because if you did that then I think it would make it very very difficult to organize a successful transplant. If you had to tie in with both, the circulatory, the - then I think medically it would be next to impossible to ever arrange for a transplant. That would be my impression.

MR. PETURSSON: Is that the primary concern then, to be able to make a transplant rather than determine whether the man is . . . ?

MR. PAWLEY: I think that the medical people do want some criteria by which they can determine, they can know when they can make a transplant. At the present time they don't feel properly protected I believe to make transplants because there is no clear definition in law of what a death is. In medicine yes, but in law they face a difficult problem. Maybe Ræ Tallin would like to . . .

MR. TALLIN: In the report of the Law Reform Committee they dealt quite extensively with the position of the person who is on a heart pump, and a kidney machine, and a respiratory machine whose brain function has ceased several months before perhaps. The circulatory system can be kept going independently of brain function; the respiratory system can be kept going independently of brain function; and the kidney functions can be kept going independently of brain function, and with those functions going the body appears to be alive in many respects, particularly if they're feeding it intravenously to keep up some of the other aspects. But what the medical profession were concerned about was that if you rely on circulatory system, you don't know whether it's a circulatory system which is operating on its own or operating because of some mechanical feature independent of the body. So the reason why the medical profession generally come down on the side of the brain, cessation of brain functions, was because as yet there is no machine which can keep the brain functions going independently of the other functions

(MR. TALLIN cont'd)of the body.

MR. CRAIK: The person you just described though, Mr. Tallin, who had the artificial heart, whose brain had ceased to function, would under this definition be dead.

MR. TALLIN: Right.

MR. CRAIK: But he would be a live-dead person.

MR. TALLIN: What possible good would it be when his brain has ceased to function? The report also indicates that when the brain function ceases, it ceases irreversibly, the brain loses its functioning power, and you can't bring it back to operation no matter how much blood you pump through it, no matter how much oxygen you get into the blood, no matter how much you purify the blood by a kidney machine.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: First of all I just want to establish something. The Uniformity Law Commissioners have not dealt with this then really?

MR. TALLIN: Beg your pardon?

MR. SPIVAK: Have the Uniformity Law Commissioners dealt with this at all?

MR. TALLIN: No.

MR. SPIVAK: So really when - the question of other jurisdiction is really . . . Does Alberta have this definition in? This definition?

MR. TALLIN: I don't know. They may have enacted it this year, I don't know.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Chairman, on television tonight the comment came directly from, I believe, the Chief Pathologist from the Alberta Government where they have just introduced an amendment of this nature in their Act, and they were referring to the Law Reform Commission bill of Manitoba as well. So it's a similar . . . I think the comment that they made there was that they haven't developed - they don't want to second-guess the scientists in developing the machines that they have today in the movement of the organs that still can be mobilized by machines.

MR. SPIVAK: Again the question would be, how they legally define it. It's not the question of the intent as much as, you know, that the drafting is similar in terms of the specific desire. I think I have to make one point, Mr. Chairman, and this is a point that I think is important. If one looks at the interpretation section of the vital statistics as to birth, which has now been accepted as the legal interpretation of birth I would think - because it says it's the complete expulsion or extraction from its mother, and then I don't have to continue on - I think there are a number of people who would quarrel, you know, with that definition of birth. But nevertheless we've accepted a legal definition for whatever purposes, for the purposes of this Act, and for the purposes of other legislation. I think you know we've come to another situation where we're going to have to legally define death, whether we like it or not, we've got that obligation, because we are into a new era. I think at this point that there will always be differences of opinion, just as I'm quite sure that if we were to open up the question of birth that you would have a violent difference of opinion in this province on the basis of this particular section. So it would seem to me that we've got to come to it, and if in fact there is a consensus, even though there may not be complete agreement, then I think that we should proceed with it. I think that that's our problem, unless - and I say this to you - unless the person that Mr. Craik has referred to is prepared really to come before this committee at the next sitting, and if that's the case then it would seem to me that it would be a reasonable disposition to allow it to be held over and let him appear, and then make a decision after that. But if he's not going to appear, then it puts us in an impossible position of --(Interjection)-- Well on the other hand we may be persuaded by the arguments presented. This is not the first time that a person has come up and has been able to persuade us that the legislation that we were going to proceed with shouldn't even be changed.

MR. CHAIRMAN: Lay the bill over? Mr. Pawley.

MR. PAWLEY: You know, I would just like to say that one of the benefits I think of having the Law Reform Commission, that when it does come to the detailed analysis of the medical information, that they have the opportunity to probably examine it in much more depth than we do at the committee level. Now they have done that with the Manitoba Medical Association, and I certainly, from what Gil has said, I take from a number of other medical petitioners, too, and I'm sure that they have heard from some that have reservations about this. I would have been very very happy if we had had the presentations directly to the committee but we haven't and I'm just wondering if we put it over whether we'd really accomplish anything, because as I

(MR. PAWLEY cont'd)say the Law Reform Commission has spent a lot of time on this and has, I understand, gone into this in great detail with the medical profession. It receives the endorsement of the Medical Association itself.

MR. CHAIRMAN: Mr. Graham,

MR. GRAHAM: Mr. Chairman, I'd like to ask a question of the Attorney-General. We know that the Law Reform Commission has brought forward other suggestions on other bills, some of which are majority decisions and some of which are unanimous decisions. Is this a unanimous decision of the Law Reform Commission?

MR. PAWLEY: Yes it is, Mr. Chairman.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, I meant to mention this earlier, I indicated that it was referred back to the Law Reform Commission with some questions, and there's a letter here, copy of a letter from Dr. McPherson of the Manitoba Medical Association, to Dr. Parker the Chief Medical Examiner of the Attorney-General's Department, in which he indicates that the recommended definition is the one that they're still recommending for all purposes within the legislative competence, etc., etc. And we trust that this approval will assist any interested persons in obtaining the necessary amendments to the appropriate Act. So the MMA through Dr. McPherson has indicated its concurrence in this amendment.

MR. CHAIRMAN: On Page 1 we have an amendment.

MR. MILLER: Can I move my own amendment?

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I move that subsection 10(1) be repealed and substituted with the following: "2. Subsection 1 of the Act is repealed and the following section is substituted therefor: Order of Adoption to be sent to recorder." 10.1, "within ten days after the making of an Order of Adoption, or an order correcting an Order of Adoption by a County Court Judge under The Child Welfare Act, the County Court Clerk shall send to the recorder one or more certified copies thereof as provided in that Act."

MR. CHAIRMAN: The new subsection as moved, agreed?

MR. SPIVAK: . . . for the change?

MR. MILLER: I'll ask legal counsel because there are quite a number of amendments here.

MR. CHAIRMAN: Mr. Balkaran, would you explain please.

MR. BALKARAN: Mr. Chairman, might I explain. The new Child Welfare Act that was just passed during the last session of this House required the County Court Clerk to transmit these documents. Under The Vital Statistics Act as it now reads it would be the Director or the Recorder of Vital Statistics shall send these, and there was a contradiction. So that to make it consistent with the new Child Welfare Act this amendment was necessary.

MR. CHAIRMAN: Next.

MR. PAULLEY: I have another amendment to propose, Mr. Chairman. That Section 7 of Bill 5 being an Act to amend The Vital Statistics Act be struck out and the following section be substituted therefor:

MR. CHAIRMAN: That's on Page 2, is it?

MR. PAULLEY: Still on Page 1, Mr. Chairman.

MR. CHAIRMAN: Can we pass Page 1 then as amended? (Agreed) Page 2 - Section 7. Now the Honourable Minister can move that section.

MR. MILLER: Well, Mr. Chairman, I think legal counsel should be asked to explain because there is a long list of amendments.

MR. BALKARAN: Long list of amendments, Mr. Chairman. And this again is as a result of the new Child Welfare Act. It speeds up the Decree of Absolute Adoption when the new Child Welfare Act speaks of an Order of Adoption. As a result there's a number of areas where these changes have had to be made. As a result these changes are being made to conform with the new Child Welfare Act.

MR. PAULLEY: I still insist, Mr. Chairman, that the document that I have, I've started on the top of Page, 1. It goes over to Page 2; it may not be the way it's in the Act.

MR. CHAIRMAN: No, no.

MR. PAULLEY: I don't want to fight with legal counsel. So therefore, Mr. Chairman, I would move that Section 10 of the Act be amended by striking out the words "Decree of Absolute Adoption" "(i) in the third line of the subsection 2 thereof, and (ii) in the second and

(MR. PAULLEY cont'd)third lines of subsection 3 thereof" and substituting therefor in each case the words "Order of Adoption". That is (a).

And (b) by striking out the words "a Decree of Absolute Adoption" "(i) in the third line of subsection 4 thereof, and (ii) in the second line of subsection 6 thereof," and substituting therefor the words "an Order of Adoption".

MR. BALKARAN: Mr. Minister, would the Committee accept those changes on the basis of the explanation I have given. . .

MR. PAULLEY: Well the Chairman has asked me that if on the basis of the - instead of proceeding with reading them all will you accept them?

MR. CHAIRMAN: (Agreed)

MR. PAULLEY: Thank you kindly.

MR. CHAIRMAN: Page 2 as amended - passed; preamble- The Honourable Member for Birtle-Russell, Mr. Graham.

MR. GRAHAM: Section 15 here, that is quite a bit different I believe, is it?

MR. BALKARAN: That, Mr. Chairman - I'm sorry - that has to dovetail with the Fatality Inquiries Act, circumstances under which the Recorder of Vital Statistics has to record the evidence of death. People that are in so-called prisons, instead of saying "in a prison", an "involuntary resident in an institution."

MR. MILLER: I think you're talking about 8(a).

MR. PAULLEY: 8(a) subsection . . .

MR. BALKARAN: And (b), they're both the same thing.

MR. GRAHAM: Mr. Chairman, we have been unaware of these amendments until right now, and we haven't got the Act before us. This is just dealing with Section 15, that's the only section I'm concerned with.

MR. PAULLEY: By adding after the word "negligence" in the second line of clause (a) thereof, "or in an unexpected, unexplained or sudden manner." That is the point raised by the honourable member.

MR. BALKARAN: That is where the Recorder of Vital Statistics shall issue a Certificate of Death under those circumstances.

MR. PAULLEY: Under those circumstances. And then, also in that same section adding - that's the (b) part - by adding thereto immediately after the word "prison" in the second line of clause (b) thereof the words "or while he was an involuntary resident in any institution in the province."

MR. BALKARAN: That's a mental home or something like that.

MR. PAULLEY: Yes, tie it all in together.

MR. GRAHAM: What is an involuntary resident?

MR. PAULLEY: He's one that might be in a mental institution.

MR. GRAHAM: Against his will.

MR. PAULLEY: Right. That's right. Or in confinement that he didn't voluntarily go into.

MR. CHAIRMAN: Agreed? (Agreed) Preamble - passed; Title - passed. Bill be reported.

BILL NO. 6 - AN ACT TO AMEND THE WILLS ACT

MR. CHAIRMAN: Bill No. 6, an Act to amend The Wills Act. I believe there are some amendments to this Act. The first one is on Section 3 on Page 4. Page by page? (Pages 1, 2 and 3 passed) Page 4 - we have some amendments. Mr. Minister, would you . . .

MR. MILLER: I move, Mr. Chairman, that the proposed subclause 48(b)(ii) of The Wills Act as set out in Section 3 of Bill 6, be amended:

(a) by striking out the words "signature or ratification" in the first line thereof and substituting therefor the word "accession"; and

(b) by striking out the word "ratification" in the fifth line thereof and substituting therefor the word "accession".

MR. CHAIRMAN: Would you explain that please, Mr. Tallin.

MR. TALLIN: Yes. The time within which Canada has to ratify this convention has now expired so that they can now only accede to it, they can't ratify it, so that's why we're talking about changing these words. There's another similar amendment in Section 53 of The Wills Act later on on the next page.

MR. CHAIRMAN: Agreed? (Agreed) Page 4 as amended-passed. Page 5 - I believe there's an amendment?

MR. MILLER: Yes. On Section 53. I would move that the proposed Section 53 of The Wills Act set out in Section 3 of Bill 6 be amended by striking out the word "ratify" in the second line thereof and substituting therefor the words "accede to".

MR. CHAIRMAN: Page 5 as amended-passed. Page 6 . . .

MR. MILLER: There's an amendment there too, Mr. Chairman. I would move that Section 3 of Bill 6, an Act to amend The Wills Act, be amended by adding thereto, immediately after the proposed Section 60 of The Wills Act as set out therein, the attached Schedule, which has been distributed.

MR. CHAIRMAN: Page 6 as amended - the Honourable Member for Birtle-Russell.

MR. GRAHAM: Can I ask the Attorney-General if the Schedule for Bill 6 has been distributed to any of the legal fraternity? I know we didn't get it when the bill was in the House and we have just received it now.

MR. TALLIN: It was distributed to everybody who was on the mailing list for bills in the House. It went out as though it were a bill, on the mailing list.

MR. GRAHAM: Good. Good. That's what I wanted to know.

MR. CHAIRMAN: Page 6 as amended-passed; Preamble-passed; Title-passed. Bill be reported.

BILL NO. 8 - AN ACT TO AMEND THE CHILD WELFARE ACT

MR. CHAIRMAN: Bill No. 8, an Act to amend The Child Welfare Act.

MR. PAULLEY: There are no amendments, Mr. Chairman.

MR. CHAIRMAN: Page 1-passed; Page 2-passed; Page 3 . . .

MR. BALKARAN: There's a punctuation correction on Page 3.

MR. CHAIRMAN: Page 3.

MR. BALKARAN: After the word "placed" the semi-colon should go out, it should be a comma.

MR. CHAIRMAN: After the word "be"?

MR. BALKARAN: After the word "placed" there should be a comma.

MR. CHAIRMAN: Oh "placed". In 128.1(1)(b) after "be" in the second line "where he is lawfully placed," it should be a comma instead of a semi-colon. Agreed? (Agreed) Preamble - passed; Title - passed. Bill be reported.

MR. MILLER: I wonder if I might ask the indulgence of the members to deal with Bill 42 because the Director of Child Welfare is here and he needn't stay here while we plough through a lot of other bills.

MR. CHAIRMAN: Is that agreed? I'm in the hands of the Committee. Whatever the Committee decides . . .

MR. PAULLEY: Yes, we've decided in the affirmative, I'm sure.

MR. PAULLEY: No, it's not being facetious.

MR. TURNBULL: . . . if that's the basis, then I would like to proceed after this bill with Bill 34 so that . . .

MR. PAULLEY: Yes, but you can't leave because you're on the Committee.

MR. TURNBULL: That's right.

MR. PAWLEY: Well, Mr. Chairman, this places me in an awkward position because I think I have more staff than anybody else here.

MR. CHAIRMAN: Order. Then I guess the Chair will have to rule that we will just go on in order of rotation since we can't seem to come to any agreement. Bill No. 8, an Act to amend The Child Welfare Act. Page 1-passed . . .

A MEMBER: We just passed that.

MR. CHAIRMAN: Oh pardon me. Bill 13. You're getting me all confused here.

BILL NO. 13 - THE FATALITY INQUIRIES ACT

MR. CHAIRMAN: The Fatality Inquiries Act. Page by page? (Agreed) There is a correction when we get to Page 4. (Pages 1, 2 and 3 passed) Page 4 - Mr. Balkaran, I think there is a correction.

MR. BALKARAN: 8(5) third line, the word "and" should be "or".

MR. CHAIRMAN: In Section 8(5) on the third line after the word "excise" the word "and" should be struck out and substituted with the word "or". Agreed? (Agreed) Page 4 with that correction - Mr. Minaker.

MR. MINAKER: Mr. Chairman, on Section 8(5), I was wondering what assurance there would be that all the parts would be put back with the body. No, I'm serious on that.

MR. BALKARAN: A wart could be taken away.

MR. MINAKER: Mr. Chairman, it gives the right for examination, but at the time of burial does that mean they'll be put back - or what? Or does this give the right for use of human bodies as cadavers without the permission of the relations?

MR. CHAIRMAN: Perhaps Mr. Goodman could give us an explanation. Mr. Goodman.

MR. GOODMAN: I think certainly that the purpose of this is to allow the pathologist to make a full examination of the body - of course certain parts of the body will be removed, and after the examination I don't think anyone would want to have what's left of that particular part of the body. It will be so mutilated because of the examination you just wouldn't want to have that part of the body back I'm sure.

MR. PAULLEY: It wouldn't make any difference anyway.

MR. MINAKER: No I think, Mr. Chairman, we're dealing with something where a body can be used as a cadaver without the permission of the relatives. This is my interpretation as a layman.

MR. GOODMAN: Well I think you have to look at The Human Tissue Act. That is the Act where you would get permission to use a cadaver, let's say for medical school purposes. There the provisions relate to how you go about it - and certainly in every case that I'm aware of, they will speak to the next of kin before they use a body.

MR. MINAKER: Well my next question, Mr. Chairman, - would this particular section in this Act override the Act that Mr. Goodman has just referred to?

MR. GOODMAN: It will.

MR. MINAKER: The other Act has no meaning now then.

MR. GOODMAN: Oh no. Well it's different purposes. This particular Act is just to allow - for example, if a man is shot, the first thing the trained pathologist does is he excises that whole wound. That wound will be taken and it will be preserved - they will give it to the ballistics expert of the RCMP, and in effect that particular portion of the body will never go back to the body. It will be presented in court, and the ballistics' expert will on the basis of that perhaps give us some opinion as to how close the muzzle of the gun was from the body and matters of this kind.

MR. MINAKER: Yes, Mr. Chairman, with all due respect, the way the Act is worded - and I'm sure that I would hope it wouldn't happen - but my understanding would be that if they wanted to they could remove the head or the leg or anything of the body and take it away to examine the wound if they wanted to, the way it's written. Is that not correct? It says any part of the body.

MR. GOODMAN: Well for the purposes of a post mortem examination, yes. It's for that purpose.

MR. MINAKER: There's no guarantee that the leg or the head would be put back.

MR. GOODMAN: No, no, but that is the purpose - for post mortem examination.

MR. SPIVAK: I think what he is saying, is why not add that right there and then that would be defined. That in effect, 'remove any part of the body for scientific or laboratory examination for purposes of post mortem examination.' Well I mean, I think what he is saying, is that it could be used for some other purpose.

MR. MILLER: No, just post mortem examination.

MR. SPIVAK: It's performed under a post mortem, but it doesn't follow that there could not be removal of another part of the body for other scientific or laboratory examination, not necessarily tied in to a post mortem examination. I think that's really what he's saying.

MR. PAULLEY: Yes, I get the idea but it seems to be rather far fetched.

MR. SPIVAK: No, that's what basically he's saying.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: I don't know. Mr. Chairman, I think we are putting certain words in the wrong - we are emphasizing the wrong phrase. For the purposes of the post-mortem examination, excise and remove. Now how do you read that? Those are the purposes. It's clearly stated.

MR. SPIVAK: I guess that's right.

MR. BALKARAN: I don't know how - you're putting that phrase at the end of the sentence.

MR. PAULLEY: It says for scientific or laboratory examination.

MR. MINAKER: What would happen, Mr. Chairman, if it said "upon finalization or examination will be returned with the remains"?

MR. PAULLEY: There may not be anything left because of the fact of the type of investigation made by the examiner.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, would it not help if we removed the word "scientific" out of there and just made it strictly "laboratory"? Because the "scientific" can occur in a classroom or anywhere.

MR. PAULLEY: Oh no, Harry. After all, that would upset . . . for scientific . . .

MR. CHAIRMAN: Order please. You are making it very difficult. If you want the recordings transcribed, and everybody's talking at one time, I don't know how anybody is going to be able to transcribe all this. One at a time please. Mr. Spivak.

MR. SPIVAK: Well I think what Mr. Balkaran says is correct, I think that the words are there. A possible change would be "he may excise and remove any part of the body for a scientific or laboratory examination for the purposes of post mortem examinations." I think maybe just the transplanting of the words is what's required.

MR. PAULLEY: It achieves the same thing.

MR. GOODMAN: I might say, Mr. Chairman, other than the word "or", this section is exactly the same section we put in in 1971 and I'm satisfied there hasn't been any complaints about the manner in which the pathologists have used this section. The whole purpose was to bring in a new Act. There were just so many amendments, that just for clarity we thought we'd put in a whole new Act rather than all the amendments. This is one section that really has not been amended.

MR. CHAIRMAN: Page 4 with correction - passed; Page 5 - passed; Page 6 - Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with Section 20(2) really, it says, "A provincial judge may order exhibits tendered at an inquest to be disposed of in any manner that he deems appropriate." I'm a little concerned over this, because it could be in some cases where third party property could be involved in an inquest as evidence or an exhibit - and I would just for example say, possibly a farmer's \$50,000 tractor could be the exhibit that was used in the post mortem, and in that case here we find that the judge has the sole discretion about the disposition of it. I would hope that everything would go back to its rightful owner without the judge having the final say on that.

MR. CHAIRMAN: Mr. Goodman.

MR. GOODMAN: If I might reply, Mr. Chairman. The purpose of these sections was just to simplify the procedures - and let's say, where the exhibits come to court, the court would have to make a formal order. We're just saying here, let's make it informal. If the judge - obviously he's not going to be giving this \$50,000 implement to somebody else, and the fact that he's given a discretion does not mean that he can use that discretion unreasonably or improperly. It was really just to simplify the procedures and allow for the informal return of exhibits rather than going through formal court process.

MR. CHAIRMAN: Mr. Balkaran has something to add I believe.

MR. BALKARAN: There is one other reason why this section was put in, Mr. Chairman. The Administrator of Court Services, under the previous Act all exhibits were filed with him. There were sheaves and sheaves of documents that he had, and there was no authority as to what he should do with them. Frequently applications were made to a judge and the judge would say, well I've got no jurisdiction to tell the Administrator what to do, and so he phoned, and he would say, "Look, what do I do with these?" And he said, "You should give the judge the discretion to say what to do with these documents. Should they be retained in government files or should they be sent back to the people to whom they belong?" And that's why this was put in.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well, Mr. Chairman, I approached legal counsel with my concern on this, and Mr. Tallin has drafted a resolution that would make a change in this which would just spell out the methods, I think, in a more clear and comprehensive manner, and if I may I would just read the suggested proposal here: "That the Provincial Judge or the Administrator, as the case may be, shall take reasonable steps to assure that the exhibits tendered at an inquest, or filed with the Administrator, other than weapons used to kill or wound the deceased

(MR. GRAHAM cont'd) in relation to whose death the inquest was held and the exhibit filed, be returned to the person entitled to possession thereof."

A MEMBER: What if he ran over him with a tractor?

MR. GRAHAM: Well I'm just - Mr. Chairman, the intent is to . . .

MR. CHAIRMAN: Order please. Order please.

MR. GRAHAM: The intent is to insure that the property rights of an individual are respected.

MR. PAULLEY: . . . speaking, Mr. Chairman, that is done by the Provincial Judges no matter what the language is.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, if we were to follow Mr. Graham's suggestion, would that mean that any organs that were taken for post-mortem would then become part of the deceased's estate?

A MEMBER: Let's not go back to that.

MR. PAULLEY: I would suggest, Mr. Chairman, that we pass . . .

MR. CHAIRMAN: (Pages 6, 7, 8, 9 and 10 were read and passed) Preamble-passed . . .

MR. PAWLEY: I'm glad we're moving off that, Mr. Chairman.

MR. CHAIRMAN: Title-passed. Bill be reported.

BILL NO. 14 - AN ACT TO AMEND THE UNSATISFIED JUDGMENT FUND ACT

MR. CHAIRMAN: The next bill for consideration is Bill No. 14, an Act to amend The Unsatisfied Judgment Fund Act. Page by page? (Bill No. 14 was read and passed) Bill be reported.

BILL NO 15 - AN ACT TO AMEND THE SUMMARY CONVICTIONS ACT

MR. CHAIRMAN: Bill No. 15, an Act to amend The Summary Convictions Act. Page by page? Page 1-passed; Page 2 - I'm told there is a correction. Mr. Balkaran.

MR. BALKARAN: Section 6, first line last word should be "contravention" instead of "cantravention". Spelling error, co instead of ca.

MR. CHAIRMAN: That correction on Page 2-passed; Page 3 - Correction on Page 3. Can we just get the correction first, Mr. Graham, and then we'll . . .

MR. BALKARAN: 11(3), first line the word "of" should be "on". "Of" should be struck out and the word "on" inserted.

MR. CHAIRMAN: 11(3) as corrected-passed. Now, Mr. Graham.

MR. GRAHAM: Mr. Chairman, dealing with Section 11(1). Can the Minister explain why in the last line thereof where it says "or thereafter". Without giving an offence notice "without prior to, or thereafter, swearing to an information." Can he tell us why he wants that "or thereafter" in?

MR. PAWLEY: I wonder, Gil, do you?

MR. CHAIRMAN: Mr. Goodman.

MR. GOODMAN: Mr. Chairman, the purpose of course is to do away with the formal information. You have the now common offence notice and the whole purpose of it is to avoid having to swear out an information which is the usual way that you commence a prosecution. Now with the offence notice the original in effect forms is used as an information.

MR. GRAHAM: Well, Mr. Chairman, dealing on that very point, I think the point was raised in the Legislature on debate on this about the importance of the swearing out of an information afterwards, that just the handing out of a short offence notice may not be sufficient to allow the person to understand exactly what the nature of the offence is. Without the swearing of an information later, how is he going to find out?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: If I could just comment briefly on that, Mr. Chairman. The members are aware, I guess, about 90 percent of the anticipated actions that would be undertaken under this amendment to The Summary Convictions Act are already initiated by way of the common offence notice, namely the highway traffic offence notices which are commenced now by way of the common offence notice, and we would be only adding primarily The Liquor Control Act and The Wildlife Act principally to those Acts that would be commenced by way of common offence notices.

Now we have not run into difficulty, from my understanding, with the practice now in respect to Highway Traffic Act offences. The abbreviations for instance that are used on the form

(MR. PAWLEY cont'd) are pretty clear-cut, and I wish I had a copy of that - I believe it's in my office, I should have brought it with me. Oh, Gil has a copy of it here, of the various abbreviations that are used on the form, for instance, and I was concerned because I thought the Honourable Member for Birtle-Russell has made a very valid presentation in the House. But the abbreviations that are used are pretty clear, for instance, in the traffic offence notices and abbreviations wouldn't create problems. For instance, there are speeding, improper turns, unsafe passing, follow too close, unlawful possession of liquor - this is the proposed change that we added, we would have "unlawful possession of liquor" added to it - disobey traffic control device, fail to yield, drive carelessly, faulty equipment, unlawful consumption of liquor. And then there would be a place to tick off the Act. For instance, it might be The Highway Traffic Act, Liquor Control Act, Gasoline Tax Act, Wildlife Act, The Snowmobile Act, or a regulation or by-law. And that would be all ticked off. So it's pretty clear-cut . . . the party simply looking at the offence notice would know. Now if he didn't understand, then of course he would inquire and then still if he failed to obey then it would be proceeded with as earlier, by the preparing of an information and the issuance of a summons, if he ignored this common offence notice. Would that not be correct? Go ahead, Mr. Goodman. Maybe I could pass this around for members to look at though.

MR. GOODMAN: Certainly the whole idea of the offence notice is to give the fellow notice, and it sets out when he is to appear in court, it gives him an opportunity to appear voluntarily if he wants to, and I'm satisfied that 75 percent of the tickets that are given out - perhaps even more, 90 percent or so - are dealt with on a voluntary basis. A fellow will come in and plead guilty to the charge before a Justice of the Peace. And there is always a date on there, a final date when he has to appear in court if he doesn't dispose of the matter voluntarily. He's given some three, four weeks, normally to appear. I don't think that the swearing out of an information is really going to assist him. It's not going to give him any further information than he's going to find on the common offence notice, and I think you'll find that most people don't read the information in any event. In fact my experience is few lawyers read the information, never mind the clients.

MR. PAWLEY: But if he failed, he ignored the common offence notice . . .

MR. GOODMAN: If he ignored it our procedure has generally been to proceed ex parte - that means in his absence - with the trial. We have avoided getting warrants out except in exceptional cases. But normally the procedure is that the man is advised that he has to appear, the trial date has been set, and if he doesn't appear it will go on in his absence.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, does that not infringe somewhat on the rights of the individual in society? If we could be assured that he had been served with that notice, that I understand that many of these notices are just put under the windshield wiper on the vehicle and they can be removed by wind or vandals, or something of that nature, and a person can be perfectly innocent, and yet we're told the case can go to court in his absence, without his knowledge. I don't think that that is what we want in today's society is it?

MR. GOODMAN: The traffic offence notice has been used for five years or so, and I don't know, perhaps you have somebody who has had that experience. If you have I'd like to speak to them. I'm not suggesting that somehow in some way the court process dealing with thousands upon thousands of people, that there can be some mix-up from time to time no matter what procedure you use. But I'm not aware of any complaints, and we've been using the traffic offence notice for many many years and, not only in this province, in our sister provinces they use it and . . .

MR. PAWLEY: But there's no way of course that the action would proceed without it being evidenced that in fact the person had received service and notice of the trial date.

MR. GRAHAM: I would sincerely hope that there is a follow-up to insure that he has been given a notice before the thing goes to court.

MR. GOODMAN: Right. But one problem I think you have to face, too, is that there is any number of people in society who will play any number of games that you want to play trying to avoid coming into court. This admittedly is an assistance for the police. In fact the purpose is really to avoid having to go out and find these people and serve them with a summons. In effect you find them . . .

MR. GRAHAM: At the same time though I wouldn't want the police and the courts to be playing games with people.

MR. GOODMAN: I don't think they are, and as I say if you have people who have complained about how the system has been used over the last five years with traffic offence notices, I'd like you to bring them to my attention because I'm not aware of them.

MR. GRAHAM: Well, Mr. Chairman, I have further comments to make on this, and it's dealing with the abbreviations that appear. In particular one abbreviation which deals with speeding or exceeding the speed limit. I would sincerely hope that any officer filling out an offence notice of that nature would put on that notice the extent to which they are exceeding the speed limit, because it has significant implications when the case comes to court. As we know, if you're five miles over the speed limit, I believe, under The Highway Traffic Act it's \$1.00 a mile for the first ten miles, and then \$3.00 a mile for the next, and \$5.00 . . .

MR. PAWLEY: It rises.

MR. GRAHAM: It rises quite rapidly.

MR. GOODMAN: Well no. That's the way it was at one time but now it's \$2.00 to \$10.00, and there is a discretion with the court with the court for every mile over the speed limit. Normal practice is that the minimum fine is normally imposed except in exceptional circumstances. Certainly on 99 percent of the please of guilty the minimum fine is imposed.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well, Mr. Chairman, I would hope that - while I wouldn't want to see an amendment put in here - I hope that instructions would go out that on an exceeding the speed limit offence that the amount exceeding the legal limit should be put on that notice as well.

MR. GOODMAN: Well as a matter of course it always is because, as I say, you're going to find that four out of five people will be pleading guilty and the Justice of the Peace or Provincial Judge who hears that plea of guilty - this will be in the absence of the police officer - all he will have before him is the offence notice. And it has to have recorded on there what the speed limit is because the law requires him to fine between \$2.00 and \$10.00 for each mile over the speed limit. So he has to have that information before he can assess the proper penalty.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Well, Mr. Chairman, for the information of the Committee I'm not Simon Pure, I have been the recipient of one of those offence notices, and on that notice there was no indication whatsoever of the amount I was exceeding the speed limit, and I had to wait till . . .

MR. GOODMAN: Well not on your copy, not on your copy.

MR. GRAHAM: I think that that should be on the copy that is handed to the person committing the offence. I think it would be to his benefit and very valid and pertinent information for him.

MR. GOODMAN: Mr. Chairman, did the officer tell you what he was recording insofar as the speed?

MR. GRAHAM: No, he did not. Again, Mr. Chairman, I would request the Minister to see if it's possible that in speeding offences that the degree that they are exceeding the speed limit be placed on that notice that is given to the person that's committing the offence.

MR. PAWLEY: I thought there was a place where the speed excess, the amount of speed was to be inserted. --(Interjection)-- There we are. Right there.

MR. GOODMAN: Right on the first page.

MR. GRAHAM: Well, it wasn't marked on mine.

MR. CHAIRMAN: Order please. (The remainder of Bill No. 15 was read and passed) Bill be reported.

BILL NO. 17 - AN ACT TO AMEND THE DEVELOPMENT CORPORATION ACT

MR. CHAIRMAN: Bill No. 17, an Act to Amend The Development Corporation Act. There is only one page. (Bill No. 17 was read and passed) Bill be reported.

The Honourable Leader of the Opposition, Mr. Spivak.

MR. SPIVAK: We want to facilitate the Committee's determinations tonight, but I must say at this time that with respect to the bill being reported it has been our position, and still is our position, that the Manitoba Development Corporation should be wound up. We cannot in all conscience support this bill and allow it to be reported to the House. All one had to do was be present at the Committee on Economic Development and listen to the report of its Chairman, and listen to the answers and the contradictions with respect to the matter of Saunders Aircraft

(MR. SPIVAK cont'd) to recognize the need for a control with respect to the Development Corporation. Therefore, Mr. Chairman, we do not believe that The Development Corporation Act should be reported, and we would move that it not be reported.

MR. CHAIRMAN: Motion before the Committee that the bill be not reported. Mr. Walding.

MR. WALDING: Mr. Chairman, on a point of order. I believe that such a motion is out of order because it's unnecessary. It's only needed to vote against it.

MR. CHAIRMAN: I think that's technically correct.

MR. PAULLEY: . . . on the reporting it, doesn't really require it. But as long as it's noted, and I think that would be the point of the Honourable the Leader of the Opposition.

MR. SPIVAK: No, no, I would like the vote to be recorded.

MR. PAULLEY: Yes, well that's what I meant.

MR. CHAIRMAN: Recorded vote. I'll ask for a recorded vote.

QUESTION put MOTION carried.

MR. SPIVAK: I think, Mr. Chairman, there actually has to be a counted vote.

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

Yeas 13; Nays 7.

MR. CHAIRMAN: I declare the motion carried.

MR. PAULLEY: You missed the Member for Gimli.

BILL NO. 20 - AN ACT TO AMEND THE HERITAGE MANITOBA ACT

MR. CHAIRMAN: Bill No. 20, an Act to amend The Heritage Manitoba Act. Page 1 - passed; Page 2 - the Honourable Member for Fort Rouge. On Page 2?

MR. AXWORTHY: Page 1, Mr. Chairman. I have a question on Section 10(2) where, "the Foundation shall pay to the Minister charged with the administration of The Financial Administration Act," etc. The question we have about that particular clause is really the disposition of the money - that it seems that what could happen in this particular instance is some of the same kinds of problems that we've run into in relation to The Lotteries Commission Act where moneys that were presumably committed to certain purposes somehow get lost in investments in government capital, whether it could be MDC, could be other forms of capital, which are not in any way recorded or have been given any record. We're wondering, first, whether in this section there should be - if this is to be the case - some requirement where in fact there is a reporting on the investment so that they're just not subsumed under the Capital Supply; and secondly, and perhaps more importantly, I'm wondering why it should not be the Board of Directors of the Foundation that would direct the nature of the investment. My understanding of the reading of the bill is that this is a bill where there are private moneys in fact being acquired and held by the Foundation for purposes of acquisition, and under this Act those private moneys could be taken and transferred simply to The Financial Administration Act and then be used for a variety of government investment purposes. I would recommend that this section be altered to indicate that in fact it should be the Board of Directors of the Foundation that would control the investments of that Foundation.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, I can't answer. The Minister is not here. But I would suggest to the Honourable Member for Fort Rouge that all moneys handled are subject to - under The Financial Administrations Act would have to be accountable, including the disposition of the same. So I don't see any reason for any problem. As I read the Act, it's amending the present Act dealing with the investments from the Foundation.

MR. AXWORTHY: Well, Mr. Chairman, the point we're raising is that we have run into some very serious problems in trying to determine the actual disposition of moneys raised by the Lotteries Commission where they're put into trust funds held by the Minister responsible for financial administration, without any - we find it very difficult to determine what and how those consolidated trust funds, where they end up, where they're invested, who is using them. It would seem that, particularly because in this case there is private moneys being involved that are bequested to the Foundation for the specific purpose of acquiring historical sites or older buildings and properties, that in fact the disposition of any money held in reserve should be up to the board members of that Foundation which are in fact appointed by the government, which would be very clearly in their control. If then it would require the approval of the Minister for Financial Administration in terms of those investments, that's fine. But I would think that the disposition should be subject to their decision.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, might I point out that if the honourable member is concerned about private investments or private moneys that the very next subsection takes it out of subsection (2).

MR. AXWORTHY: Well that's not quite true because it says, "Where the foundation receives moneys which have certain bequests or conditions set to them." But I am thinking in the case where someone decides they're going to give \$50,000 to the Heritage Foundation but doesn't set any condition on the use of that money, just simply to give it to the foundation, then it becomes subject to Section 10(2), and I think that if that money is being held in reserve then the board of that Foundation should decide how the money should be applied and what should happen. If they want to invest in Manitoba bonds, or whatever, it should be their business, not simply passed into the Consolidated or into a trust fund by the Minister of Finance.

MR. MILLER: Mr. Chairman, the member's suggestion really would change the entire direction of the original Act itself. The moneys under The Heritage Act are handled through the financial administration; they're invested; they have to account for it through the Provincial Auditor, and this is how the Act was written. This still is in the Act. The only condition is in subsection (3) as indicated by counsel where there are certain moneys paid over and bequests made in a certain way or certain terms and conditions imposed. Otherwise the Financial Administration Act does do the administering of the funds, invests them, and is accountable for them, and has to account both to the board of the Foundation and to the Provincial Auditor.

MR. AXWORTHY: Well, Mr. Chairman, having looked at the Act, and I'm not so sure that definition is as clear, my reading of the Act on the Heritage Foundation is that both public and private moneys are given to this Foundation primarily for the purpose of preserving different historical sites, artifacts, etc. This particular clause is designated specifically for moneys which are not presently being used, for which there is no actual piece of heritage being acquired. So they're being held in trust in effect or in reserve. I'm saying that the actual - so that there is no real investment of most of the money which is being turned over, which I suppose would be coming from grants from government and other forms of grants, to historical societies, and what not. But the concern we have in this case again is the disposition - I agree that the administration of the funds in terms of the actual execution of the investments, that I would request that the decision as to the nature of the investment be subject to a board decision.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: But, Mr. Chairman, if I may again refer to Section 10(3), that where the private moneys come in and there's terms and conditions that would require the foundation to utilize those moneys, in accordance with those terms and conditions those moneys shall not be paid over in accordance with subsection (2), so that it's true that they're in sort of a trust account position but there is still - the fact of the matter is complete surveillance as to the expenditures, and that the Financial Administration Act is charged with the responsibility for the investments in any case, but insofar as the private contributions under the terms and conditions that the moneys were contributed.

MR. AXWORTHY: Mr. Chairman, if the private moneys are contributed without any particular specific conditions set to them other than that they are to be granted to the foundation, then 10(3) would not apply.

MR. PAULLEY: That's right. If there were no conditions, then they would be handled as under subsection 10(2) I would suggest.

MR. AXWORTHY: And that's what I'm objecting to.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, the government has an obligation to see to it that the money is expended properly, and also has an obligation to see to it that the money is invested properly. Therefore the suggestion that it should be turned over to a board and they should handle their own investments of the \$10,000 or \$5,000, whatever it is that might be there, is just not acceptable. The government has an obligation to assure that the money is invested and invested safely, and it has to be reported to the Legislature and accounted for.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I at this point would not necessarily question that the money would not be invested safely. The real question is whether the money would actually ever end up coming back into the use of the Foundation.

A MEMBER: It has to.

MR. AXWORTHY: Well it doesn't because we certainly have increasingly some evidence that a lot of the moneys acquired through the Lotteries Commission have been held in trust and invested and have never come back for the use for which they were intended such as recreation culture and sports. And that's the kind of concern that's being raised.

MR. MILLER: Mr. Chairman, I totally reject the comments made by the member. I think they were rejected during the Estimates. The money was allocated; it may not have entirely been paid out, but if it wasn't paid out it was because the municipality, or whoever was supposed to receive the money, wasn't yet ready to receive the money, because they hadn't met certain conditions. But the authority was there; it was earmarked.

MR. CHAIRMAN: (Bill No. 20 was read page by page and passed) Bill be reported.

BILL NO. 21 - AN ACT TO AMEND THE HORSE RACING COMMISSION ACT

MR. CHAIRMAN: (Bill No. 21 was read and passed) Bill be reported.

BILL NO. 22 - AN ACT TO AMEND THE HORSE RACING REGULATION ACT

MR. CHAIRMAN: (Bill No. 22 was read and passed) Bill be reported.

BILL NO. 26 - AN ACT TO AMEND THE LIQUOR CONTROL ACT

MR. CHAIRMAN: The next one is The Liquor Control Act, No. 26. May we have some amendments.

A MEMBER: Is this a free vote?

A MEMBER: No.

A MEMBER: Don't we have free votes any more on liquor bills?

A MEMBER: Yes.

MR. CHAIRMAN: We'll get these amendments distributed. Bill No. 26, an Act to amend The Liquor Control Act. Page 1 - there seems to be an amendment.

MR. GRAHAM: After subsection (2). Mr. Chairman, there is an amendment here that Bill 26 be amended by adding thereto immediately after Section 2 thereof, the following sections: Clause 45(16)(e) is to be repealed and substituted by: 3 Clause 45(16)(e) of the Act is repealed and the following clause is substituted therefor: (e) except as provided in subsection (19), in premises situated in a municipality that is under local option.

And subsection 45(19) added. 4 Section 45 of the Act is further amended by adding thereto, immediately after subsection (19) thereof, the following subsection: Resolution of council for municipality under local option.

45(19) Notwithstanding any other provision of this Act, the Commission may issue an occasional permit in respect of a social occasion to be held in premises situated in a municipality that is under local option if the council of the municipality has, by resolution, approved the application for the occasional permit.

And a further motion:

THAT Sections 3 to 44 of Bill 26 as printed be renumbered as Sections 5 to 46 respectively.

MR. CHAIRMAN: Can we deal with the first motion. There are two motions. Can we deal with the first motion first, which is an amendment to 45(16) and a new subsection. Mr. Graham.

MR. GRAHAM: Mr. Chairman, perhaps the Attorney-General can give us an explanation on this.

MR. PAULLEY: . . . the amendment has been introduced by a member of the opposition to a government bill, and then he is asking the Attorney-General to explain what it's all about. I might say I have had some peculiar situations prevail but never one like this.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I think there's a fairly straightforward explanation. Unbeknown - how shall I word this? Unbeknown to many of us it was contrary to the provisions of The Liquor Control Act for casual permits to be issued to weddings or events held within a local option municipality. --(Interjection)-- That's a dry municipality by vote. There are some 11 municipalities of this nature in the Province of Manitoba. This was raised in the House, and some issue was taken in the House because of the fact that permits were being issued by the Liquor Control Commission to these municipalities. This resolution, or

(MR. PAWLEY cont'd) amendment, is intended in order to insure that in a local option municipality that permits can be issued, casual permits, for social occasions. For instance, we have a situation right now where in one municipality a golf club holds quarterly dos, has been receiving liquor licence really improperly, but cannot by law receive the liquor permit and have so been indicated for this month, June, that they cannot receive a licence. This would make it possible for the issuance of casual permits upon passage of a resolution of the council in that municipality. I think, Mr. Chairman, it's a reasonable resolution. The purpose is not commercial. We're respecting the local option, the voice of the people in the area insofar as commercial exploitation of liquor is concerned within their municipality. But I don't think really that the majority of people in any municipality would want to deny a casual permit for instance to a wedding party or to a non-commercial event within any municipality in the province.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: Mr. Chairman, may I make a comment, a general comment. I'm particularly concerned of the, in effect, giving to the council of a municipality that is under local option the right of approval of each individual application for an occasional permit. Now that's the way I read the proposed amendment. It says, "notwithstanding any other provisions of this Act the Commission may issue an occasional permit in respect of a social occasion to be held in the premises situated in a municipality under local option" - that part is okay - "if the council of the municipality has by resolution approved the application for the occasional permit." This means

MR. MILLER: If they're not invited, they won't pass it.

MR. PAULLEY: Well it could conceivably be. It could conceivably be just that. Now this would mean - and as an ex-councillor I'd hate like the devil to have to have a meeting of council to pass on whether or not an occasional permit should be issued. --(Interjection)-- No. So I think that while there may be some basic logic in parts of the proposed amendment, but I do draw to members' attention the point that I raise. Actually it would amount, in my opinion, to an abrogation of the responsibilities of the Commission because the Commission can say yes, the municipal council can say no, and that leaves the bride and groom at a wedding hanging up - dry.

MR. CHAIRMAN: The Honourable Attorney-General.

MR. PAWLEY: Mr. Chairman, if I could just respond to my colleague. If you don't have this then in fact permits will be issued in a widespread way by the issuance of the same from the Liquor Control Commission without any response at the local level, and it might very well be that there are municipalities that the feeling is for various reasons so strong at the local level that they would not want to see the issuance of these permits. That's the spirit of local option. Otherwise if you open it wide open in an indiscriminate manner . . .

MR. PAULLEY: Mr. Chairman, if I may be permitted . . .

MR. CHAIRMAN: Mr. Minaker.

MR. PAULLEY: Okay, I was just going to ask for a clarification, but you go ahead.

MR. MINAKER: Mr. Chairman, I was just going to comment that I believe that the Attorney-General wouldn't really be setting any precedence in this because I know when I sat on council in St. James at one time I believe the beer garden permits were limited in number to certain cities or areas, and at that time we used to have to make the decision who would get them. I didn't find it any obligation or difficulty to try and make this decision as a councillor, and they were commercial, that's true, Mr. Chairman, but I think the principle was there that it left some say to the local area on the matter, yet the Liquor Board still had the governing decision on whether in fact they could get a permit.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: If I may, Mr. Chairman. On that, I too was a member of council that dealt, as I recall it, with special occasions and picnics, and the likes of that that were going to be held within the municipality. This goes further than that. This goes further than that as I read the proposed 45(19). "Approve the application for the occasional permit." It's not as limited as it was, may I suggest to the Honourable Member for St. James, when he was on council and when I was on council. This could conceivably be wide open; and another point was that I believe in the Municipality of St. James at that time and the Town of Transcona we weren't under local option, to which reference is being made, so that was permissible apart from that. We were open and not under option. So there is a difference.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I think maybe the Minister of Labour has the intent maybe a little misplaced. Here the municipality has to approve the application, and then after that the Liquor Board then makes its decision on whether it will grant the licence or not.

MR. PAULLEY: It doesn't matter whether the cart's before the horse or the horse before the cart, the end result is the same.

MR. GRAHAM: At the same time, Mr. Chairman, there are only 11 municipalities in the province, and in many of them the occasion for a by-law, the need for a by-law has never existed because the permits have been granted in the past and they have never had a need for a by-law. We realize also that further on in the Act we are making changes regarding the method that can be used for a by-law vote. Before it could only be by petition, now it can be initiated, I believe, by the council. So that we are changing the provisions and in all likelihood we will see some by-law votes coming forward in the next year or two from these - there's only 11 municipalities at the present time.

MR. PAULLEY: What happens after the next referendum?

MR. GRAHAM: At this particular time this gives the local people through the local council, and I may suggest that this was brought to the attention of the Attorney-General and other members of the Legislature by a local council who was concerned about it at the present time, and the vote that they can hold cannot be held until October.

MR. CHAIRMAN: Any further discussion on the amendment?

MR. PAULLEY: Well I just want to make further comment - I can see a lot of difficulty arising from this if each individual permit has to be approved by the council before the issuance of the permit by the Commission. If a resolution of council, may I suggest to the Minister of Municipal Affairs . . .

MR. PAWLEY: I would be prepared if it's agreeable throughout to change the wording of this so that the resolution be carte blanche, say, at the beginning of the year for casual permits in the municipality.

MR. PAULLEY: Yes, I would accept that but not for each individual permit.

MR. PAWLEY: At the beginning of each year, say, rather than requiring them to be issued on an individual basis, one by one.

MR. PAULLEY: That's my major objection.

MR. GRAHAM: I'm not opposed to that.

MR. MILLER: Mr. Chairman, I think it would make more sense to do it that way.

MR. CHAIRMAN: Order please.

MR. MILLER: I think it would make more sense to do it that way and really in these rural municipalities they don't meet that often. They'll meet . . . about once a month. It could be a real problem if you had to deal with each application separately. This way if the municipality gives carte blanche for social occasions and that's it, they know where they're at.

MR. PAULLEY: You still have the control with the Commission, Mr. Chairman. I understand that's acceptable. It would be acceptable to me as well. Whether that means anything or not, Harry, I don't know.

MR. CHAIRMAN: Is the Honourable Attorney-General prepared to make a sub-amendment?

MR. PAWLEY: Yes, Mr. Chairman. If that could be reworded that it be dealt with on a carte blanche manner each year by resolution of council pertaining to the calendar year.

MR. TALLIN: Do you want to take another bill and we'll prepare the amendment.

MR. CHAIRMAN: Can we just postpone this and we'll carry on with another bill, and then come back to it.

MR. PAULLEY: You didn't expect that from me did you?

MR. PAWLEY: No, I must say, Mr. Chairman, I was rather taken back by . . .

MR. PAULLEY: The logic of my arguments.

BILL NO. 31 - THE PUBLIC SERVANTS INSURANCE ACT

MR. CHAIRMAN: (Bill No. 31 was read page by page and passed) Bill be reported.

BILL NO. 34 - THE REAL ESTATE BROKERS ACT

MR. CHAIRMAN: We'll carry on with Bill No. 34. I believe there are some amendments to this Act. Bill No. 34. Do we have the amendments? Could they be distributed. Just one amendment? May I have a copy, Andy? The amendment doesn't come until Page 5 so we can carry on to there.

(Pages 1 to 4 of Bill No. 34 were read and passed) Page 5 - there's an amendment to Subsection 19(9). Mr. Miller.

MR. MILLER: I would move that the proposed subsection 19(9) of The Real Estate Brokers Act as set out in Section 8 of Bill 34 be amended by adding thereto, immediately before the word "owned" in the third line thereof, the word "so".

MR. CHAIRMAN: (The remainder of Bill 34 with amendment was read and passed) Bill be reported.

BILL NO. 42 - AN ACT TO AMEND THE CHILD WELFARE ACT (2)

MR. CHAIRMAN: (Bill No. 42 was read page by page and passed) Bill be reported.

MR. MILLER: Could we go back to 26, Mr. Chairman?

MR. CHAIRMAN: We have now completed all the bills with the exception of Bills 43, 52 and 53, which it is my understanding are to stand until the next meeting of the committee.

BILL NO. 26 (cont'd)

MR. CHAIRMAN: I'll read this section to you with the amendment and if you want to take it down, and then I'll have someone move it.

45(19) notwithstanding any other provision of this Act the Commission may issue an occasional permit in any year in respect of a social occasion to be held in the premises situated in a municipality that is under local option if the council of that municipality has approved the issue of occasional permits in the municipality in that year by resolution passed in that year, or within one month prior to the beginning of the year.

MR. MILLER: The intent is clear enough.

MR. PAWLEY: Mr. Chairman, the only thing I would say, you know, I had suggested that it be done on a year to year basis. I suppose one could pass a resolution and permit that resolution to stand until such a time as it is rescinded by the municipal council. Maybe that would make more common sense.

MR. CHAIRMAN: With that understanding of that correction . . . Mr. Minaker.

MR. MINAKER: I have a question to Mr. Tallin. If the Act is given third reading and Assent, then would the local option municipalities be able to pass a resolution this year?

MR. TALLIN: Sure.

MR. MINAKER: They wouldn't have to wait until the beginning of the year, the way it's worded.

MR. PAWLEY: We certainly hope so. And let me mention that we're worried about an event on June 16th I believe here, so we have to move pretty quickly.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well that means - and I think the legislative counsel is doing this now - that means that the calendar year is eliminated really.

MR. CHAIRMAN: We are going to try to get something new here, and I'll read it out again to you. No one has moved it yet anyway so . . .

Now do you wish to read that . . .

MR. PAWLEY: I wouldn't . . .

MR. CHAIRMAN: Would you move the sub-amendment, Mr. Walding? Order please. Let's get this resolution passed or we'll be here till the 16th.

MR. WALDING: Mr. Chairman, I will move the sub-amendment as read.

MR. CHAIRMAN: No. You'll have to read it out because there's a change. Would you read it out please, Mr. Walding.

MR. WALDING: The change would read: "Notwithstanding any other provision of this Act, the Commission may issue an occasional permit in respect of a social occasion to be held in premises situated in a municipality that is under local option if the council of the municipality has approved the issue of occasional permits in the municipality by resolution, and the municipality may rescind the resolution."

MR. PAWLEY: Until such time as the municipality rescind same. So that the resolution will stand until such time as rescinded. Yes. Until such time as rescinded.

MR. CHAIRMAN: Does everybody understand the purport of the resolution? We could have it dressed up a bit. --(Interjection)-- Well, I know. But perhaps we can have that cleaned up by legislative counsel.

MR. PAULLEY: I think we should have it cleaned up before we move the bill for adoption.

MR. CHAIRMAN: Do you want to do that now? All right. The resolution as before the Committee . . .

MR. PAULLEY: I just have one question. I'm not going to try and hold matters up, but the original document containing a few amendments were introduced by the Honourable Member for Birtle and now we have an amendment by the Honourable Member for St. Vital. It shows co-operation, but I wonder whether it shows proper procedure. --(Interjection)-- It doesn't matter a darn as far as I'm concerned. That's right. That's right.

MR. CHAIRMAN: I was in error here. I should say the sub-amendment-passed; the motion as amended-passed.

MR. PAULLEY: That's right.

MR. CHAIRMAN: And now we have the second motion which Mr. Graham moved, that Sections 3 to 44 of Bill 26 as printed be renumbered as Sections 5 to 46 respectively-passed.

MR. PAULLEY: Wait a minute.

MEMBERS: Let it go. Let it go.

MR. PAULLEY: I have another technical point, Mr. Chairman. There may be other changes, some that might affect that particular motion.

MR. CHAIRMAN: Does that affect that particular motion?,

MR. TALLIN: Yes.

MR. PAULLEY: There you are. The answer is yes.

MR. CHAIRMAN: Well then, I would suggest that by unanimous consent the Committee rescind that and hold that until we get at the end. Agreed? (Agreed) All right.

(Pages 1 to 8 of Bill 26 were read and passed) Page 9 - I believe there is an amendment

MR. TALLIN: Harry? Secunder to the other amendment(?)

MR. GRAHAM: Oh, this other one. I didn't see the other one.

MR. TALLIN: Are you going to move it?

MR. GRAHAM: A motion THAT Bill 26 be amended by adding thereto, immediately after Section 38 thereof, as printed (section 40 as renumbered) the following section:

Clause 261(2)(d) repealed and

41 Subsection 261(2) of the Act is amended

(a) by adding thereto, at the end of Clause (b) thereof, the word "and";

(b) by striking out the word "and" in the last line of clause (c) thereof; and

(c) by striking out clause (d) thereof.

MR. WALDING: Explain.

MR. PAULLEY: What the heck is that all about?

MR. TALLIN: That's the section that says it's illegal to have an occasional permit in a local option area - just repeal that, because now they can't issue the permit unless they've got a resolution . . .

MR. CHAIRMAN: With that brief explanation, can we pass the amendment? Page 9 as amended-passed. And now the renumbering - is there a motion that they be renumbered accordingly? Mr. Graham.

MR. GRAHAM: I would so move.

MR. CHAIRMAN: The amendment before the Committee-passed; Page 10-passed; Preamble-passed; Title-passed. Bill be reported.

That completes the work before the Committee. May I thank the committee for their co-operation. Have a good weekend. Committee rise.