Time — 8:00 p.m.

CHAIRMAN — Mr. Warren Steen.

MR. CHAIRMAN: When we concluded last night's hearing this morning at that time it was agreed upon that if there were any persons who wished to make representation regarding Bill No. 17, The Medical Act, that this evening we would hear them. Are there any persons present who were not given an opportunity last evening to make representation regarding this bill that wish to make representation tonight? No one? All right.

BILL 18 — THE PHARMACEUTICAL ACT

MR. CHAIRMAN: Bill No. 18, The Pharmaceutical Act. Is there a representative of the Manitoba Pharmaceutical Association? My notes tell me a person by the name of Mr. Brown. Is there someone else from that association? All right, sir, would you come forward and identify yourself.

MR. GEORGE McCOY: Mr. Chairman, members of the committee, my name is George McCoy and I'm the Assistant Registrar of the Manitoba Pharmaceutical Association.

We're currently in the throes of organizing a national convention so you're having to settle tonight maybe for a third stringer but I'll do my best.

The Pharmaceutical Act in Manitoba is right now 103 years old and unlike Scotch whiskey I guess it doesn't improve but like a diaper, a government and a wife maybe it should be changed every once in a while. On behalf of the Pharmaceutical Association I'd like to say that most of the amendments and the changes that are in Bill 18 are of a housekeeping nature that have their initiative from the Pharmaceutical Association. Those others which represent new information, new clauses are in response to the government's wish to update our Act.

I don't know if you expect me at this point to go through any of the items in our Act that may be contentious but I'd be willing to answer any questions that you may have on the Act. This is actually a redraft, it represents a new Act because the number of changes in the old one presumably were so many that it seemed expedient to make this rather a whole new Act and with very few exceptions, it's exactly the same thing as was presented at the last session as Bill 62.

MR. CHAIRMAN: Are there any members of the committee that wish to ask questions to the delegate? Mr. Cherniack.

MR. SAUL CHERNIACK: Thank you, Mr. Chairman. Is it McCoy or McCloy?

MR. McCOY: McCoy.

MR. CHERNIACK: Thank you. I finally met one, not the real one. There are a few questions I wanted to ask you Mr. McCoy. How many members are there in Manitoba?

MR. McCOY: Practising members are somewhere in the neighbourhood of 800.

MR. CHERNIACK: That's a much larger number than I expected mainly because I see the council is proposed to have eight members — that seems very few for an organization as large as 800 — and you say council should be changed every so often like other analogous spotties. Surely what you have here as I read it, is an eight-member council and you even provide that they can't be thrown out all at once; they alternate. What is it, four every year for two terms?

MR. McCOY: Yes.

MR. CHERNIACK: I must tell you my reaction is that the council should be larger. I also believe that there should be the possibility to throw them all out at one time and really change them the way you suggested earlier would be desirable.

MR. McCOY: I think the reason for having half the council elected each year, even to expand on that a little bit more, that the principle officers in the new legislation has some guarantee. Our objective of course, is continuity. We feel that the council of the association is charged with the responsibility of administering the Act and our feeling is, that as long as you have some experience on your council that you're going to have wise judicious administration of the Act. As a matter of fact right now, this represents a change for us by the way because the current Act has all of our council elected at one time and it was my impression that the continuity that would be afforded by electing half each year would probably be for the better public interest.

MR. CHERNIACK: Have you suffered, Mr. McCoy, from the fact that you had a complete changeover possible? Has there been one frequently? Has there not been a continuity under the system you have now?

MR. McCOY: To be honest with you I have never seen a complete turnover.

MR. CHERNIACK: Right. Thanks for being honest with me because I want to plead with you that you reconsider that point and carry out exactly what you — I mean you brought in an analogy — you started by saying that governments and wives should be changed every so often. I want to suggest to you that the democratic principle ought to be that if the members want to change the council they should be able to do so without having to change one-half at a time. When you say the administration of this Act, really what it deals with is the registration and

discipline of members, that's the real thing. Suppose the membership doesn't like the way the council's been operating. Shouldn't they have that opportunity to elect a completely new council and what damage is there to the administration of the Act if you have new people with fresh ideas and a new approach come in and take over?

MR. McCOY: Well, as I said before, to the best of my knowledge, that system has worked well for us, the new concept to provide continuity. I suppose at this point, we don't really know whether it's going to be an improvement or not.

MR. CHERNIACK: But you say you haven't suffered from the fact that it wasn't that way, I mean the council hasn't.

MR. McCOY: I think I could truthfully say we have not suffered.

MR. CHERNIACK: What about the number of members? Would you not think that eight is a pretty tight little clique? When you have a quorum of majority it means that five people can make decisions affecting 800.

MR. McCOY: Yes, well when we're talking about eight people we're talking about eight elected people; we're not talking about ex officio members which we have two and then of course, the new addition of two lay people. So actually you're talking in terms of 12, aren't you?

MR. CHERNIACK: I have to look again. My impression is that the eight include the two appointed.

MR. McCOY: No. You know, without being too facetious about this, it would seem to me that eight good men frequently can do the work of 80 bad men.

MR. CHERNIACK: "An association composed of not fewer than eight, two of whom shall be lay members". So we come back to there being not more than eight required — there may be more — but eight includes the two members; six are elected, two are appointed and you say you have ex officio. By the way that gives you a certain amount of continuity, doesn't it?

MR. McCOY: Yes, I suppose that's right.

MR. CHERNIACK: You say there are two ex officio.

MR. McCOY: While it says "not less than eight", it would be our intention to keep eight elected people, two lay people and two ex officio. I would envision our council as being composed of 12 people.

MR. CHERNIACK: Mr. McCoy, I suggest even that's too few in number but if you propose to have eight elected, then why not say "not fewer than 10 members"? I want to bargain with you, I want to go up beyond the 10. You'll go the 10 though, won't you?

MR. McCOY: We'll go to 10? I think that's our intention so if you said 10, I can't see any real difficulty there.

MR. CHERNIACK: All right, I won't debate that with you anymore. Mr. Chairman, on the appeal provision, most of it looks pretty straightforward. Before I go to appeal, the notice of time and place of meeting, what is your practice as to minimum notice? The calling of a meeting of the general body.

MR. McCOY: 14 days.

MR. CHERNIACK: Would you agree to insertion of the words "at least 14 days' notice"?

MR. McCOY: It's part of the by-laws. Is it necessary?

MR. CHERNIACK: Well, I think it is because this is the legislation. The by-law can be changed, the legislation cannot. I'll make a note of 14 days. Finally, we get into a fairly technical question that we asked the medical profession yesterday and that is, on the appeal. Section 15(13) deals with the procedure on appeal. I don't know if you were here yesterday but we discussed the right of the court to determine whether or not it shall hear the evidence and the arguments afresh; it's called de novo or from the beginning. Do you see any objection to that? You don't provide for it; do you see any objection to the court having the right to decide to hear all the evidence?

MR. McCOY: No, I don't see any objection at all to that.

MR. CHERNIACK: Thank you, Mr. McCoy.

MR. CHAIRMAN: Any further questions? Mr. Walding.

MR. D. JAMES WALDING (St. Vital): Mr. McCoy, as you are probably aware there were three nursing bills passed last year, laid out in a similar manner with the powers of the council and the duties, etc., laid out in a similar order. Some of the bills that are before us this year ARE obviously modelled on those and they follow the same sort of format. I wonder if you were aware if that and whether you had considered putting your Act into the same order with comparable powers under comparable headings so that it would be easier for one thing for members to compare your bill directly with others. I'll tell you frankly that it presented us with some difficulty in going through it.

MR. McCOY: Our bill caused some difficulty?

MR. WALDING: Yes.

MR. McCOY: Oh.

MR. WALDING: Because it was not directly comparable to other bills that we were studying at the same time. That is the reason.

MR. McCOY: I don't think there was any thought given to comparing it to anything else. I see frankly, a very marked similarity to this current bill, to the Act that we have right now and it's something that we have lived with for — well like I say 103 years — and I don't see any difficulty at all in just carrying on

with the present form. But if there was some different setup, the order of things, is that what you're talking about?

MR. WALDING: Well, that is one thing and in order to compare the various investigation and appeal proceedings and the hearings, it would be good if they were in the same order, under the same sections in each bill that we looked at, so that there would be some degree of uniformity in the bills. I don't know whether you see a need for uniformity in professional association acts; that is the direction in which we've been moving for several years.

MR. McCOY: Yes, I appreciate that and it was my understanding that it would be up to the Legislative Counsel to organize these things in what would be a workable form for everybody.

MR. WALDING: So as an association you would have no objection if the sections were juggled and perhaps separated?

MR. McCOY: No, I would think not. As far as I'm concerned, what's important in the bill is the material, the substance and how it's organized. To me it makes very little difference.

MR. WALDING: Thank you.

MR. CHAIRMAN: Mr. Uruski.

MR. BILLIE URUSKI (St. George): Mr. Chairman, to Mr. McCoy. In the election of the council the association may by by-law divide the province into electoral divisions. How is that presently accomplished.

MR. McCOY: Okay, we have two electoral divisions; the City of Winnipeg is Electoral Division No.1 and Electoral Division No.2 is all that part of the province which is not. Just to go a little further it's based somewhat on population, okay? A little more than half of our membership is in the City of Winnipeg and a little less than half is in rural Manitoba so it's based on that.

MR. CHAIRMAN: Any further questions? Mr. Cherniack.

MR. CHERNIACK: Again, Mr. McCoy, yesterday we had a brief discussion with the medical people regarding the question of costs.

MR. McCOY: Of costs?

MR. CHERNIACK: Costs.

MR. McCOY: Yes.

MR. CHERNIACK: Were you present during that discussion?

MR. McCOY: Yes I was.

MR. CHERNIACK: Do you have a reaction as to the problem dealing with the council itself having a vested interest in finding that costs shall be paid?

MR. McCOY: I found the discussion last night on that very interesting. To be perfectly honest with you, it's an issue that had never ever crossed my mind and the reason of course, it's possible to happen but I would like to think that the people who are charged with the responsibility of judging their peers — these are elected people — I would like to think that honesty and integrity of this group would supersede any financial consideration with regard to costs. Now I'm not sure whether I'm being idealistic about that or not but I honestly believe that the people that you elect to sit in judgment and to issue penalties against their peers do it responsibly and with integrity and I would like to think that would not be a problem.

MR. CHERNIACK: Have you had occasion? How many in the last year were disciplined?

MR. McCOY: To discipline? Well I would say a half-a-dozen.

MR. CHERNIACK: Were they charged costs?

MR. McCOY: No. As a matter of fact, none of the discipline cases that we had within the last year involved fines at all. There was only one I guess where there was considerable cost involved.

MR. CHERNIACK: There was one.

MR. McCOY: There was one, yes.

MR. CHERNIACK: And it wasn't awarded against the person who . . .

MR. McCOY: There were no costs, because we do not have the authority now to assess costs.

MR. CHERNIACK: I see, so you don't have any experience of having assessed costs in the past.

MR. McCOY: No, no. That's right, we don't. But here again, I believe that integrity would take over here. I could be totally wrong.

MR. CHERNIACK: Yes, that's right. Well, you said they didn't have it before, this is new.

MR. CHAIRMAN: Mr. Kovnats.

MR. ABE KOVNATS (Radisson): Mr. Chairman, thank you. Mr. McCoy, what type of figure are we talking about when we consider it to be considerable costs?

MR. McCOY: Considerable costs?

MR. KOVNATS: Yes, that was your term, considerable costs.

MR. McCOY: No, I don't think so. I think you must have misunderstood me.

MR. KOVNATS: Then maybe I did misunderstand.

MR. McCOY: Oh, I'm sorry. Referring to the one case that we had this year?

MR. KOVNATS: Yes.

MR. McCOY: I'm sorry. Okay, 3,200.

MR. KOVNATS: 3,200.

MR. McCOY: 3,200 were the costs involved in the one major case that I've referred to.

MR. KOVNATS: The one that we were discussing yesterday I think was somewhere around 15,000 and that was not considered considerable costs. I'm just trying to . . .

MR. McCOY: Don't forget I'm a pharmacist, not a doctor.

MR. KOVNATS: Fair enough. I support your cause, it's okay.

MR. CHAIRMAN: Any further questions? Seeing none, thank you, sir, for your presentation.

MR. McCOY: Thank you, gentlemen.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I don't know if Mr. McCoy should be expected to answer it or we deal with Legislative Counsel. I'm not sure of the structuring of the Act in relation to the Discipline Committee and appeal for the Discipline Committee and later on it deals with penalties. The structure is something I presume was drafted with the help of Legislative Counsel?

MR. McCOY: Yes.

MR. CHERNIACK: We'll deal with it when we come to it then.

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

MR. McCOY: Thank you.

MR. CHAIRMAN: Manitoba Health Organizations, Shirley Seidel.

MS. SHIRLEY SEIDEL: Thank you, Mr. Chairman. I'd like to take the opportunity again to introduce myself as the representative of Manitoba Health which is a voluntary non-profit organization and has a membership of hospitals, personal care homes and health care agencies. You'll be seeing me many times throughout these presentations of health bills. I'd like to make a general comment that we support the proposed health legislation in that we support the professional development and the self-monitoring that is inherent in each of them.

In terms of The Pharmaceutical Act, I really have only two comments. The first is in Section 5(1) and we support the concern about lay representation. The lay representation on the committee is really of less importance from the perspective of our facilities than it is from a public policy point of view where the purpose is to ensure the interest of society is protected. We would like to see a percentage in that.

The other is possibly an error and is in Section 31. There's a reference to a Schedule "A" which does not seem to appear in the legislation. A further mistake in . . . Pardon?

MR. CHAIRMAN: Please carry on.

MS. SEIDEL: The further subsection 31(e), makes reference to 45(8) and 45(10) and it would appear to be more correct to be 45(10) and 45(12), which refers to information noted on prescription and identification markings respectively. That's all the comments I have, Sir.

MR. CHAIRMAN: Will you permit questions from members of the Committee? Are there any questions? Mr. Cherniack, do you have a question to our delegate?

MR. CHERNIACK: I was just talking to our Legislative Counsel.

MR. CHAIRMAN: Mr. Cherniack, I have a question for you. Do you have a question to the delegate? Are there any other members that have questions?

Mr. Kovnats.

MR. KOVNATS: To Shirley Seidel. We were talking about lay persons being members of the Council. What is your objection to the two lay persons? Is it not enough numbers, or should it be on a percentage? What is your consideration?

MS. SEIDEL: It's that the number of the directors of the Board is not stated and consequently impossible to consider the effectiveness of lay membership.

MR. CHERNIACK: I gather you mean — is it Seidel? Thanks, I'll try to remember that. What I interpret you to mean is that under the legislation there could be a council of 50 people and two lay people. You suggested there be a percentage rather than a number so that no matter how big the Board or council becomes there will still be a constant percentage. Is that your point?

MS. SEIDEL: That's right, Sir, which I understand is in The Nursing Acts, a percentage.

MR. CHERNIACK: Yes, you're right.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly for your presentation.

We have another name on the list but I don't see the person in attendance. Is Graeme Haig available? He was here last night I know. A.L. Jones. Are there any other persons that wish to make representation regarding this bill? Seeing none.

Last night we spent a great deal of time on Bill 19, The Veterinarian Medical Act. Are there any persons who wish to make representation regarding that bill, having heard the discussion of last evening? Mr. Downey.

MR. DOWNEY: Mr. Chairman, I'm aware there's a presentation that has come in from a member of the Veterinary Association. He's not here at this particular time. Maybe you could proceed on to another bill and return to that one at a later time.

BILL 20 — THE REGISTERED DIETITIANS' ACT

MR. CHAIRMAN: All right. Bill No. 20, The Registered Dietitians' Act, Manitoba Health Organization, Shirley Seidel. Seidel, my apologies.

MS. SEIDEL: I'm sorry, sir, on which Act?

MR. CHAIRMAN: On Bill 20, The Registered Dietitians' Act.

MS. SEIDEL: I'm referring first to Section 3(1). Again it's the description of Board of Directors without specific indication of percentage of lay membership on the council.

The next item is Section 14 — Employers Responsibility — and within that Subsection (a) we would like that modified to state, "Shall ensure that each person at the time of employment is duly registered under this Act", otherwise our member facilities would in effect be required regularly to enquire into the status of the dietitian's registration. This is consistent with the structure of the Licensed Practical Nurse.

(b) of Section 14 requires that the Association Board be notified whenever a dietitian is unilaterally terminated because of professional misconduct, incompetence or incapacity. It is the recommendation of MHO that it would be beneficial to employers and employees if this provision were changed so that facilities were required to notify the Board of termination only where professional misconduct, incompetence or incapacity have been demonstrated as opposed to where in cases a facility wishes to terminate an employee for a cause not yet amounting to demonstrated incompetence.

Subsection (b) includes the cause of notification — a written reprimand. This particularly is of concern to us as this appears as a cumbersome and inappropriate inclusion and is not included in other Acts.

Section 15(2) — Offence by employer. We request that the phrase "to aid and abet" be removed from the Act. This is inconsistent with the provisions in other professional Acts.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: What subsection is that, Mr. Chairman?

MS. SEIDEL: 15(2).

MR. CHAIRMAN: Please carry on.

MS. SEIDEL: Section 34(8) — Right to Counsel. We think that there must be an error at least in my draft. It refers to "new counsel" on the second line of the clause and we interpret this to mean her counsel or agent. I'm sorry that I have to refer back to Section 4(1) which the statement, "(k) to promote the professional and social welfare of the association", we ask that that be taken out as it has been taken out in all other legislation. This is a function of the union and not the professional association. That's my comments, sir.

MR. CHAIRMAN: Are there any questions? Mr. Cherniack.

MR. CHERNIACK: I stopped on Section 14 for a moment because I didn't fully comprehend your recommendation dealing with 14(b). You say, " where her employment is suspended or terminated because of professional misconduct, incompetence or incapacity", that it shall be reported, do you have an objection to that?

MS. SEIDEL: No, no. We would like an insertion of "demonstrated".

MR. CHERNIACK: What is demonstrated? Misconduct is demonstrated.

MS. SEIDEL: Yes.

MR. CHERNIACK: But if you fire somebody you must have cause.

MS. SEIDEL: Then you would have documentation. I really have not as great a concern with that as I have with the aid and abet.

MR. CHERNIACK: Aid and abet as employer, we'll come to that. But under (b) what you are saying is that if you reprimand a dietitian for whatever reason, like coming late or something that has nothing to do with professional capacity, then you're saying you shouldn't have to report that. But suppose you reprimand because of professional misconduct. Should you not have to report that?

MS. SEIDEL: Certainly I would agree with the reporting of professional conduct as that is consistent in other legislation. The notification of a written reprimand is not consistent and probably is a little bit more involved than would be appropriate because written reprimand generally would include a first reprimand.

MR. CHERNIACK: But as I read this if the grammar lends itself to say where "the dietitian receives a written reprimand because of professional misconduct, incompetence or incapacity" — that's the way I read it. Do you read it differently?

MS. SEIDEL: I don't have the whole inclusion of Section (b) here but our recommendation has been that "written reprimand" is separate from, "reporting to the Board of dismissal".

MR. CHERNIACK: You mean the cause is different?

MS. SEIDEL: Yes.

MR. CHERNIACK: But suppose my reading is correct and that a reprimand is because of professional misconduct. Do you still object to reporting that?

MS. SEIDEL: I think in terms of a written reprimand it is a lesser than discharge and that would be a relationship between the employer and the employee.

MR. CHERNIACK: I'd like to ask you a general question in which your organization ought to be concerned. We are dealing now with the Registered Dietitians. We will be dealing today with physiotherapists, registered respiratory technologists and as you know there are other members of a health team. Are you satisfied as administrative employers or employers who are also administrators, that you have all these various professional bodies — I'm not talking about unions, I'm talking about

professional bodies that do the licensing — that each is independent of the other and not part of one central health team?

Let me expand a little then, you don't seem to follow what I'm saying. It seems to me that since they're all members of one system which is designed to take care of the health needs of a community, that they each ought to have an input in the principles that are involved in the provision of health services to the extent that there could be some interlocking relationship, which might mean a nurse on a board, same board, a doctor on a board, a dietitian on a board, which would then be involved in the overall plan and would then be charged with the responsibility of maintaining standards at the same level rather than what may become self-serving if each body runs its own show. Do you see that as anything worth exploring?

MS. SEIDEL: I understand your concern. I would say that it's probably a problem that has to be addressed from an overall systemic point of view and probably could not be addressed within this legislation and the legislation of other health disciplines.

We are certainly pleased with the idea that the health disciplines will be self-monitoring and will be concerned with their personal and educational development. I'm always concerned about systemic issues and interrelationships and balances between and among those but it isn't something that I see able to be addressed in the individual discipline's legislation.

MR. CHERNIACK: Are you familiar with The Dietetic Association of Manitoba Act which is being repealed by this legislation?

MS. SEIDEL: I have had opportunity to review it. I can't say that I could . . .

MR. CHERNIACK: Do you know of any basic differences in principle between one and the other?

MS. SEIDEL: The basic of principle?

MR. CHERNIACK: Like, are they not self-administering, self-licencing?

MS. SEIDEL: Self-monitoring. I would assume that that is the case. This strengthens their role and their responsibility.

MR. CHERNIACK: Is there a provision that you, as representative of employers, would not be permitted to employ as a dietitian a person who is not a member of the association?

MS. SEIDEL: I think that does not exist in the present legislation.

MR. CHERNIACK: So that now your opportunities to hire people are more limited, aren't they?

MS. SEIDEL: The opportunities would be limited. On the other hand, employers would expect an increased level of competence and would expect quality.

MR. CHERNIACK: Is there a union that negotiates for the dietitians separately from other paramedical people?

MS. SEIDEL: I'm sorry, I don't know that.

MR. CHERNIACK: Aren't you the body that does some negotiating?

MS. SEIDEL: I'm part of that body. I'm not the person who is responsible.

MR. CHERNIACK: I understand.

MR. CHAIRMAN: Any further questions? Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I wonder if I could ask Ms. Seidel if she would file a copy of the amendments that she has proposed because there have been a number of proposed amendments that have eminated from her presentation and certainly the sponsor of the bill, who is not present this evening I'm sure would want to look at them and certainly, as Minister, I would like to look at them before we complete clause-by-clause examination in Committee.

MS. SEIDEL: I have a copy for you, Sir.

MR. SHERMAN: Thank you.

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

For the Dietitians Association, Elizabeth Hamilton.

MS. ELIZABETH HAMILTON: Mr. Chairman, Members of the Legislative Assembly. I'm the Chairman of the Legislation Commission of the Dietetic Association. I'm sure you are aware that there is an Act which will be repealed, we hope; the Act which came out in 1957. Our reason for presenting a new Act is mainly housekeeping and in order to bring it in line with current practice. We have, as you probably already noted, followed the format used by The Nurses Act. I don't propose to point out differences or specific clauses but I should mention that one item, which Ms. Seidel had concern about, the word "social" in Section 4(1)(k) had slipped our editorial pen and we had already been in contact with the department asking that that particular word be deleted. I would be pleased to answer any questions.

MR. CHAIRMAN: Any questions? Mr. Cherniack.

MR. CHERNIACK: Ms. Hamilton, you heard the discussion that took place already with the Pharmaceutical Association regarding the size of the board. How many members do you have?

MS. HAMILTON: On our Advisory Council we have 7.

MR. CHERNIACK: How many members do you have in your association?

MS. HAMILTON: 150.

MR. CHERNIACK: Well they must be spread all over the province, most of them in Winnipeg I assume.

MS. HAMILTON: The majority of them are.

MR. CHERNIACK: Is 7 not too few?

MS. HAMILTON: Well, I must say that it was an arbitrary number. However, I think I would share the sentiments of the gentleman who said that eight good men could perhaps do the work of 80 poor ones and I think perhaps seven good women could do the work of 70 poor ones. I think numbers are not all that important.

MR. CHERNIACK: What do you think about seven members of the Legislature running the province?

MS. HAMILTON: I'm not a politician, Sir.

MR. CHERNIACK: I think you are a politician when you answer that way. You're proposing a board 4 of whom shall be non-members and two shall be appointed by Lieutenant-Governor-in-Council. Ms. Seidel has already made the point that she thinks there ought to be a percentage. You say out of seven, out of seven would you say four would be lay?

MS. HAMILTON: Well, as it stands now, two are.

MR. CHERNIACK: I read that four shall be. Maybe I misread it.

MS. HAMILTON: What section?

MR. CHERNIACK: Section 3(1).

MS. HAMILTON: We have eight there, four shall be non-members; two shall be appointed by Lieutenant-Governor-in-Council.

MR. CHERNIACK: Of the four.

MS. HAMILTON: And of the four, two shall be appointed.

MR. CHERNIACK: So, you're providing for four lay people, two appointed by the Lieutenant-Governor and two in some other way. So that you are proposing four, which must mean, I'm sure you intend to increase the council beyond seven, otherwise the majority would be lay people.

MS. HAMILTON: We have four and four.

MR. CHERNIACK: I'm sorry, I don't want to mislead you. You said you have seven now.

MS. HAMILTON: I'm sorry, Sir. I was referring to our Advisory Council, not the board.

MR. CHERNIACK: Oh. Board of Directors, how many do you have?

MS. HAMILTON: Board of Directors, yes.

MR. CHERNIACK: How many do you have in Board of Directors?

MS. HAMILTON: Eight.

MR. CHERNIACK: Eight.

MS. HAMILTON: Four of whom shall be non-members.

MR. CHERNIACK: So one-half of your board is to be lay people? That's surprising to me. I would have thought that would like the board to be controlled by members of the association.

MS. HAMILTON: Well, we have reserved the right here to appoint two of those lay persons.

MR. CHERNIACK: Right. What would be your qualifications for them?

MS. HAMILTON: Hopefully someone who was knowledgeable of our profession.

MR. CHERNIACK: But not a member?

MS. HAMILTON: Not necessarily a member.

MR. CHERNIACK: Would you object to the number of the Board of Directors being stipulated in the Act. You don't have it anywhere you know; 3(2) says the number and the manner of their appointment or election shall be governed by the by-laws; which means to me that the spelling out of the democratic process is left to by-laws which are not part of the legislation.

MS. HAMILTON: The only reason that we would have objections is because, as you know, it's extremely difficult to change an Act. We've only done this once in 24 years and if it were found to be an unworkable number we'd be stuck with it.

MR. CHERNIACK: Let's suppose it said not fewer than so many, not more than so many.

MS. HAMILTON: Well, if it were left that loose I don't see that our association would have any objection to that.

MR. CHERNIACK: Well, then your present is eight people elected to the board out of a group of 150 — not eight people elected, I'm sorry. Two appointed by Lieutenant-Governor, four elected and those four appoint two lay people. That doesn't seem very democratic, does it? You have the four people elected who already increase their group by their choice to six and then the Lieutenant-Governor puts in two more. So of your council four are elected, only four. One-half of your council is elected, the other half are non-elected.

MS. SEIDEL: They are appointed.

MR. CHERNIACK: Yes. Two appointed by the four elected and two appointed by an outside body. You are happy with that? Have you been working under that basis up to now?

MS. SEIDEL: No.

MR. CHERNIACK: How do you operate now?

MS. SEIDEL: We do not have lay members on our Board and this is one of the main changes we want to see in this Act.

MR. CHERNIACK: And the members of the Board, how many are there now?

MS. SEIDEL: In our present Board we have six.

MR. CHERNIACK: And are they all elected?

MS. SEIDEL: They're all elected.

MR. CHERNIACK: So what you're proposing is to reduce the number that are elected?

MR. CHAIRMAN: Any further questions? Mr. Uruski.

MR. URUSKI: Would you have any objection to leaving the amount of six elected representatives that you have now and leaving the four? Would there be any problem there?

MS. SEIDEL: I'm sorry, I don't . . .

MR. URUSKI: You have six elected representatives to your Board presently. You are proposing, at least you've indicated that your by-laws will have four elected, a reduction of two from the present status. Would you have any objection to continuing the election of six and the lay people as they are? Would that be a problem to you?

MS. SEIDEL: I don't think so.

MR. CHAIRMAN: Any further questions? Seeing none, thank you very kindly. Are there any other persons present that wish to make representation regarding Bill 20, The Registered Dietitians Act? None.

BILL 21 — THE PHYSIOTHERAPISTS ACT

MR. CHAIRMAN: The Manitoba Health Organization, Shirley Seidel. Perhaps Shirley, by the time you appear before us on every bill, I'll be pronouncing your name correctly.

MS. SEIDEL: It makes me sound like a new person each time. Okay. The Physiotherapists Act, Section 14, Employer responsibility. Again, we're dealing with "the imposing upon the employer of physiotherapists the responsibility of ensuring that such person at the time of employment is duly registered under this Act". This is the modification. It should be modified to state "shall ensure that such person at the time of employment is duly registered under this Act". Again it's from the point of view that our facility would be in the position of searching the status of the physiotherapist's registration in each case.

Subsection (b) has far-reaching consequences to our member facilities in that it requires the association to be notified whenever a physiotherapist — maybe it's the wording with this one — is unilaterally terminated for any reason and that a report be forwarded to the association. This Section ought to be restricted to apply only where a person's employment is terminated because of professional incompetence, etc., etc., there's a statement of any reason.

In Section 16, Offence by employer, we would like the amendment to be "it would be an offence to cause or knowingly permit an employee to so act".

MR. CHAIRMAN: Would you repeat that Section please?

MS. SEIDEL: Yes, that's Section 16, "make it an offence to cause or knowingly permit an employee to so act".

The next is, I have Section 28 of the proposed Act which enables the Board to apply ex parte, that is without notice to anyone else concerned for an order directing that books, records, etc. be produced to the person conducting the investigation". From our point of view, this renders all records of facilities liable to be turned over on a summary basis to the individual investigating the complaint with no opportunity for the facility to prove to the court as to whether or not the records ought to be disclosed. Our comment would be that "ex parte" should be deleted. Basically that's my comments on that legislation.

MR. CHAIRMAN: Any questions to the delegate? Mr. Cherniack.

MR. CHENIACK: You know, your telephone could be wire-tapped by an ex parte order. The principle appears to be that a court can be trusted not to be too loose and free with these orders. But you feel that in your case there should be notice.

MS. SEIDEL: Let me try to explain. I understand there is expected to be a time element for a facility to give indication or to make response to turning over summary reports. We understand ex parte to mean "without notice".

MR. CHERNIACK: That's correct. What it means is that where the judge is of the opinion that the issue of such an order is just and appropriate he may order it. I think the main reason for ex parte — and there are lawyers present who may have a better experience with it — my own reaction is that it is done ex parte in order to be able to go down quickly and get it without giving the custodian of the documents an opportunity to conceal them. I'm suggesting to you that's probably the reason.

MS. SEIDEL: I understand your comment. I think it still stands that on behalf of our facilities we would still request that "ex parte" be removed.

MR. CHAIRMAN: Any further questions, Mr. Cherniack? Thank you kindly for your presentation.

Mr. David Balfour representing the physiotherapists.

MS. SHIRLEY LePERS: I am Shirley LePers, Chairman of the Board and I will be representing the Association.

MR. CHAIRMAN: All right, for our Hansard purposes, please identify yourself.

MS. LePERS: I am Shirley LePers, Chairman of the Board of the Association of Physiotherapists of Manitoba. Here with me are Heather McLaren, the Registrar of the Association and Mr. Balfour, who is our association's legal counsel. They would be prepared to anwer any questions if you have them later on.

We appreciate this opportunity of meeting with you regarding Bill 21. We have a short brief which is to be distributed to you and I will be giving you a precis

of this in my words of comment. We also have some letters of support for The Physiotherapy Act from physicians who work closely with therapists and these have been passed forward to you, Mr. Chairman.

The physiotherapists of Manitoba were first recognized as a self-governing profession by legislation passed in 1957. This legislation has had one very minor amendment done in the 24 years that have passed. In these 24 years, the major emphasis in the delivery of health care has changed from that of treatment of disability and disease to that of maintaining health and preventing disability and disease. The education of physiotherapists and the practice of physiotherapy has correspondingly changed to include more health maintenance and prevention programs in conjunction with the traditional role in the treatment of disability.

The draft Act before you, Bill 21, has been discussed with and approved by the members of our association. The definition of the practice of physiotherapy has been drafted in consultation with members of the medical profession. The bill is being submitted for the following reasons:

(1) to provide increased public protection through expanded registration procedures, complaints, discipline and appeal procedures and to provide for lay representation on the Board and the Complaints and Discipline Committees;

(2) to replace the present Act which has become obsolete. This reflects the changes in the scope of physiotherapy practice since 1957 and depicts its status as of 1981.

(3) to maintain the standards of practice of the education and ethical conduct to best serve the interests of the public of Manitoba.

1. Highlights of items proposed in Bill 21 are the definition of physiotherapy. The definition has been revised to reflect the increased scope of practice of physiotherapy at this time. Under the revised definition, the physiotherapist will continue to work in close liaison and co-operation with physicians and other members of the health care team. This definition has been submitted to the College of Physicians and Surgeons of Manitoba and has received the approval of the executive of the college.
2. The Board of Directors. The current Board of Directors consists of five people, all of whom are elected from members of the association. It is proposed to increase the size of the Board to eight members with two or 25 percent of these be lay members; one lay member will be appointed by the Lieutenant-Governor-in-Council and one by the association. An additional physiotherapy member has been included to reflect the increase in the number of physiotherapists in the province and the expansion of the field of practice.
3. By-laws. The association has no by-laws under the present Act. The proposed Act will include by-laws which will require membership approval and will provide for administration of the day-to-day affairs of the association.
4. Regulations. These will require approval of the membership and the Lieutenant-Governor-in-Council and will pertain to those activities which are of direct concern to the public — registration, admission, suspension, expulsion of members, standard of practice, voluntary continued education and definitions of professional misconduct.
5. Unauthorized practice. Practice by persons other than those who meet registration requirements and are registered under this Act will be prohibited.
6. Complaints, investigation, discipline and appeal procedures. These procedures are more detailed than previously and recognize the concerns, the needs and the rights of the public in these matters. Lay members will be on both the Complaints and the Discipline Committees.
7. Standard of education and advisory council. The standard of education acceptable under this Act will be the standard of physiotherapy education at the University of Manitoba. An advisory council regarding education programs will be set up which will include representatives of the Minister of Health and the Minister of Education. This council will review and advise the Board as to whether other physiotherapy education programs are equivalent to the standard of the University of Manitoba.

Bill 21 has been drafted in accordance with the guidelines for the development of legislation for health professions produced by the current government. It has been drafted in frequent consultation with Dr. George Johnson, the Deputy Minister of Health and Mr. Andrew Balkaran, the Deputy Legislative Counsel. The Act is substantially similar to The Nursing Acts that you passed last session.

I'll be pleased to answer any questions you might have. Mrs. McLaren and Mr. Balfour could assist me if you wish.

MR. CHAIRMAN: To members of the committee, just before any questions, the physiotherapists have provided me as Chairman of the Committee with five supporting letters. Would you like to know who they are from firstly, and secondly, do you want copies of them? Would members of the committee like copies of these supporting letters?

MR. CHERNIACK: I think it would be helpful if at least — maybe you should put into Hansard. Are they lengthy? I think it would be of value to have them, if they went to the trouble of getting them.

MR. CHAIRMAN: No, they are very short letters. I think it might be helpful to indicate who they're from. They're all basically saying the same thing, that they are in support of the bill.

The first one is on the letterhead of the Health Sciences Centre and it's signed by a Dr. J.F.R. Bowie, Professor of Medical Rehabilation, Associate Professor of Medicine, University of Manitoba, in support of the bill. The second one is Community Therapy Services of Manitoba signed by E.J. Thomas, M.D., Medical Director. The third one from the Health Sciences Centre and signed by Dr. F.D. Baragar, M.D. The fourth one from Sports Medicine Division signed by Dermot McVicar, the Chairman, as well as signed by six other officers of that association. The fifth one is the Canadian Physiotherapy Association and signed by Steven H.S. Wong, President and also signed by 11 other

executive members of that association. All letters are either addressed "To whom it may concern" or addressed to Mrs. Shirley LePers, the Chairman of the Association of the Physiotherapists and in each case they refer to Bill 21 and are in support of the bill.

If members of the committee wish to have copies or perhaps a copy to each caucus of each letter, what is the desire? —(Interjection)— All right, I'll have the Clerk's Office supply a copy to each caucus room.

Mr. Cherniack, do you have a question?

MR. CHERNIACK: Yes, I do. Thank you, Mr. Chairman. Mrs. LePers, it's very helpful when you follow so closely the legislation we worked with last year. I'm wondering if you or Mr. Balfour in due course could point out the differences so that we could see that.

MS. LePERS: Yes, I can point out some of them.

MR. CHERNIACK: Can you?

MS. LePERS: Yes.

MR. CHERNIACK: That I think would be helpful and would you start with 3(1).

MS. LePERS: 3(1), yes. We have not used the percentages for no great reason. We originally started out with solid numbers. It was recommended to us that we leave it in open terms as to the actual number of the Board of Directors and as we proposed eight it was suggested, well, lay down two as the lay members because that would be 25 percent which was in keeping with last year's policies. I don't think we would have any objection to rewording as in The MARN Act. It would amount to the same thing.

MR. CHERNIACK: Percentage.

MS. LePERS: Yes.

MR. CHERNIACK: Okay, the next one would be 4(1). What is missing, "(j), develop, establish and maintain standards of professional ethics among its members". Is that elsewhere or — oh, I'm sorry, that's (g). I see that. You must have shuffled them.

MS. LePERS: Just one moment and I'll get out my MARN Act because I have it here. The by-laws from The MARN Act which we do not have in our by-laws are their 4(1)(a) which is "fixing the methods of annual and other fees". We have this as Section No. 8 in the Act. MARNs 4(1)(d) — provide for regional organizations, we do not feel we need at this time in the province, we do not have the same numbers.

Then MARNs 4(1)(k) — promote professional and social welfare. We do not feel that is a role for our association. We have a professional association which well can look after those matters.

The next changes that I have in mind from MARN is under regulations 5(1), (f) and (g) are new to our Act, they are not included in MARNs; (f) is to define professional misconduct. We feel that if your terms for disciplinary action is professional misconduct it should be laid down somewhere and propose that this is the place to put, in regulations; (g) control the manner in which a member may describe his qualifications. There are a number of physiotherapists in private practice and the number is increasing. There should be some regulation on behalf of the public as to the kind of advertising and designations that they can use.

Carrying on, in 7(3)(a) this MARN has included under regulations. We have carried it through as the initial membership in the new association.

Section 8 I have already pointed out is for the Board to fix fees.

In Section 13(1) removal of names; (f) and (g) are new to our Act. We feel that these are just reasons for why a member's name should be removed from the register and that it should be specified.

MR. CHAIRMAN: On that point could I stop you and ask Mr. Jenkins I believe who has a question regarding that exact point.

MR. JENKINS: Through you, Mr. Chairman, to Mrs. LePers. In this section I don't argue with your right to remove names in the register but I don't see any right for a person to appeal his removal. Could you find out where that is in the Act?

MRS. LePERS: Yes there is. In the Act, appeal?

MR. JENKINS: No, I mean appeal from the removal of the name from the register, not an appeal upon refusal of registration but appeal from the removal of the name from the register.

MRS. LePERS: It would be a Board's decision to remove a name from the register. Under the appeal to the Court of Queen's Bench, 44(1), a person can appeal any decision that he is dissatisfied with by the Board and I think that covers it.

MR. JENKINS: Well reading 44(1), Mr. Chairman, I don't get the same interpretation. It's where a registration is revoked. We're not talking about registration here, we're talking about removal. In your opinion don't you think it would be simpler if we had an appeal mechanism built within this section here rather than somewhere else? Because all we have here is just the removal of the names from the register for various things.

MRS. LePERS: But once one's name is removed from the register their registration is cancelled. Maybe Mr. Balfour can give you some more ideas I don't know. Have you any others?

MR. CHAIRMAN: Mr. Jenkins, any further questions on that point?

MR. JENKINS: No.

MR. CHAIRMAN: Okay, please carry on.

MRS. LePERS: 13(2) is new in our Act, is not in MARNs. It is just the fact that a therapist should be notified and the process that must be followed.

17(1) and (2) are . . . Sorry.

MR. CHERNIACK: Ms. Seidel has referred to 14. Could you react to her comments?

MRS. LePERS: 14(a), we have put it in as duly registered under the Act. We realize this is continuing process and this is a continuing requirement for practice in this province, that they do be registered. In actual fact the directors of physiotherapy already follow this practice by letting us know and by checking with their staff at annual renewal time about their staff's registration. It has already been done.

MR. CHERNIACK: If I may, Mrs. LePers, as I read this they're saying that when a physiotherapist employed that it's up to the employer to know that they are members. But they are saying thereafter it should not be their obligation to constantly keep in touch with you to see whether they're still members, I should think the onus passes to you to notify them of a change in membership. But I think that's what Ms, Seidel was getting at and that is, that once they're employed and are members at the time of employment that their obligation should cease to ensure that they continue to be members.

MRS. LePERS: This is a practice we already follow, that we do notify employers if registrations are dropped for any reason. We have not had occasion yet to put conditions but it would be that employers would be duly notified then.

MR. CHERNIACK: Does that mean you do not object to their suggested change?

MRS. LePERS: No I don't object.

MR. CHERNIACK: How about (b) for any reason. It's not in the Nursing Bill.

MRS. SEIDEL: No it's not. There is no question, what we are particularly wanting is professional misconduct, incompetence and incapacity. There are perhaps times when the association could better tell misconduct or incapacity so if we were notified any time there was a unilateral termination we would be able to follow through at that time.

MR. CHERNIACK: If I may, the employer knows why it has discharged this person. It may be something that has nothing whatsoever to do with professional misconduct. Well then, is it any of your business or are you going to put your judgment in place of the employer's decision as to why that person was fired?

MRS. LePERS: What we are wanting to know is about therapists who employers have found are not functioning in a proper fashion. Now it may be agreed that it is they do not function well in their facility because of their interests; it may be personality clashes which happen in our business. The Board is not going to be taking any major decision on that. But we would like to know because we want to know of the whereabouts of therapists as they go through the province.

MR. CHAIRMAN: Any further questions? Mr. Walding.

MR. WALDING: I'd like to ask a question too, Mr. Chairman, arising from Section 9 — Unauthorized Practice. If you find someone who is practising without being a member of your association, who brings the charge against the person?

MS. LePERS: Our association writes the person notifying them of the requirements of the Act, asking them for registration and then, if they would not comply and continue to practise physiotherapy, then it is one of the offences under this Act and the association would have to follow through.

MR. WALDING: Okay, so you would then launch civil action in the court against the person?

MS. LePERS: I believe so. Mr. Balfour can answer that better than I can.

MR. CHAIRMAN: Mr. Walding, would you like Mr. Balfour to answer that?

MR. WALDING: Yes, please.

MR. CHAIRMAN: Mr. Balfour, please.

MR. DAVID BALFOUR: There would be a prosecution, Mr. Chairman, by the association under The Summary Conviction's Act in accordance with the prosecution provisions of this proposed bill.

MR. WALDING: Is that 53(3)?

MR. BALFOUR: Yes, Mr. Chairman.

MR. WALDING: Can I ask you why it says that any person may be prosecutor or complainant and why is it not that, since your association has the rights and responsibilities of a self-governing association, why is it not a responsibility of your association to protect the public by doing this and not leaving it open that other people may do what surely your association has the responsibility to do?

MR. BALFOUR: Mr. Chairman, the reason for that is that the board would like to reserve onto itself the discretion to make a determination as to whether or not, in its opinion, a complaint is justified. It has provisions to adjudicate on complaints and if it feels, the board in its discretion, that the complaint is not well founded it may say to the complainant, sorry, we don't feel action is justifiable. But, however, under Section 53 if you wish to process the complaint before the courts your free so to do.

MR. WALDING: But you said to us that you have a definite system, if you find someone that is practising without being registered, that you send them a letter if they persist in doing that. So you must obviously see them doing something which is contravention of the Act in order to get to that stage. In what circumstances would you then not proceed and ask the complainant or someone else to do it for you?

MS. LePERS: In that case we wouldn't; we would be the person to carry on.

MR. WALDING: Well, that's exactly the point. If there is that clear responsibility on you to do so why does this section appear to allow other people to do it for you?

MR. BALFOUR: Mr. Chairman, if I may, I would suggest that if the board is satisfied that there is a

clear offence against the Act, indeed, they have a duty under the Statute to, themselves, institute the action. But whether or not there is an offence in fact is not the absolute determination of the board; that's for the courts to decide. May I go back, the board has had experience, under its present procedures, where complaints have been lodged, investigated and found to be completely without any foundation whatsoever. It's through that experience that they've worded the section in that fashion. In those cases that you mention was that cases where someone had alleged that a member was practising physiotherapy without being a member of the association?

MS. LePERS: No, they weren't. They were complaints of conduct.

MR. WALDING: But surely what we are speaking of here is complaints about someone carrying on the practice of physiotherapy. That's what Section 9 is about, is it not?

MS. LePERS: That's what Section 9 is about but Section 9 is not the only thing that can be called an offence under this Act, I don't think. There are other things that can be called offences under this Act.

MR. CHAIRMAN: Any further questions, Mr. Walding.

MR. WALDING: Can I ask you what the second part of 53 means, "such portion of the funds recovered as may be expedient". The government shall pay to the prosecutor. Are you speaking of any fines imposed?

MR. BALFOUR: Fines and/or court costs, more particularly the latter.

MR. WALDING: Then we come back to the matter that was, sorry that's the courts. Okay, thank you.

MR. CHAIRMAN: Any further questions? Mr. Cherniack.

MR. CHERNIACK: I'm looking at 9 and I'm looking to make sure that you are not just reserving the title physiotherapist but you're actually setting up an exclusive right to practise the arts of physiotherapy. I'm having difficulty with the wording of 9. I'm trying to read "no person shall practise as a physiotherapist", is that the way you would read that 9? "No person shall practise as a physiotherapist" — I'm trying to work on the grammar — unless he's registered under this Act. Now physiotherapist means a health professional who's qualified under the Act, so that would be sort of a reserve of title. I could not say I am practising as a physiotherapist but could I not say that I will help you with your pain, to relieve your pain and to give you exercises which will help you? I'd like you to distinguish the role of, let us say — I know so little about sports — there is a person that is hired by most teams, a trainer, who works with them when they have a physical injury and he is not necessarily a physiotherapist. What is there to define the occasion when that person goes beyond his own limitations and encroaches on the arts of physiotherapy?

MS. LePERS: Well, part of the definition, there is a definition of the practice of physiotherapy . . .

MR. CHERNIACK: Yes, I'm looking at it.

MS. LePERS: . . . as well as the definition of physiotherapist and they go hand in hand. With a sports therapist or a trainer it's a very fine line, I will agree, providing they do not call themselves physiotherapists, do not imply that they are physiotherapists.

MR. CHERNIACK: That is a reserve of title. You're saying nobody can practise as if he or she is a physiotherapist unless they're licenced. But suppose they do all the other things that you do and just say I'm a natural physical therapist, what happens?

MS. LePERS: We have these kinds of people and . . .

MR. CHERNIACK: I know you have.

MS. LePERS: . . . and you do not have control over them.

MR. CHERNIACK: Well there are occasions, the nurses for example, do have controls. The medical profession, and I assure you the legal profession, do a very good job of making sure that people do not do the things that these professions reserve as being their exclusive skill and prerogative. Are you not asking for that? I'm trying to interpret what . . .

MS. LePERS: I think that it is not a practical thing to ask for. I, as a physiotherapist, might like it but there are many people who have exercise skills. The trainers, those who graduate in phys. ed., they have exercise skills; there are other people who have massage skills. I cannot say that they are trained as physiotherapist; they do not have the medical background, they do not have the anatomy, they do not have the scientific background that we do, therefore they cannot be called physiotherapists but I cannot say, "I'm the only one who can do exercises".

MR. CHERNIACK: Mr. Chairman, I'd like to ask Mr. Balfour and probably Mr. Balkaran who I assume was working on this, is it Section 9 which provides . . .

MR. CHAIRMAN: Just a minute, Mr. Cherniack. Mr. Balkaran was talking to Mr. Tallin and he wouldn't hear your question. They've been I believe discussing the very point you want to ask a question about. Would you repeat your question? Mr. Cherniack.

MR. CHERNIACK: Well at this stage I'd like to address it to both, or to whomever will answer; whether I am correct in assuming that Section 9 is the only one that is of a restrictive or prohibitive nature and deals only with a reserve of title, that is, anybody can do all the things a physiotherapist does and can do it with impunity as long as he or she doesn't call himself a physiotherapist. Am I right about that?

MR. ANDREW BALKARAN: Yes, Mr. Chairman, I think Mr. Cherniack is right. Physiotherapy by definition means, "the services usually performed by a physiotherapist", and as was just pointed out, a

trainer who helps to reduce the pain and suffering of an athlete who has just come off the field with an injury, could do that with impunity I think without being registered under the Act.

MR. CHERNIACK: It seems to me that this very detailed description would still include in its description many things as Miss LePers says, is being done by other than physiotherapists and there is no effort to control them — that's to me the important point to know — that the Physiotherapists' Association does not think they will be able to control anybody who does that kind of work, as long as they don't call themselves physiotherapists.

MR. DAVID BALFOUR: Mr. Chairman, if I may through you to Mr. Cherniack, with all due respect I don't entirely agree with my learned colleague, Mr. Balkaran. There is a very definite interaction between Section 9 and the various definition sections. I should hasten to add that the profession of physiotherapy, the person graduates only after a four-year university course. Yes, there are people out there who are trainers with certainly perhaps vast practical experience, perhaps little practical experience, in many cases very little theory, who are in effect holding themselves out by virtue of what they do on a day-to-day basis as being physiotherapists.

They may not call themselves physiotherapists but the existence of those people has caused concern, injury, problems to the public. The statute has been structured so as hopefully in the future, to be able to prosecute those people who are in effect, doing what physiotherapists are registered to do and are trained to do in situations where they do not have the adequate training and indeed are not competent.

MR. CHERNIACK: Mr. Chairman, the reason I asked the question, Mr. Balfour, was that I want to know if there is any other section other than 9 which places a prohibition, because as I read 9, indeed it is what Miss LePers says and that is only if they hold themselves out as a physiotherapist. Frankly, unless there's something I haven't seen in this bill I don't see that there's any effort to set up an exclusive right to practise the art of physiotherapy. I wish you would do that.

I have sufficient respect for the physiotherapists to know that training and background is much more extensive than that of a trainer who learned the skill say, on the training field or the athletic field. But I don't see that you have any powers of exclusivity of practice, but only the reserve of the title physiotherapist. If you don't think you have I wish we could come to an agreement.

MR. BALFOUR: Again I'd just like to reiterate, Mr. Chairman, we feel that the interaction of Section 9 with the definition sections will be sufficient to enable courts to say that through the conduct of a person, he is indeed holding himself out as being a physiotherapist.

MR. CHERNIACK: It says, "hold himself out or use the designation or any word or words indicative o such designation or seek to convey the impression he is practising as a physiotherapist." Mr. Balfour, I think you're limited to that word.

Mr. Balkaran is suggesting a way of creating exclusivity of practice. I don't know whether society is yet ready to deny others the right to offer that service. I think if you go to a health club you'll find a masseur who has a great following in that, I'm really not sure. (Interjection)— You have health clubs in the country?

MR. CHAIRMAN: Mr. Cherniack, please carry on.

MR. CHERNIACK: I raised it, Mr. Chairman, because I don't want physiotherapists to think that by passing this bill they do have exclusivity of practice and although Mr. Balkaran can suggest words that will give you that, I'm not sure the community is ready to grant that and that's why I want to know what you want. What you get will be what we decide, not necessarily what you want.

MRS. LePERS: I think I would like to talk to Mr. Balkaran about his wording, to be quite honest.

MR. CHAIRMAN: Mr. Cherniack, we can perhaps look at that particular matter when we're going clause-by-clause. That will give the physiotherapists some time to consider the point you have raised with them.

MR. CHERNIACK: I think that's the right way.

MR. CHAIRMAN: All right. Are there any further questions or any further comments by the delegation? Mrs. LePers, have you covered the bill as far as you wish to?

MRS. LePERS: Yes, unless Mr. Cherniack wants me to go through other clauses that are new to our bill compared to others but we can do it when we're doing clause-by-clause, whichever you like.

MR. CHERNIACK: That's fine as long as you'll be present to point it out.

MRS. LePERS: I'll be here for clause-by-clause.

MR. CHAIRMAN: I'm not so sure you can just sit at the table and discuss your bill at that time.

MRS. LePERS: Well, that's up to you.

MR. CHAIRMAN: It's been done in the past and it hasn't been done in the past.

MR. CHERNIACK: Mr. Chairman, you're right, it's not the practice although we did it last year with I think, great success. Mr. Sherman has just suggested maybe we should get on the record now just in case. I don't know whether the committee is going to be willing to permit it or follow the usual practice of not permitting it, so possibly we should get it on the record. It will be helpful I think.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would suggest that if Mr. Cherniack has concerns about other clauses in the bill that represent departures from the existing legislation or that in any way he feels are not consistent with those in the nursing bills, that he take

the opportunity now to work through those questions with Mrs. LePers.

MR. CHAIRMAN: Mrs. LePers, would you like to carry on then?

MRS. LePERS: All right. 17(1) and (2) are different in our Act to MARN, I believe.

MR. CHERNIACK: May we stop on that?

MR. CHAIRMAN: Mr. Jenkins.

MR. WILLIAM JENKINS (Logan): Yes, Mr. Chairman, through you to Mrs. LePers. In my humble opinion I feel that the powers you're asking for here are quite excessive. You're asking actually to pick and choose which indictable offence you are going to deregister or remove from the register, because 17(1) gives you the right to refuse registration or erase the name from the register of a person who has been convicted of an indictable offence under the Criminal Code; yet in (2), there may be other offences that the Board may or may not. Just what is the thinking of the association? I could see indictable offences that perhaps are with the practice but there could be other indictable offences that don't affect the right to practise. Just what is the thinking? Where are you going to draw the fine line? After all, you're going to be the judges then afterwards, not the courts.

MRS. LePERS: That's right. What we are asking for here is the opportunity of being able to decide firstly, at the time of registration if we know of someone who has an indictable offence and has been convicted of it, if we feel that the indictable offence could have influence on their practice, that we could have the opportunity of denying them registration.

Now the only thing I can think of at this time would be some of the moral charges that are indictable offences. These could have repercussions on the manner or the respect which the therapist might receive in this province.

The second half, "The Board may erase from the register names of any member who has been so convicted", I agree that that can be handled under discipline procedures and perhaps doesn't need to be in that clause.

MR. DEPUTY CHAIRMAN, Abe Kovnats (Radisson): Mr. Cherniack.

MR. CHERNIACK: Could you explain the necessity for sub (2)? If sub (1) says the Board may, what do you need sub (2) for?

MRS. LePERS: I'm not sure what I need it for to be quite honest. Mr. Balfour, what do I need it for, please?

MR. DEPUTY CHAIRMAN: Mr. Balfour.

MR. BALFOUR: Thank you, Mr. Chairman, it really is by way of guidance to firstly, the Board and secondly, the public as to the method, the criteria in the exercise of the discretion as to whether or not registration may or may not be refused.

MR. DEPUTY CHAIRMAN: Mr. Cherniack, do you have any further questions?

MR. CHERNIACK: No, it just seems to me the exact wording was in either The Pharmaceutical Bill or The Dietitians Bill. It must have come from somewhere else.

MRS. LePERS: I can't tell you where it came from. I think it's The Medical Act but I'm not 100 percent sure.

MR. DEPUTY CHAIRMAN: Are there any further questions of the person presenting the petition?

MR. CHERNIACK: She's running through the sections for us, Mr. Chairman.

MRS. LePERS: The next section I have that is new, is 19. This is the section which states that the standard of education is that acceptable at the University of Manitoba. I graduated from Alberta.

The next new section is 36(1) through (4).

MR. DEPUTY CHAIRMAN: One moment please. Mr. Jenkins.

MR. JENKINS: Yes. Before Mrs. LePers goes on, we had a representation from the delegate from Manitoba Health Organization on 28, in which she wanted the ex parte removed. Does your association have any strong objections to the removal of this?

MRS. LePERS: The ex parte is in there to facilitate quick moving of any production of documents that we need. We feel that any judge would not give us that ability if he felt we were doing it frivolously or did not need the documents.

MR. DEPUTY CHAIRMAN: Mr. Jenkins.

MR. JENKINS: What guarantee would we have, because some of these documents may be confidential? You know, there is supposed to be the confidentiality of medical records and I imagine that there are medical records being held by the practising hospital or institution. What guarantee have we in legislation that there will not be frivolous use of those medical records which may be part of an investigation that is taking place for, well, misconduct of a practising member of your association? I'd like to know where the protection is for the participating public? I, as a recipient of that physiotherapy, I'm sure I wouldn't want my personal medical history made known.

MS. LePERS: The first thing is that all information that physiotherapists, as a professional, receive is treated confidential like any medical information is, so that on that basis we would be considering the information confidential. I think Mr. Balfour has some other thing.

MR. DEPUTY CHAIRMAN: Mr. Balfour.

MR. BALFOUR: If I may, Mr. Chairman. In partial response to the concern, I would say that courts and judges are generally loathe to give ex parte orders because part of their function is to protect the rights of citizens, including relationships between citizens such as patient-client, and are generally only convinced — and I stress the word "convinced", to

give ex parte orders when it's clearly demonstrated that there's a very definite for the ex parte order. If the ex parte order, the discharge of it, involves a confidentiality breach or a similar insight into the confidentiality, I am certain that the judge would impose conditions on this association to protect that relationship as best they were able.

MR. CHERNIACK: Dubienski didn't think that, did he? He rejected some on the basis that the ex parte order was given a little too freely I think. However, I think generally you're right.

MR. DEPUTY CHAIRMAN: One moment please. Mr. Balkaran.

MR. BALKARAN: I wonder if there is not some confusion in reading Section 28, Mr. Chairman. I think there's an important phrase in Section 28; 28 only comes into play where the member has failed to produce under Section 27 and so the court would not be asked ex parte unless there's been a refusal.

MR. CHERNIACK: No, Mr. Chairman. The other person is not referred to in 27; 27 refers to members only, and 28 goes beyond that to anybody else.

MR. BALKARAN: I think the word "other" should not be there.

MR. CHERNIACK: Isn't it right that 27 deals only with members?

MR. BALKARAN: Okay, it deals with other persons but also deals with the member, Mr. Chairman, where the member or the person has refused. So there's a refusal.

MR. CHERNIACK: And not the other person?

MR. BALKARAN: Has failed.

MR. CHERNIACK: Oh.

MR. BALKARAN: Yes, they both failed to produce.

MR. CHERNIACK: But there's nothing that . . .

MR. BALKARAN: I don't want to argue, Mr. Chairman, because I got into difficulty last year. I hold my peace.

MR. CHERNIACK: Not with me you didn't.

MR. DEPUTY CHAIRMAN: Order please, order please. We are not in debate, it's an open discussion. We're trying to get things done to the best of our ability but, rather than get into debate and the legal counsel is not really allowed to get into debate.

Ms. LePers, would you care to carry on?

MS. LePERS: The next new section that I have is Section 36.

MR. DEPUTY CHAIRMAN: Order please. Mr. Walding.

MR. WALDING: I wonder if we could ask Mr. Balfour how he sees this section, whether it applies only to members or whether, as we read it, that "or any other member or person" to produce the various things. Does he read it that way, as having been involved in the drafting of it?

MR. DEPUTY CHAIRMAN: Mr. Balfour, would you care to answer?

MR. BALFOUR: Thank you, Mr. Chairman. The intent of the section which I may add is identical to a similar section in The MARN Act is so that an ex parte order may go forth requisitioning really any records or books pertaining to the affairs of any member of any nature or kind. I would expect generally they would be of a personal nature between that member and perhaps his employer or perhaps patients but it is intended to pertain to records personal to the member with respect to an investigation that is being conducted pertaining to that member.

MR. WALDING: If that is the intent, would it clarify things if the words "or any other person" were taken out of there to make sure it applies only to your members and not to me.

MR. BALFOUR: No, I would suggest, Mr. Chairman, if it's a matter of, let us say, serious misconduct, another person or a person including institution may very well have the only records that would verify the misconduct pertaining to that member. So I would suggest that the present wording is the appropriate one.

MR. WALDING: So in that case it is not the intent of Section 28 to apply only to members and only where they have refused to produce books.

MR. DEPUTY CHAIRMAN: Mr. Balfour, do you agree?

MR. BALFOUR: That is the intent that anyone having records pertaining to the conduct of that member could be obliged, upon court order, to provide them to an investigation chairman appointed under the Act.

MR. DEPUTY CHAIRMAN: Ms. LePers, would you care to carry on? I'm sorry, Mr. Cherniack, were you to be recognized?

Mr. Cherniack.

MR. CHERNIACK: Thank you. We may have to spend a little time on this in Committee because it seems to me that Mr. Balfour said that it's pertaining to the personal records of the person who is being investigated but it also may pertain to the records of a patient in a hospital where the patient's chart shows an instruction from, say, a doctor or someone as to what should be done; then it may again show that the treatment given was contrary to what was ordered and, therefore, that patient's record indeed becomes available for the investigation. Now I personally don't have any particular hang-up about it but the argument that was given to us by the Manitoba Health Association would say that if they want that record why shouldn't they give notice to the hospital so the hospital could appear before the court and say it's unfair to the patient for us to give

this up and argue against the order for production of documents. I think probably this is a problem not peculiar to the physiotherapists; I think it's a problem that we should look at in general because it's repeated and it's in the nurses' legislation as well.

MR. BALFOUR: Fair enough.

MS. LePERS: I have dug out Section 29 of MARN's Act and ours is nearly exactly the same wording as this Act. On with our Act, Sections 36(1)(2)(3) and (4) are new to our Act. We are asking at this point, at the time a Discipline Committee Inquiry has been ordered, if there is reason to believe that the person who is being investigated at the time should not be practising in the interests of public safety, that we can suspend them at this time before the hearing. (2)(3) and (4) are the method that can be used.

MR. CHERNIACK: I'm just looking quickly at the nursing bill, Section 33, I don't see that this is so different but the difference is something that I am concerned about and that is the Court of Queen's Bench is referred to in 33 as having the right to lift a suspension. So that I don't think 36(1) is different really from 33 with exception of that which I think is a very important change and the rest is just procedure, as you say. Would you object to going back to the nursing one and say "or the Court of Queen's Bench"? I don't see how you can.

MR. BALFOUR: If I may, Mr. Chairman, it's perhaps an oversight because under Section 44(1) there is an appeal for any suspension to the Court of Queen's Bench, so certainly those words indeed should be added in 36(1).

MR. CHERNIACK: Fair enough.

MR. DEPUTY CHAIRMAN: Ms. LePers, would you carry on?

MS. LePERS: The next new section that I have note of is No. 39 and this allows that the Board can restore names to the register if they feel that there is sufficient reason. Section 42, Proceedings before the Board, this is new to our Act. We feel that we should have it stated what papers and reports can be handled at that time and what are required. There is a difference in Section 45 between our Act and MARN's and that is the last phrase "unless it is established that the association, board or member acted maliciously or negligently".

MR. CHERNIACK: What number?

MS. LePERS: 45.

MR. DEPUTY CHAIRMAN: Carry on, Ms. LePers, unless there is somebody that wants to interject and ask you a question.

MS. LePERS: The next one is 49, Limitation of actions. This is not included in MARN. We have put a two-year limitation of actions.

MR. DEPUTY CHAIRMAN: The Honourable Member for Logan.

MR. JENKINS: Thank you, Mr. Chairman. I think this is a good section but would your association not agree that it might be better still, from the point of view of a patient, that it would be two years from the date of discovery, because two years from the matter complained of are those that the professional services terminated. It might take longer than that for, say, something that had happened through a malpractice or negligence of professional services and the two years, by the time I might discover that something you have done to me, might be nearly up. Then we would wind up, as we would have here in many other sessions, having a private member's bill before the House asking for an extension of the Limitations of Action. Date of discovery, would your association really have serious objection to that insertion in the clause?

MS. LePERS: My first thoughts are that the type of treatment that physiotherapists give, for the conditions we give, they are basically physical conditions, that this sort of problem would have turned up well within two years and should be no problem.

MR. JENKINS: Yes, I agree but sometimes the legal profession do not — and I'm not knocking the lawyers — but most of the Private Members' Bills that we have here for an extension of the Statute of Limitations and for various Acts are because of the fact that lawyers did not operate it in sufficient time. If part of that time has been used up, of the two years, from the time that the professional services were rendered, were completed, supposing a year or a year-and-a-half had gone by before that showed up, that would leave me with six months in order to file a complaint in a court of law. As I say that is one of the things that I've noticed in the years that I've been in the Legislature, we have had year after year — last year was another example of a case — where we had to extend the Statute of Limitations.

MRS. LePERS: Pardon me, we're saying that the action is commenced within two years. We're not saying that the action has been completed within two years, that it's commenced.

MR. JENKINS: That's pretty basic in all legislation. That's through you, Mr. Chairman, to Mrs. LePers that is pretty basic in all legislation, it's commenced within two years. But I understand from your association that you would not be in favour of from date of discovery.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I try to be helpful, Mr. Chairman. I was just looking at Limitations of Actions Act which provides Section 15(1) — "notwithstanding any provision of this Act or of any other Act of the Legislature", and that would be this Act, The Physiotherapists Act, "limiting the time for beginning an action the court on application may grant leave to the applicant to begin or continue an action if it is satisfied on evidence induced by or on behalf of the applicant, that not more than 12 months have elapsed between the date on which the applicant first knew or in all circumstances ought to have known of all material facts of a decisive character upon which the action is based and the date on which the application was made to the court for leave". I'd like

Mr. Tallin possibly to confirm my impression that this means, in spite of the two-year limitation a person who learns about the cause of action attributable to the physiotherapists could apply to the court for an extension of time based on the very fact that that person didn't know for let's say four years or five years until it arose and then must apply within that one year after that. Mr. Tallin is nodding. So I think this could take care of the point Mr. Jenkin's raised

MR. DEPUTY CHAIRMAN: Mrs. LePers, would you care to carry on?

MRS. LePERS: As far as I know there are no other changes comparison to MARN.

MR. DEPUTY CHAIRMAN: Are there no further questions? Mr. Cherniack.

MR. CHERNIACK: I want to ask the question which I've asked on previous occasions. Do you object to the court being granted the power to decide to hear the proceedings de novo? To decide rather than to follow the record of what transpired before the Board then the court could decide that they want to hear the evidence themselves. Do you see any objection to that?

MRS. LePERS: I thought that our wording "or may order a new hearing" the last phrase of 44(4), that that was the trial de novo.

MR. CHERNIACK: No, that limits it to an occasion when the evidence was not reduced to writing, then the court may order it. It limits the courts, it does not grant the court that power in all cases. It just says it may do so if there's inadequate reporting. I ask it again, do you have any objections to giving the court the absolute discretion to decide to hear the case from the beginning afresh?

MR. DEPUTY CHAIRMAN: Mrs. LePers or Mr. Balfour.

MRS. LePERS: Sorry, I don't know how to answer it.

MR. DEPUTY CHAIRMAN: Mr. Balfour, would you care to answer?

MR. BALFOUR: Thank you, Mr. Chairman. With the new procedures in the statute the Complaints Committee, the investigation chairman, the Discipline Committee, appeals from all those groups to the Board, further appeals from the Board to the Court of Queen's Bench with the provisions for keeping transcripts of the testimony at the various stages, it's my understanding it's the feeling of the association that an automatic trial de novo is not necessary and really would seriously take away from the peer group review process.

MR. CHERNIACK: So Mr. Balfour, you would deny to the courts the right to decide that for whatever reason it feels it ought to hear the evidence de novo, you would deny them that right?

MR. BALFOUR: No, no.

MR. CHERNIACK: I didn't say that they shall do it. What I'm proposing is that the court shall on occasion when it deems it in the best interests of justice, decide to hear the case afresh.

MR. BALFOUR: May I, Mr. Chairman? I'm not one, Mr. Chairman, through you to Mr. Cherniack to deny the courts anything. But I do not feel the association wishes to give the court the automatic right, exercisable just on its mere discretion, whim if you like, to order a trial de novo.

I would suggest that the common law provisions do protect an accused as it were, a member who's been disciplined when there has been an error, a mistake in natural justice, a denial of natural justice. In those cases the record would normally reflect that there had been a denial of natural justice and the common law provisions give the courts the right to order a trial de novo. I would say that the common law provisions do protect abuses of justice which I believe the member is really getting at.

MR. CHERNIACK: Mr. Balfour, you have complete confidence that the court on an ex parte application for an order would not arbitrarily just go ahead and give the order. So you have confidence that the court would not just on its whim, do such a thing. On the other hand you think the court might on a whim decide to hear the evidence just as a whim? To me there's a contradiction.

MR. BALFOUR: No, no I don't wish to mislead. No, the courts under common law are not on a whim going to order a new hearing. It would inevitably take the exercise of one of the extraordinary remedies, mandamus, certiorari, that sort of procedure. But those procedures do exist to protect the ordinary citizens including members who have been improperly dealt with.

MR, CHERNIACK: You think mandamus could be used to protect the member?

MR. BALFOUR: I'm not positive . . .

MR. CHERNIACK: I'm not even sure certiorari might. But you're saying there's a common law right for the court to order a new hearing before whom? Who would hear it? The Board again, the same counsel?

MR. BALFOUR: Yes.

MR. CHERNIACK: That's the very point, Mr. Balfour. You're saying the court can decide that the counsel shall rehear the case they've already heard. I'm saying the court should be able to say, for whatever reason, for arguments presented to us we feel it would be better to remove from the body itself that final decision and provide a judicial body, the court, before which it could be heard. When the courts generally order a retrial of a hearing they order a judge to reopen a case. But in this case you're saying that the counsel which dealt in camera on an issue may be ordered by the court to hear the same thing all over again. Is there any likelihood that that counsel on rehearing would do any differently than it did the first time?

MR. BALFOUR: Very often when discipline boards are ordered to rehear the case the courts will

indicate in their decision the areas they felt the discipline committee or board erred. No, no one can guarantee that they won't repeat those errors but hopefully they're guided by what the court says. But the concept, Mr. Chairman, is one of peer review. Who is best able to adjudicate on whether a professional has or has not been competent or incompetent, except his peers? The new procedures — and they are new procedures to this association — are in-depth, there's four different steps, there's various appeals; it is a peer review and it's not a court determination. If there are clear abuses the courts have certain inherent powers that can be brought to bear.

MR. CHERNIACK: Mr. Balfour, you say that on many occasions the courts have ordered a review by a discipline committee and frankly I'm not aware of any but that's because my knowledge is lmited. Are you aware of . . .?

MR. BALFOUR: Yes I am.

MR. CHERNIACK: You are. May I invite you to let me have whatever you know in due course, not part of the committee?

MR. BALFOUR: Yes I will.

MR. DEPUTY CHAIRMAN: Are there any further questions? Mr. Walding.

MR. WALDING: Mr. Chairman, I have one question to Mrs. LePers and perhaps I missed it. Did you mention that Section 8 was different from the MARN Bill?

MRS. LePERS: Yes I did.

MR. WALDING: Can I ask you again to tell us the reason for that?

MRS. LePERS: The Board feels that we have been given the powers for managing the association; that we should have also the ability to fix fees. Fees have to be justified to the membership. Budgets have to be drawn up each year. The membership does have some opportunity for input there but that we should have the right to fix the fees.

MR. WALDING: Without reference to or approval by the membership as MARN does and as The Pharmaceutical Act and probably several others do as well.

MRS. LePERS: In practice we do refer to the membership.

MR. WALDING: Why are you making the change if that is something that you do anyway? Why not leave it?

MRS. LePERS: In our present Act the scheduling of fees is one of the items of the Act. We don't have by-laws and it is not part of regulation in the other Act. It is part of the Act and we have kept it on there.

MR. DEPUTY CHAIRMAN: Are there any further questions? Mr. Walding.

MR. WALDING: I haven't quite finished, Mr. Chairman. Would you then have any objection to bringing your Act in line with other Acts in this regard and having the approval of your members? It's sort of a stamp of approval in that case; it wouldn't be then a matter of eight people imposing an assessment on all of the members against their will.

MRS. LePERS: No I don't suppose I have any great objections to it being in by-laws. I think it might be easier the way it is at times. If there are difficulties it would be easier if the Board had the ability because annual meetings tend to be once a year. But no I wouldn't object I suppose being in by-laws.

MR. WALDING: Okay, thank you.

MR. DEPUTY CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I'd like to ask Mr. Balfour a question with respect to subsections 17(1) and (2) of the Act. Mr. Balfour could you justify the existence of those subsections in Bill 21? That kind of provision is not contained in the nursing legislation that was passed last year as you know, is not sought in the legislation that has been proposed for consideration with respect to the other, of health disciplines and associations that is in front of us at this time, with the single exception of The Medical Act and the College of Physicians and Surgeons. I think that there is a justification that can be offered for that provision in the case of The Medical Act but I find it difficult at this juncture to accept it in the case of The Physiotherapists Act, particularly since your regulations would presumably take care of the methodology that you would employ for expulsion of members from the register and the reasons for that expulsion.

MR. DEPUTY CHAIRMAN: Mr. Balfour.

MR. BALFOUR: Thank you, Mr. Chairman. Under the existing Physiotherapy Act there is the concept of the members being of good moral character, a concept which they wish to preserve, and it is felt that they have done so through Section 17. Section 17 indicates that a person can be refused to be registered initially as a member if he or she has been convicted of an indictable offence under the Criminal Code, and similarly a member can have his or her membership suspended or revoked if he or she is convicted of a similar indictable offence. But again, as I mentioned earlier, Subsection 2 of Section 17 indicates that there should not be a refusal of registration or a revokation of registration unless it's serious enough pursuant to the the criteria laid down by Subsection 2.

MR. DEPUTY CHAIRMAN: Are there any further questions? The Honourable Mr. Sherman.

MR. SHERMAN: The difficulty with it lies in the inconsistency that it represents with respect to other legislation in this field. If one looks at The Medical Act you can find a justification for it, because the regulations under The Medical Act do not contain provision for dealing with expulsions of this kind. But under the proposed legislation and the existing

legislation for the other health professions and disciplines and under the proposed bill in front of us, the regulations would provide the means and the method for either refusing entry onto the register of a certain applicant's name or for expelling the name from the register. And presumably the board in this case would give very serious consideration to exercising that prerogative in the case of a member or an applicant who had been convicted of a serious indictable offence.

I'm not arguing with the morality of the provision. I would think there would certainly be instances that one could think of quite readily where the board would be justified in refusing registration or expunging registrations. But my problem is with the requirement for 17(1) and (2), and you've suggested that 17(2) probably is not necessary, but the requirement for 17(1) in the Act when the means and the method will be provided under your regulations which have to be approved by Order-in-Council but would certainly be approved from the perspective of giving you that much control over the moral turpitude and the ethics of members of your profession.

So my difficulty is with the suggestion or the insistence that it be in the Act when the means will be provided to the association under the regulations.

MR. BALFOUR: I understand, Mr. Chairman, that the Association has no grave objection to it being removed. It would, as the Honourable Minister points out, be covered otherwise in regulations.

MR. DEPUTY CHAIRMAN: Mr. Sherman, do you have any further questions?

MR. SHERMAN: No, Mr. Chairman. I appreciate Mr. Balfour's response. I appreciate the fact that he suggests that the Association would not have any particular objections to removal of this section.

In the other health legislation, Mr. Chairman, as Mr. Balfour is aware, that sort of frame of reference and term of reference for the Board, where removal of the name of a member from the register is concerned, is dealt with in a subsection that provides for removal at the request or with the written consent of the member where the name has been incorrectly entered, where notification is received of the member's death, where the member has been suspended, or where the registration of the member has been revoked. It would be my suggestion that a similar provision be written into this legislation in place of 17(1) and 17(2) for the sake of consistency and then that certainly the whole methodology for revokation of registration would be covered in the regulations — if that's acceptable to the Association.

MR. BALFOUR: I believe a good part of what has been suggested is contained in 13(1) of Bill 21, consistent with other health legislation.

MR. DEPUTY CHAIRMAN: Are you completed on that subject? Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman. Through you to Ms. LePers. The answer that the witness gave to my colleague, the Member for St. Vital, Mr. Walding, on Section 8 disturbs me because really we are allowing, I think, you agreed that you were going to have eight members of this Board of Directors, two of whom shall be persons not members of this Association. You're going to have members, people who are not even associated with an Association, determining what the fees of the members of that Association would be. I can tell you, as an old trades unionist, I would object very strongly if my trade union was to set up its executive to determine what the fees of my union were going to be without giving me an opportunity to vote on it.

I think in the other legislation that has been passed here it's within the by-laws that at least the ratification of the fees should go to the general membership, and if I might say it doesn't to me sound very democratic. In fact, I would say it would be very undemocratic and I would suggest strongly to you that perhaps you should look at that portion of The Manitoba Association of Registered Nurses Act and their regulations, because you are going to set up according to your Act that you have here that by the by-laws for elections and the appointment of members of the board, and perhaps also that you could look at the fee structure at the same time.

MS. LePERS: I have agreed with Mr. Walding that we would be prepared to consider this. Perhaps No. 8 does sound very undemocratic in hard writing; in actual fact it is not undemocratic in the way it is handled. I'm prepared to have it put in by-laws, yes.

MR. JENKINS: I can assure you, Ms. LePers that as a former president of my local union, if I had ever attempted to tell my local members what their fees were going to be without giving them the opportunity, they would have removed me at the next general election. Tout de suite.

MR. DEPUTY CHAIRMAN: I heard the remark tout de suite, are we now conversing in français. Mr. Balfour.

MR. BALFOUR: Just one final point, Mr. Chairman, it was suggested here this evening that Section 9 has a limiting effect and I agree with that. The main reason for that is because the word physiotherapist was used in that section and that is defined to mean a person registered under the Act and I would suggest for your consideration that it could have the wider interpretation that some members here were seeking if it were amended to read "no person shall engage in the practice of physiotherapy or offer to engage in the practice of physiotherapy or hold himself out as a physiotherapist". The sports trainer who is in effect practising physiotherapy is not holding himself out as a physiotherapist, a registered member, but he is indeed holding himself out as practising physiotherapy. I think then the public could have the greater protection which I believe we all understand that it deserves.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, now are you saying that you want exclusivity of practice and you want — I mean, you didn't ask for it. Now you're asking that you can bar anybody else from doing the kinds of work you do? Are you ready for that?

MR. BALFOUR: I'm advised, Mr. Chairman, there may be some problems and if you take the

suggestion under advisement and the Association will be in further communication prior to clause-by-clause review.

MR. DEPUTY CHAIRMAN: Are there any further questions? The Committee thanks the delegation very much. Are there any other persons presenting briefs on The Physiotherapists Act? My associate will now take over as I step out for a cup of coffee.

BILL NO. 22 — AN ACT TO AMEND THE ARCHITECTS ACT

MR. CHAIRMAN, Warren Steen: Next bill, Bill 22, An Act to amend The Architects Act. Manitoba Association of Architects, Mr. Jim McFeetors, Ms. Helene Peters. I know that the architects are present. I'm not sure whether they wish to make a presentation or just what. What is your intention, Mr. McFeetors.

MR. JIM McFEETORS: Well, my name is Jim McFeetors. I'm past president of the Manitoba Association of Architects.

MR. CHAIRMAN: Mr. McFeetors, could you turn that mike up a bit?

MR. McFEETORS: I don't intend to make a presentation, Mr. Chairman. I just wish to mention that the purpose of the amendments to the Act is to merely update our Act to eliminate some sections of the Act which we found unworkable in our present situation, and to add some we feel are meaningful sections regarding public liability. That is the intention of our amendments and if there are any questions that the Committee has, I would be pleased to answer them.

MR. CHAIRMAN: Members of the Committee, are there any questions to Mr. McFeetors? Mr. Cherniack.

MR. CHERNIACK: Mr. McFeetors, do you have any provision for the inclusion of lay-people on your board?

MR. McFEETORS: We don't have, but we have no objection to the inclusion. Unfortunately, the decision or the question was brought up after the Act had proceeded substantially. We waited so long to get a change to the Act that we were afraid that if we delayed it any further that it wouldn't make some very necessary changes during this session. We would have no objection to adding lay-people to our board. In fact, we would welcome it. The percentage of members — we have a nine-member council — one or two lay-members to our board, as I say, would be welcome. We do have people that are not practising architects. One is the member of the faculty of Architecture at the university. The other is a student at the university. They are nonpractising architects. They could be considered representing another part of the community.

MR. CHERNIACK: We needn't discuss whether they represent another part of the community. They are architects.

MR. McFEETORS: They are not architects yet. In many cases the representative of the school is not a practising architect, not a registered architect.

MR. CHERNIACK: Nevertheless, they are related to the profession.

MR. McFEETORS: They are related.

MR. CHERNIACK: And want to be. You say you have nine members on your board. My note says you have 170 members all together, so nine members seems to be a fairly practical approach to that. Your present law says not less than six nor more than 21 and you determine that by by-law, but you are prepared to agree to two out of the nine as lay, or two in addition to the lay?

MR. McFEETORS: Well, that is something that we hadn't discussed, as I mentioned. We are not . . .

MR. CHERNIACK: Well, since you won't have time to tell us, do you find it offensive if we add two to your nine.

MR. McFEETORS: No, we do not find that offensive.

MR. CHERNIACK: Mr. Chairman, referring to your candidate for admission, Section 11, which substitutes Sections 13(4), a candidate shall be admitted if he has attained a level of architectural education acceptable to the council". How would I, as a person who wants to be accepted as an architect, how would I know what is acceptable to the Council? Is it written anywhere?

MR. McFEETORS: In the by-laws there is a designation as to what is acceptable qualifications. Principally, what has happened in Canada in the last few years is that the national body of the arthitects' association, the Royal Architectural Institute, has established a certification program which a person applies for certification from the national body and are issued a certification number. The national body then determines whether they are qualified. We generally do not delve into their academic qualifications if they have that certification. That is part of our by-laws.

MR. CHERNIACK: Under (b), you do talk about "following the completion of the education to serve as a full-time employee for a period prescribed by the by-laws". Your by-laws, are they subject to review by the Lieutenant-Governor-in-Council or anything like that?

MR. McFEETORS: I believe they are. The reason we say that by the by-laws is that we have presently a two-year requirement. Many provinces in Canada require three years. If an applicant here qualifies for membership here and subsequently moves to another province, they might not be in a position to be registered. So therefore we have wanted to allow ourselves the flexibility to change the term so that we have a cross-Canada requirement in as far as practical experience.

MR. CHERNIACK: The point I would make is that it would be in my interest on behalf of the public to make it possible for more and more architects to be available to provide service to the community. I think it would be undesirable if you set your level so high

as to make it very difficult for a person to become an architect. In other words, you wouldn't be serving yourselves by being restrictive. It seems to me that the level of education should be something that should be spelled out. You say it's in the by-laws and yet you don't say it must be in the by-laws. The period of time, you say, is in the by-laws. I make that distinction.

MR. McFEETORS: It is spelled out in regard to what are the qualifications required for admittance.

MR. CHERNIACK: Then shouldn't 13(4)(a) say, "attained a level of architectural education as set out in the by-laws"?

MR. McFEETORS: As prescribed by the by-laws. But again, the minute you write it in, written, you do not have the flexibility to make adjustments. We have many people who come here with qualifications that might not meet exact requirements. Therefore, the council has the right to determine whether these people are in, effect, qualified to practice. Many European universities do not have courses that are exactly like our courses here at the University of Manitoba. We have made decisions based upon other qualifications.

MR. CHERNIACK: My file shows that you've had some difficulty in getting legislation changed. But surely you have no problem changing your by-laws to conform to . . . so then you shouldn't really object to having it set out in by-laws so it can be seen, so that nobody has to

MR. McFEETORS: I have no objection. I'm just saying that we hope to have a national requirement as far as acceptable qualifications.

MR. CHERNIACK: Now you wish to restrict the right to do the architectural work for certain types of buildings; you want to restrict it to only your own members. You want to have exclusivity of practice at a certain level.

MR. McFEETORS: Clause 17(14)? All that clause is — the Manitoba Building Code spells out that is a requirement, that no person shall build a building that exceeds that in size. Our Act at present states that no person shall build anything over $35,000 without the services of an architect. So we are in effect extending that clause to conform with the Manitoba Building Code.

MR. CHERNIACK: Well, do you need it at all? If the code sets it out, what do you need it for?

MR. McFEETORS: Well, we just felt that it tied the Act into the code as well.

MR. CHERNIACK: But when the code changed and the Act didn't change, you found contradictions.

MR. McFEETORS: We never considered that, but it could be something that could be considered, but I would not be prepared to say personally that . . .

MR. CHERNIACK: Have you provided appeal provisions in your disciplinary section?

MR. McFEETORS: Yes, we have. They're Section 19 and 23.

MR. CHAIRMAN: Any further questions to Mr. McFeetors? Mr. Walding.

MR. WALDING: Mr. Chairman, to Mr. McFeetors along the same lines that we were speaking to the last group about the matter of Council fixing entrance fees and annual fees.

MR. McFEETORS: We have had a difficult problem with our Act which set a limit on fees, which have put us under extreme duress. (Interjection)— It limited it to such a small amount that every year we were without funds for the first part of the year. The Council is elected by the membership. The membership stipulates that for a one-year period or whatever the period is that individuals are elected — but a general meeting is held at least once a year — they are responsible for the affairs and if an extraordinary circumstance arises in that we must have additional funds, the Council will have to raise the funds. If the membership do not agree with it, at the next general meeting it can be brought up.

MR. WALDING: That is a requirement under your by-laws at the moment, I understand.

MR. McFEETORS: Generally the fees are established at the annual meeting and that is usually not until after the first of the year. Unfortunately that means our statements don't go out till April or May, so essentially what we're doing is we're on a calendar year; we hope we can establish the requirements for the year; send out the billings as of the first of January.

MR. WALDING: Surely that depends on the timing of your annual meeting.

MR. McFEETORS: Our annual meeting is established that it has to occur at the end of January, within February, somewhere in that area.

MR. WALDING: Is that in the Act?

MR. McFEETORS: That's in the Act or in the by-laws that it is established, but we can't have it any earlier. It would be difficult to have it any earlier.

MR. WALDING: Apart from the administrative details, is there any reason why it shouldn't be a by-law and subject to the approval at a membership meeting?

MR. McFEETORS: I think the membership always has the ability to bring up and disagree with what Council has done at its annual meeting. If they don't like what Council has done they can turf them out, but the thing is that the council having been elected in a democratic way and given the responsibility of operating the association for that period of time, we feel should have the flexibility to respond to extraordinary circumstances. (Interjection)— I know what you're suggesting but we feel it would limit the ability of the association to respond to extraordinary costs, that's all, within the jurisdiction that has been given it.

MR. WALDING: Is your executive elected at the annual general meeting?

MR. McFEETORS: We have a rotating — two new members are elected each year. We feel it's absolutely essential for continuity. We have national bodies that members belong to and without continuity on the Board, it would be almost chaos in dealing with the national bodies.

MR. WALDING: So you elect two members each year out of a total of eight, nine?

MR. McFEETORS: The ninth is actually the member from the University of Manitoba so he is appointed. We have eight elected members; two are elected each year.

MR. WALDING: But the ninth is a voting member.

MR. McFEETORS: He's a voting member, but he's a representative of the School of Architecture.

MR. WALDING: So if the membership were to be so annoyed at their Council that they wanted to turf them all out it would take them three years to do so.

MR. McFEETORS: They can petition to have other members of the Council removed at a meeting. An annual general meeting can do a lot of things. I think it has a fairly wide jurisdiction. If it really feels it is being manipulated or hard done by, it can make its annoyance known and do something about it.

MR. WALDING: This seems a bit complicated if your membership is a little annoyed at your Council for this one thing. They might have complete confidence in them for everything else and be prepared to have the continuity and give them confidence for the coming year. Yet because of this one thing, you say there's got to be petitioning to remove people, which seems very drastic to cope with something they would cope with anyway if it was in the by-laws instead of just in the Act.

MR. McFEETORS: This was presented to the annual meeting, the changes to the Act, and including the flexibility of Council to vary the amounts of fees and it was accepted without question, and each clause was dealt with individually.

MR. WALDING: Did anyone point out to the membership at the time that this is the way it happens in many other associations and this seems to be the trend of professional associations?

MR. McFEETORS: I think it has been obvious, as I said, because of our other problems with our own annual fees. It has been obvious that Council must have some flexibility and our membership agreed with it.

MR. WALDING: Okay, I don't want to get into an argument.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Mr. Chairman, if I understand your legislation, presently your fees are designated right in the legislation that it can't be changed and were designated in 1970. Would you object to having those fees set by by-law, by your Council?

MR. McFEETORS: The Council would have to set them each year. They could not respond then to an increase. We have just moved to new premises, for instance. We had to change, we had to prepare a long way ahead to do that. We had to get approval of a special levy, which is what we're doing now. Every year we had to go for this. You can't just present an annual fee and say this is what it's going to cost us to run our association this year. We had to prepare in effect a by-law which created a levy. We'd be in the same circumstances that we're in now. We just feel that if we elect responsible people to run our organization and then give them the right to do what has to be done.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I wonder if we could invite Mr. McFeetors to meet with the Legislative Counsel and try to agree on the wording for the provision of two lay people to the Board, if I might ask that. Mr. McFeetors indicated —(Interjection)— No, before we pass the — No, I mean at convenience of course, Mr. Chairman, until we come to deal with the sections themselves.

MR. CHAIRMAN: I hope Mr. Cherniack the sponsor of the bill agrees with the amendment. You don't care?

MR. CHERNIACK: Well, I don't worry about the sponsors as I do about the architects themselves.

MR. CHAIRMAN: We'll see. We'll see when we get there then.

MR. CHERNIACK: Mr. Chairman, I wanted to — there's another question I had here. While I'm looking for that, I'm wondering if Mr. McFeetors is satisfied to give one moity of the penalty to the Minister of Finance. I just looked up what it means. I didn't know until now.

MR. McFEETORS: What was that, Mr. Cherniack?

MR. CHERNIACK: It says, ''the penalty imposed upon any conviction shall be paid to the Minister of Finance, one moity of which shall be applied to the Consolidated Fund and the other paid to the . . .

MR. McFEETORS: But that was from the old Act.

MR. CHERNIACK: Yes, but it's still here.

MR. McFEETORS: That shows how long ago it was . . .

MR. CHERNIACK: You haven't taken it out, have you?

MR. McFEETORS: I don't think so.

MR. CHERNIACK: I hope not. I'd like to see that stay here. No, you've not taken it out. I know what it is; I looked it up. I'll pass, Mr. Chairman, I did have another question.

MR. CHAIRMAN: Any further questions? Mr. Green.

MR. SIDNEY GREEN (Inkster): Sorry I didn't get the gentleman's name; I was not here.

MR. CHAIRMAN: Mr. McFeetors is his name, Mr. Green, Mr. McFeetors.

MR. GREEN: Thank you very much. Mr. McFeetors, if you will look at the bill — Section 9 of the bill — I don't know what the existing section says but I find it unusual that I have to legislate that the council may adopt a schedule of suggested fees to be charged by members of the association for professional services. My question to you is: Do you know of any law that would prevent you from having a suggested schedule of fees to be charged by members of the association for professional services?

MR. McFEETORS: No, we felt that was within the requirements of any law, that it is only a suggested fee.

MR. GREEN: Only a suggested schedule. If it was against The Combines Act then the government of Manitoba wouldn't have power, I would submit, to legislate that they can do it. It wouldn't override The Combines Act. But my question is: Supposing this wasn't there? I have to explain to you, I'm sorry, but I don't really like to legislate unless I can't do it with . . Legislation sort of gives me the power to do something that I don't otherwise have the power to do. I wonder why it has to say that. Why couldn't the council get together and say here's what we suggest the fees are for our work?

MR. McFEETORS: The Federal Government will approve any fee within their jurisdiction that is passed by the council of the area that it is concerned with. In other words, if the Manitoba Association of Architects adopts a suggested fee schedule, the Federal Government will approve that fee schedule.

MR. GREEN: This may be a bit unfair to you but I'm asking you, if I was convinced that you would have the power to do that — that the council of the association had the power to do that and did it and the Federal Government would accept it without this section, then would you be worried about having the section and I guess with me it's almost a . . . you might even think it's comical, that it's a fetish, that I don't like to put into legislation something that I can already do, because that implies that the legislation gave me the right to do it. I prefer to think that I have the right to everything that the legislation doesn't prevent me from doing. So what's to prevent if this Act were passed and if Legislative Counsel is going to correct me then I'd be happy to be corrected. But what if you didn't have this? Couldn't the Council of the Architects get together and say we're going to pass a by-law, recommending that this is what we think the services of architects should be charged at, knowing that they could charge less or more or nothing. I mean that's . . .

MR. McFEETORS: I imagine that there are a lot of things in this Act that if we come down to the common denominator we could eliminate them or . . .

MR. GREEN: You're just going to get me looking through the Act finding other subsections. I am worried about this particular one and I assure you that I have said the same thing with regard to other bills that have been presented to the Legislature. So I am wondering what the situation would be if you didn't have that, if it didn't say that.

MR. McFEETORS: Mr. Chairman, I don't know.

MR. GREEN: Mr. Cherniack might help me.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think, Mr. Chairman, if I'm recognized I could help Mr. McFeetors, because if Mr. Green knew what section this replaces then I think we'd understand how they got to it. Firstly, they didn't want a blank No. 11. I think they just wanted to fill No. 11. But what it replaces reads: "The council may adopt a tariff of minimum fees that may be demanded and recovered in law by members of the association for professional services."

MR. GREEN: I think that section might offend the Combines legislation and therefore . . . and I did this the other day — we did it the other day. It would be just as easy to say Section 11 of the Act is repealed and that would permit you to do what this section says, the section that is being replaced and we have fought within the Law Society about this too. I don't believe that they have a right to tell me what I must charge but they do have a tariff of fees which they recommend. But in the absence of this section and in the action of Section 11, wouldn't you have that right if we just repealed the tariff of minimum fees which probably or I guess somebody is worried that offends The Combines Act?

I can tell you, Mr. McFeetors, that in the Law Society there were some who argued that if I don't charge what they say I should charge, it's professional misconduct. (Interjection)— There have been people who have definitely argued that. It has been argued in various jurisdictions. What I am really asking you is, if we repealed this and you were convinced that you had the right to at the same time adopt a schedule of suggested fees repealing the one that says a minimum tariff, would that be of consequence to you?

MR. McFEETORS: I can't make that decision based on my own personal observation. The council and the membership accepted the change that has been outlined here and I feel that I have to go along with what they have . . .

MR. GREEN: That's fine. I appreciate that and therefore you know of no reason except that this is what sort of has been recommended as part of the bill.

MR. McFEETORS: I don't know what other consequences or legal consequences there would be if it was repealed. No, I don't know.

MR. GREEN: Up until now despite the fact that you may adopt a minimum tariff of fees, according to the legislation, has that been the practise of the Architects Association?

MR. McFEETORS: Not for the last several years, not since The Combines Act has taken in. But prior that it was felt that to provide the amount of service that is required to do justice to a particular situation, building or whatever, a certain level and amount of service had to be provided. For that a minimum fee had to be charged or the person was in jeopardy of failing to perform properly. You might say it was a method of controlling the quality of the work that was . . . However it now has been taken out of our hands by the Federal Government.

MR. CHERNIACK: I just want to point out that I don't think it's the Law Society that established a suggested schedule. It's the Bar Association. One has power and the other not.

MR. CHAIRMAN: Any further questions to Mr. McFeetors? Seeing none, thank you, sir.

Are there any other persons persons present who wish to make representation regarding Bill 22 — An Act to amend The Architects Act? Seeing and hearing none we'll go on to the next bill.

BILL NO. 25 — THE REGISTERED RESPIRATORY TECHNOLOGY ACT

MR. CHAIRMAN: Bill No. 25 — The Registered Respiratory Technologist Act. The first party on my list is the Manitoba Health Organization, Shirley Seidel.

MS. SEIDEL: Our comments regarding The Registered Respiratory Technologist Act are as follows: In Section 4(1) regarding by-laws. We believe that this should be limited to read: "generally facilitate all such matters as may be deemed by the Board to be necessary or desirable for the administration of the association." We think that to include the rest in that clause is to move too far.

MR. CHAIRMAN: Could I stop you for a moment so that legal counsel could . . . missed what section you were referring to. Could you repeat yourself?

MS. SEIDEL: 4(1) on Page 4, yes, at the top.

MR. CHAIRMAN: All right, please carry on.

MS. SEIDEL: This would be consistent with the clause in The Dietitian Act and would comply with Item (d) of the guidelines for Professional Disciplines Acts which relates solely to matters of licencing.

We would make the same comment regarding 4(1)(k) which reads: "promote the professional, social and economic welfare of the members of the association."

Item 7(2) which refers to certain Acts not prohibited. It mentions The Practical Nurses Act. We think that this should probably be Licenced Practical Nurses Act.

19(2) — Restoration of names to the register. There appears to an error here in the descriptive clause "as a person cannot be deemed." There's probably something left out.

In Section 20 — Employers responsibility.

MR. CHERNIACK: Just a minute.

MR. CHAIRMAN: I think you're going a little too fast for members of the committee.

MR. CHERNIACK: Would you repeat that 19?

MS. SEIDEL: 19(2) regarding restoration of names to the register. There appears to be an error in the description clause "as a person cannot be deemed." It says, "the board on such grounds as it deems sufficient may cause the name of a person removed from the register other than a person who is deemed to be restored thereto, etc."

Item 20 — Employers responsibility. The clause 20(a) should be modified to state: "shall ensure at the time of employment that the person is the holder of an appropriate certificate of membership issued under this Act." We feel subsequent responsibility is that of the employee.

21(2) — Offence by employer. We would request as we did in the others that to aid and abet be removed from this clause. It would be consistent with the section in The Licenced Practical Nurses Act.

In Section 32. We have the same comments about ex parte as we do in referring to all the other Acts. And further we would recommend that a guarantee of confidentiality be incorporated into the Act in reference to investigation and access to records.

That is all the comments that I have on that legislation.

MR. CHERNIACK: Is there not in this bill a reference to confidentiality as there appears in other bills?

MR. CHAIRMAN: Legal counsel says 56, Mr. Cherniack.

MR. CHERNIACK: Yes, is that not adequate?

MS. SEIDEL: I suppose that the comment would be in 56 that access of documents would be except for the purposes of prosecution under this Act. I would assume that in most cases access would be for the purpose of prosecution or for investigation in regard to that.

MR. CHERNIACK: Was this inadequate? Do you want it enlarged on?

MS. SEIDEL: I think that we would like to see a confidentiality of all information, a statement, a general philosophy statement.

MR. CHERNIACK: Isn't that in 56, no person shall knowingly communicate, etc., knowingly allow . . . Is that not sufficient, because if it isn't, then we should be looking at all other bills.

MS. SEIDEL: In reading it in this case it does look not too bad as a matter of fact. Others I do understand refer to a reference to members, information about members. May I just ask our legal counsel if this is different?

MR. CHERNIACK: It looks to be the same as The Nurses Act.

MS. SEIDEL: Yes, may I say that you are right. This one is fine and what probably should be considered in looking at all of the others.

MR. CHAIRMAN: Any further comments or questions? Mr. Sherman.

MR. SHERMAN: I'd just like clarification on Ms. Seidel's last comment when she says it should probably be considered in looking at all the others. The point is that the wording is insofar as I can see, and I haven't checked it word for word, but it appears to be exactly the same as the wording in the nursing bill, the MARN Bill, and I didn't understand Ms. Seidel's last comment that it should probably be considered or applied with respect to all the others. I'm not quite sure — does she mean that it should probably be applied with respect to the respiratory technologists?

MS. SEIDEL: In Bill 21, The Physiotherapists Act as it's proposed, 56(a) has within it "knowingly communicate or allow to be communicated any information respecting a member." That is not in the proposed Act for the respiratory technologists and we would say that is the latter that we would support.

MR. SHERMAN: I see. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr. Chairman. Where do the words "respecting a member" come?

MS. SEIDEL: It is in Bill 21, The Physiotherapists Act, which is Page 24. 56(a) states "knowingly communicate or allow to be communicated any information respecting a member obtained by him in the course of administering this Act or the regulations" and so forth. In terms of The Respiratory Technology Act, it says "knowingly communicate or allow to be communicated any information obtained by him" and that would sound reasonable and be supported by us.

MR. CHAIRMAN: Mr. Cherniack, are you through?

MR. CHERNIACK: Yes, I see in 21 they shoved in "respecting a member".

MR. CHAIRMAN: Any further questions to the delegation?

MR. CHERNIACK: It's identical to the nurses.

MR. CHAIRMAN: Order please, any further questions to the delegation? Seeing none, thank you very kindly.

Mr. Barre Hall, on behalf of the association.

MR. BARRE HALL: Thank you, Mr. Chairman. I act for the Respiratory Technologists Association and I'd like to thank you on behalf of the association for the opportunity to be here to present this bill. We feel that the thrust of the bill is essentially to improve the standards of health care in the Province of Manitoba and to thereby protect the public to a greater degree. We feel that the thrust is in keeping with the general thrust of the Acts, the health Acts presented so far.

Our bill, Bill 25, has followed the model, The Registered Nurses Act, very closely. There are five areas that we could get into at a later time where there is some variation. We will doubtlessly be asked about that. I'd like to call on the Chairman of the Special Act Committee to address your Committee briefly and then we're prepared of course to answer what questions you might have.

Thank you, Mr. Chairman.

MR. CHAIRMAN: That individual, I guess, will identify . . .

MR. HALL: This is Bill MacKeen, Mr. Chairman, the President of the Canadian Society of Respiratory Technologists and also the Chairman of the Special Act Committee.

MR. CHAIRMAN: Mr. MacKeen.

MR. BILL MacKEEN: Bill MacKeen is my name.

Mr. Chairman, Committee members, I likewise would like to thank you for the opportunity to address you and to stand before you. My comments will be brief.

Respiratory technology has developed as a natural corollary to the increasing sophistication of therapeutic modalities directed towards cardio-pulmonary disorders. Respiratory technology is an integral part of the total patient care. Respiratory technology has been defined as an allied health discipline devoted to the scientific applications of technology in order to assist the physician in the diagnosis, treatment and promotion of the well-being of patients with respiratory and associated disorders.

The patient spectrum is varied. It includes the premature infant, the newborn, the child, the adult and the aged. Our national association received a federal charter in 1964. With growth, provincial involvement ensued. This has culminated, particularly in Manitoba, in the collective and identifiable need to continue what we believe to be a high standard of patient care. Respiratory technology is an emerging profession, emerging relative to conception, rather than to scope of patient involvement or practice.

The registered respiratory technologist is a graduate of an accredited educational program and has successfully passed examinations of the Canadian Society of Respiratory Technologists. These exams are prepared and administered by a subcommittee of the joint Canadian Anesthetic Society and the Canadian Thoracic Society Committee on Respiratory Technology.

We are mindful of the obligation that this Act places on us as health care practitioners and we intend to have this work in the best interest of the Manitoba citizen. In conclusion, Mr. Anderson, our sponsor, will be moving a few amendments, minor in nature. All such amendments have endorsement of the Manitoba Association of Respiratory Technologists. As Mr. Hall has indicated, Bill 25 has followed government standards and as you can see has been modelled after The Registered Nurses Act.

At this point in time I would answer any questions and hopefully we will endeavour to provide the answers for you.

Thank you.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr. Chairman. How do you offer your services to the public? Is it through an institution?

MR. MacKEEN: Through a hospital based.

MR. CHERNIACK: Through a hospital. You don't offer the services to the public generally?

MR. MacKEEN: As free enterprise, do you mean?

MR. CHERNIACK: Well, all right. You don't practise your profession outside of the jurisdiction of a hospital, is that right?

MR. MacKEEN: For all intents and purposes, that's correct.

MR. CHERNIACK: Because I think Mr. Hall said that the desire here is to protect the public and if you are employed people and you are, are you not?

MR. MacKEEN: That's right.

MR. CHERNIACK: Then surely your employer has to set certain standards by which they protect the public. I'm trying to get it why it is that you feel that your association has to protect the public when really what you do is work for a hospital which offers your services to the patient. Then surely it's the hospital's responsibility to ensure that the quality of your service is of a high standard.

MR. MacKEEN: I guess I could say we share a common ground and on that the hospital has a right, true and granted, but likewise I believe that we as health care practitioners who feel we are, sir, competent in what we are doing also have an onus on us to provide that as well.

MR. CHERNIACK: Do you grant to the hospital the right to employ a person to do your work who is not a member of your association?

MR. MacKEEN: Yes, that's within the Act and I think if you refer to 11(3).

MR. CHERNIACK: "Nothing prevents a person from performing any Act where that person is employed by or under the supervision of a duly qualified medical practitioner." Would that apply to a hospital? Well, then what you are saying is that you only want to protect the name, respiratory technologist, is that it?

MR. MacKEEN: No, I think what we're trying to say is if you are a registered respiratory technologist you have gone through the training process to be such and we will as an association ensure that those members are indeed competent to practise the field.

MR. CHERNIACK: I understand that, but Mr. Uruski has pretentions of knowing how to work with respiratory ailments. Could he apply to a hospital and could they employ him to do that job if they wished so to do?

MR. MacKEEN: He could apply to that hospital.

MR. CHERNIACK: I know that, but do they have a right to employ him?

MR. MacKEEN: At this point in time, they can hire whoever they want to hire to do whatever task they want done.

MR. CHERNIACK: When this bill is passed, would they continue to have that right?

MR. MacKEEN: If a physician within that institute is going to take on the responsibilities under 11(3), then, yes. I think likewise one would have to view the scope of practice of the technologist and what is being done. The individual would not be able to call himself a respiratory technologist.

MR. CHERNIACK: That's what I'm getting at, Mr. MacKeen, that really all you're asking for is a right to retain for your membership the exclusive right to use the term "registered respiratory technologist". That's really all you're asking the Legislature to grant to you. Is that not fair?

MR. MacKEEN: That is there. I think likewise what we are asking of the legislation is to provide us the privilege to monitor our own professional people from a standards point of view, from an educational point of view, from a discipline point of view. We will take care of our own individuals, not necessarily just the fact that we have a name.

MR. CHAIRMAN: But, Mr. MacKeen, my impression is that you would have that right even if you had just a club, just a group of people without a by-law, you would have the right to bar people from your group as any club, any team, can have. But the reason, as I understand it, your coming to the Legislature for legislation is only to retain to yourselves the exclusive right to decide who may call himself a registered respiratory technologist. I want to make sure that you're not claiming exclusivity of practise.

If I might just go back to it, I said earlier today, the doctors, the lawyers, they say you cannot permit anyone to practise that skill or that art unless he's a member of our association. I interpret your bill not to ask for that exclusive right to practise but rather just the exclusive use of the title.

MR. MacKEEN: I think all I can sort of comment to it is if that is there I agree with that, but I think that there is another component to the whole issue.

The other thing that I think needs to be looked at is from a practical point of view, of exclusivity, I think one has to be realistic in today's sort of health-care field and the practicalities of the situation at the moment may not provide the basis for that exclusivity and I think that's something that's realistic and we have to address ourselves to it.

MR. CHERNIACK: Well, I wonder if Mr. Hall would like to . . .

MR. HALL: Yes, I would like to comment, Mr. Cherniack. It's not simply the right to use the name that the association is interested in doing but rather a right to ensure that standards are applied and enforced as in the case of, for example, I would say practical nurses, registered nurses, who generally speaking operate in the same sort of environment in hospitals, not offering their services generally to the public in broad measure. In addition, as regards exclusivity of practice that is sought with some limitations. This is a fairly broad field and there is a fair degree of overlap and if you refer to Section 11(1) you will see the right to practice as set out, but

that has to be read together with Section 7(2) which basically says that in areas of overlap, if someone else can do the job then they're not prevented from doing it. For example, there may be a situation where a respiratory technologist is called upon to render service but a medical doctor could render service as well. The doctor would not be prevented from rendering service in that area or anyone covered by the acts enumerated in that area.

MR. CHERNIACK: Mr. Chairman, I really need help with this because I looked at 6, and I don't understand it. It says "The provision of this Act does not prevent any person from doing various things, domestic administration of family remedies." I can't conceive that the Act could prevent that without this section. I look at 7(1) and I don't understand that. It says nothing in this Act authorized any person to prescribe drugs. I never thought that it would authorize them and I don't see the point to 6, nor to 7(1). 7(2), what you're saying is that a person granted the power to practise medicine can continue to practise medicine, and if I may say so, it sounds presumptuous to me for you to say we're not going to stop the lawful carrying on of an activity which is authorized under another Act. So, I wondered why it was there and then I did go to 11(1) and I see here that "no person shall practise as a registered respiratory technologist" and my impression is that a person can practise as a registered technologist or as a respiratory technologist and do all the things that are described in the definition section without sanction; that you can't stop them and that the only thing you can stop is the use of the name and I want to be very clear as to what you think you're going to achieve by this legislation.

MR. HALL: We feel that it does stop him. The only person who can do that is the person who is operating under the direct supervision of a doctor.

MR. CHAIRMAN: Perhaps before we carry on we could ask persons who are not questioning or listening to answers from delegations if they could either keep the conversations a little quieter or get back from the table and carry on their conversations. I don't want Mr. Cherniack not to hear any of the answers.

Any further questions for the delegation? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, maybe we'll have to go to Legislative Council for an interpretation, but the fact that Mr. Hall said he thinks it covers it doesn't convince me because I just read it and it says, "no person shall practise as a registered respiratory technologist, or hold himself out for employment as a registered respiratory technologist". To me that is the essential thing.

Now you're saying that by that Section 11(1) you could . . .

MR. HALL: Unless he's registered under the Act.

MR. CHERNIACK: . . . from doing those things which are described in 1(2)?

MR. HALL: Basically the definition is set out in 1(1) and 1(2).

MR. CHERNIACK: Yes, that helps me. 1(2) does not refer to the name itself. It said the definitions of practice of respiratory technology shall be deemed to be practising if they do any of those things, so that you are claiming the control over, let us say, a hospital which wants to hire somebody who is not a member of your group from doing that work. Is that not right?

MR. HALL: Yes.

MR. CHERNIACK: So that now we know that a hospital may only employ members of your association to do that work?

MR. HALL: Unless they're operating under the supervision of a doctor as provided in 11(3). If the doctor is willing to take on the responsibility of that supervision the Act leaves that open for him to do so.

MR. CHERNIACK: Which really brings us to Section 4(1)(k) and one asks what business do you have worrying about the economic welfare of your membership when you're already controlling the employment of your group by any employer? I mean this is something new. You shoved that in, didn't you?

MR. HALL: We haven't just shoved it in. That was the format that was followed. We were very close to The Registered Nurses Act in preparing this bill and with the five sections that I referred to earlier, yes, we followed The Nurses Act and that's the . . .

MR. CHERNIACK: You are very close but you added the words "and economic" which makes it appear like a trade union, which makes it appear as a self-interest group. Rather than to protect the public you're concerned about the economic welfare. So that is something that you appear to have added.

MR. CHAIRMAN: Mr. Enns, did you have a question?

HON. HARRY J. ENNS: Mr. Chairman, I apologize for not having been at the meeting earlier. I am not officially a member of the Committee, but that doesn't exclude me from making comments as a member of the Legislature.

You know, I'm somewhat concerned about the line of questioning that the Member for St. Johns has pursued with this respect. The registered respiratory people are a group that have themselves disciplined to a course of study, to a course of education that provide a particular service in the health field. I find it passing strange that we now start to differentiate between, you know, the registered nurses or somebody else that should have certain acknowledgments spelled out for them in legislation. We've done that for many other groups.

I think the group that is presenting this bill recognizes their role in the health services field very much part and parcel of the total health service field. They don't attempt to play a role outside that parameter, outside of the hospital role that their jurisdiction and their practice is practised in. I think what we should be addressing ourselves to in this bill is asking the respresentatives of the association as

to the discipline within the organization, the practice, the education, the experience that members have to go through to become registered respiratory technologists. I think that's a question that we should legitimately be asking ourselves as legislators. We should be asking of our people whether or not they fulfill an appropriate and meaningful role within the health service field and I think that there is no question that they do.

But then why should we then, you know, pursue the line of questioning that the Honourable Member for St. Johns wants to pursue about challenging this particular group from having their due and appropriate acknowledgement? The Honourable Member for St. Johns would be quite prepared to pursue that course on behalf of any number of other groups in association with our society, but those of us that have been around for a little while of course know that the honourable member for St. Johns has a particular penchant for opposing any recognition of associations like this in a professional way and that's his problem.

There's only one profession that the Honourable Member for St. Johns believes in and that's the lawyers and he has every right to believe in that point of view. I'm not satisfied that we're getting the full story on this question.

MR. CHAIRMAN: To the Members of the Committee, are there any further questions to Mr. Hall and the representatives before us. Mr. Jenkins.

MR. JENKINS: Mr. Chairman, I'd like to refer the gentlemen to 19, where you removed names from the register. Some of the other Acts do have a notification when a person's name is removed from the registry, notification to the person that is being removed should be made. I refer you to the Physiotherapist's Bill that you were looking at earlier, Section 13(2) where it says, "Where the name of a physiotherapist is struck from the register, the register shall forthwith by register to certified mail addressed to the latest address shown in the register notify the physiotherapist that his name has been struck from the register."

Do you have any objection to that sort of notification going out to proposed members of your association?

MR. HALL: I don't think we do in principle, no. Again we followed the wording of The Registered Nurses Act which is not the same as The Physiotherapists Act.

MR. JENKINS: If I was a member of your association and was suspended, and I worked at another hospital or other place of employment where one of the members of the board were working, how would I know that I had been suspended? You have no notification for me to know that I am suspended. How would you notify me? By telephone, by carrier pigeon, or what?

MR. HALL: I think the normal procedure is to notify by registered mail that the last address on the books of the association.

MR. JENKINS: Then I take it from that that you would not be in opposition to the insertion in your bill of 13(2) which is basically what you're saying, notification by registered or certified mail to the latest address shown on the register.

MR. HALL: 13(2) of the Physiotherapists Bill.

MR. JENKINS: Bill 21 notification to the physiotherapist. In your case it'll be notification to the registered respiratory . . .

MR. HALL: No, we wouldn't object to that but I guess that's a matter for the Committee to decide.

MR. CHERNIACK: Mr. Chairman, now that I've recovered from the speech made by the Minister of Natural Resources I want to come back to this question of exclusivity of practice. As I read The Registered Nurses Act I don't think that they have exclusivity of practice, I think they only have the right to regulate the use of their title and we've heard from the physiotherapists that they're only asking for the right to restrict the use of the term "physiotherapist" but in this bill it appears quite clear that Mr. Hall is right, that they have put in their Section 1(2) something that doesn't appear in the other sections which indeed gives them complete control as I now read it of the practice itself, not just the use of the title and Mr. Hall says that's what he wants. And I'm wondering whether we shouldn't, Mr. Chairman, ask the Minister of Health and possibly come back to Ms. Seidel to find out whether the hospitals are prepared to accept this restriction placed on them as providers of this service and whether it is sufficent for them to have that provision of 11(3) permitting the practise of the respiratory technology under the supervision of a medical practitioner. I'm, for example, wondering whether the other health fields are prepared to do it to this extent and I don't know to what stage we ask that of the Minister of Health but it's a very important decision.

MR. HALL: Mr. Cherniack, I wonder if I could just comment briefly on that Section 1(3), has a pretty strong modifying effect on that inasmuch as it sets out. I think 1(2) is primarily to serve as an example in the definition section and 1(3) modifies that which sets out that in most of those clauses (a)(b)(c)(f)(g) and (h), they're not exclusive to respiratory technology.

MR. CHERNIACK: Mr. Chairman, I would have to study this even more but the introductory portion of 1(2) describes "medically supervised and co-ordinated treatment by medical gases, aerosols, oxygen, compressed air, or other therapeutic medical gas mixtures including," and now I don't know why (a)(b)(c)(f)(g)(h) are needed at all because they are then excluded but (d) and (e) are included. I will leave it at this. I now understand what they want and it'll be the responsibility of people involved in the supervising of the health field to find out if they want these kinds of restrictions placed on them. I don't know enough about it myself but I sure hope the other people in the health field will tell us.

MR. WALDING: Mr. Chairman, I'm still not clear from the delegation on this particular matter and perhaps it would clear it up if I asked you whether

under present circumstances, as of today, whether a respiratory technologist can only work in the employ or under the supervision of a duly qualified medical practitioner?

MR. MacKEEN: If I interpret your question correctly the present situation would have a respiratory technologist working under the direct supervision of a medical doctor, is that . . .

MR. WALDING: As in Section 11(3), which you want to happen in the future. What happens at the present time?

MR. MacKEEN: At the present time the hospital becomes the onus; the onus is on the hospital to bear the responsibility. The facility, the hiring agent, assumes responsibility for those that they hire presently.

MR. WALDING: So you're then taking that responsibility off them or reducing the onus on the hospital when you put it in terms of the doctor. So if I met all of your standards and was entered on the register and became a registered respiratory technologist and I decided I didn't want to pay your annual dues after a couple of years, I then would become unregistered, not of any lesser standard or any less competent to do the job since your association had registered me for two years. Would I simply be able to continue to do my work for the same employer? If not, why are you putting this additional restriction on me that doesn't apply today?

MR. MacKEEN: I guess my response to that question would be again it would rest with the employer if they want to maintain the hiring of that individual. Again if they want to maintain, to employ that individual and likewise there's the medical supervision there from this point forward.

MR. WALDING: But that's an additional condition that you're imposing into the future. I'm asking you why that is necessary if the hospitals have been happy with the present procedure and we haven't had any comment that they have not; why are you limiting that in the future?

MR. MacKEEN: I guess it's again to bring those that are performing the functions more in line to be responsible to somebody that's duly qualified and I guess that the physician is there. We work under medical direction and supervision and it just to a certain extent may . . .

MR. WALDING: Yes, but you're saying that doesn't exist at the moment and for someone who meets all of your standards or has even been registered and doesn't want to pay your licence any further, you are saying to him that you want a restriction by placing him under the direct control of a doctor which doesn't happen at the moment. Now, why do you want that, other than to keep control of the people that are doing respiratory technology?

MR. MacKEEN: I guess to a certain extent if we as an association can't control our own members, i.e. through standards and through education then this is at least a provision that's there that he will have some guidance directly to what he is carrying on in his health delivery, that he won't have a free hand to do what he feels needs to be done; that there's going to be some direct supervision. The standard will be met but there will be some guidance.

MR. WALDING: Do I take it then that you feel that there has not been the guidance and supervision up to this time?

MR. HALL: It's not guaranteed. If you can see for a moment what would happen with a registered nurse or a licenced practical nurse who didn't pay her dues or his dues, what happens then? Are they allowed to continue practising?

MR. WALDING: Well, they're no longer registered or a licenced nurse but are they still not a nurse and can an employer not employ a nurse, if that is the desire?

MR. HALL: At his own risk and the point of this proposed legislation is to ensure the maintenance of a higher standard just as occurs with nursing, for example. If you remove the legislation you remove the necessity of the higher standards. It tends to open it up and virtually anyone can, not quite come in off the street, but virtually anyone can engage in that particular activity.

MR. WALDING: Why is that bad if the hospital is prepared to employ that person on that basis and take the risk as you call it?

MR. HALL: We feel it's not a sufficient guarantee of the protection of the public. If it weren't bad you'd want to repeal the existing legislation that applied to nurses and so on. The basic position I think is that the respiratory technologists do their training and particularly the responsibility they have in carrying out their duties and responsibilities is at a level comparable to a registered nurse.

MR. WALDING: Does the hospital lose any responsibility for an employee whether he or she is or is not licenced or registered as a nurse or a technologist or a doctor or as anything else; is not the hospital still responsible?

MR. HALL: Well, I think a hospital is still responsible, sure, but I guess the responsibility is a matter of negligence in any given case if it's put to the test. A hospital would have greater protection than employing a licenced person and a nonlicenced person, I would say, putting it in very general terms.

MR. WALDING: But this says to us that you're not satisfied with that responsibility that the hospital has in who it will employ and that you have to put the standards, rather than the hospital . . .

MR. HALL: We're saying we'd like to ensure the maintenance of a high standard for these people.

MR. WALDING: But you are not taking away the right of a hospital to an employee, a respiratory technologist who is not a registered respiratory technologist.

MR. HALL: Provided the technologist is operating under medical supervision.

MR. WALDING: I see, thank you.

MR. CHAIRMAN: Any further questions? Mr. Cherniack.

MR. CHERNIACK: Does any technologist practise other than under the supervision of a duly qualified medical practitioner?

MR. MacKEEN: I think that's a question of fact. No, I don't think so at this point in time, no. I'm not aware of . . .

MR. CHERNIACK: So, you're saying that no technologist works independently. I think you told us that they're all employed and they all work under the supervision of a medical practitioner. (Interjection)— Well, under the supervision of a medical practitioner. I mean do you decide on your own what treatment to give or whether or not to give treatment?

MR. MacKEEN: No, we provide service on a basis of a written order by a physician.

MR. CHERNIACK: A written order by a physician?

MR. MacKEEN: By a written order. Just as the nurse cannot institute a treatment or give a drug without an order by a physician.

MR. CHERNIACK: Well then, I have to ask Mr. Hall. This service is not under the direct supervision. It's in relation to a written order like a prescription that's done. But that is really what is meant under 11(3). In effect it seems to me what you're saying, Mr. Hall, is that 11(3) opens up completely the right of a hospital to employ anyone to do the work being done by a registered technologist according to what we've just heard.

MR. HALL: Well, it opens it up more broadly than it would be opened up if the word "direct" appeared in front of the word "supervision" in the draft bill which was what we orginally . . .

MR. CHERNIACK: But since it doesn't then there is no restriction. We're back to now saying there is no restriction.

MR. HALL: I wouldn't say there's no restriction. The doctor has to take responsibility for supervision.

MR. CHAIRMAN: Any further questions? Seeing none — Mr. Cherniack.

MR. CHERNIACK: Mr. Hall has said that there are five areas where there is a departure. I don't know whether we should get it now or get it in a letter or something for later use. I think it's useless.

MR. HALL: Whatever is your pleasure.

MR. CHAIRMAN: Mr. Hall, will you provide us with —(Interjection)— Do you wish to do it by letter?

MR. HALL: Yes, if it's . . .

MR. CHAIRMAN: What's fine with the committee? Do you want Mr. Hall to . . .

MR. HALL: We'd be happy to do that.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I don't think that the objective would be served by having Mr. Hall do it by letter but I would suggest that he do it now, if he can.

MR. CHAIRMAN: Mr. Hall, are you in a position that you could read it into the record?

MR. HALL: Yes, I think I am, Mr. Chairman.

MR. CHAIRMAN: Please proceed.

MR. HALL: The first area deals with Section 3(1) of our Act which is the board as compared to Section 3(1) of The Registered Nurses Act. There's a slight difference in the composition of the board members. The Nurses Act is somewhat indefinite as I read it, Whereas our Act provides for an eight-member board, two members to be lay persons appointed by the Lieutenant-Governor.

The second area is the Complaints Committee, which is Section 22 — I'm sorry, Section 24 of our Act, Section 22 of The Registered Nurses Act. Our Complaints Committee consists of five people; three respiratory technologists and two lay members, one lay member being appointed by the Minister, and the second appointed by the Board.

The third area is the Discipline Committee, which is Section 37 of our Act, Section 34 of The Registered Nurses Act. Our Discipline Committee consists of four individuals; three respiratory technologists and one person appointed by the Minister. These are all just minor variations from the nurses Act.

The fourth is the Advisory Council, which I believe is Section 47(2) of The Nurses Act and Section 50(2) of our Act, which again provides for a — sorry, that's the Advisory Council. Section 55 persons; one physician, one person nominated by the Minister and three Board members for a total of five. Of course, the fifth area is in the nature of the practice itself; the definition section is, of course, for respiratory technology, not nursing practice which I think is to be expected.

Thank you, Mr. Chairman.

MR. CHERNIACK: The physiotherapists have distributed letter. Is Mr. Hall familiar with it?

MR. HALL: No, I haven't received a copy.

MR. CHERNIACK: Well, I think we should get a reaction, Mr. Chairman. They're suggesting that 1(2)(d) be added to 1(3).

MR. HALL: I don't think I'm really prepared to get into this at this time, unless you're anxious for me to.

MR. CHAIRMAN: Perhaps Mr. Hall, you can communicate with the sponsor of the bill, Mr. Anderson, between now and the time we deal with the bill on a clause-by-clause basis. Okay.

MR. HALL: I'd be happy to, Mr. Chairman.

MR. CHAIRMAN: All right. Thank you both very kindly.

Are there any other persons present this evening that wish to make representation regarding Bill 25? Seeing none. We'll get on to the next bill.

BILL NO. 40 — AN ACT TO AMEND THE CHARTERED ACCOUNTANTS ACT

MR. CHAIRMAN: Mr. Fred Betton, President of the Manitoba Institute of Chartered Accountants, Mr. D.A. Thompson, Q.C. and possibly Mr. C.O. Gilmore, Executive Director of the Manitoba Institute of Chartered Accountants. Mr. Betton.

MR. F.W. BETTON: Mr. Chairman, members of the Committee. I am President of the Institute of Chartered Accountants of Manitoba and I appear on its behalf in relation to Bill 40 now before the Committee. The council of the institute, Mr. D.A. Thompson, Q.C. and the Executive Director of the institute, Mr. C.O. Gilmore appear with me. I propose to make the initial presentation on behalf of the institute. Between myself, Mr. Thompson and Mr. Gilmore, each in our respective areas, we will endeavour to answer any questions.

The act of incorporation of the Institute of Chartered Accountants of Manitoba was first enacted in 1886. There were relatively few amendments until 1956. The last amendment was made in 1970. There have been a number of occasions in the last few years when the council of the institute has identified certain changes to the Act, the implementation of which would be to the benefit of both the public and the profession.

These changes to the Act are considered necessary by our council and are as follows: Firstly, we are requesting membership of lay members on council and institute committees. It is becoming common practice for various professional and self-governing groups to have lay representation on governing Boards and committees. The Institute of Chartered Accountants has had lay membership on its Discipline Committee for four years now. Two sister provincial institutes, the Institute of Chartered Accountants of British Columbia and the Quebec order both have lay members on their governing councils. In addition, the Canadian Institute of Chartered Accountants has recently passed a resolution allowing lay membership on its governing body. We feel that this change would add a new dimension to our council and would meep us in step with the times.

Secondly, we would like to see the institute have the right to introduce compulsory professional liability insurance. The institute believes that appropriate levels of professional liability insurance should be carried by all members holding out their services to the public and that those members could subject themselves to disciplinary action by the institute if these levels of professional liability insurance were not maintained.

Thirdly, we would like to see the right to conduct our mandatory practice review program spelled out in our Act. The council and members of the institute have recently authorized the implementation of a mandatory practice review program for those members offering their services to the public. The program is consistent with those followed by several other provincial institutes. While the program will be educational in nature, the prime objective will be to ensure public practising members are maintaining minimum standards. Failure to meet minimum standards could lead to required attendance at continuing education programs or seminars and where necessary to disciplinary action.

The institute believes that each of these three changes mentioned are in the best interests of the public. In addition to those changes, under our present Act, the disciplinary powers of the institute are limited to the imposition of suspension and expulsion orders. The council would like to broaden the disciplinary powers so that council and the Discipline Committee may reprimand, impose a fine, or charge the cost of a formal hearing, or appeal to a member found to be in default. These wider disciplinary powers are available to most other provincial institutes and we feel are necessary for our institute to better administer the disciplinary process. In this regard, I believe Mr. Green raised a question at the Second Reading of the bill and to clarify some of his concerns, it was the intention of the institute that it may expel or suspend or reprimand, but if it does either of these things, it may not impose payment of a fine and costs. In other words, the imposition of a fine and costs were not intended to be added to an order of expulsion, suspension or reprimand. We would also willingly agree to the deletion of the word "costs" so that the institute could not levy both a fine and costs.

MR. CHAIRMAN: Mr. Cherniack, have you a question to Mr. Betton?

MR. CHERNIACK: I thought he had referred to a section.

A MEMBER: 7(b) of the Bill.

MR. BETTON: May I continue, Mr. Chairman?

MR. CHAIRMAN: Yes, please carry on, Mr. Betton.

MR. BETTON: There are a number of other housekeeping changes that we feel are desirable. Quickly, these are as follows: Our objects and powers have been expanded to include chartered accountancy students. Previously, the provisions in the Act referred only to members. Under the bill, membership on the institute council will be open to all members of the profession. Formerly, there could have been limitations placed on this membership. Under the bill, the right of council to adopt a fee or tariff has been revoked and a section is added enabling the institute in its disciplinary proceedings to seek orders from the court for the production of documents necessary in connection with enquiries.

In connection with this last point, I believe Mr. Cherniack raised a question in the Legislature as to whether the complainant or member himself should not have the same right. The institute is prepared to accept an amendment that's been prepared that would give the complainant or member complained against, the right to require the institute to make an application to a judge for a court order for production of records or documents which might not otherwise be available to them.

I believe, Mr. Chairman, that this summarizes the changes we hope will be made to our Act. I have

referred to two suggested amendments, which we would be prepared to accept, and I understand the Legislative Counsel has prepared these amendments in a form satisfactory to us.

There are two other proposed minor amendments to the bill dealing with technical language matters.

This concludes our presentation of the Institute. Questions that may be asked will be answered by myself, Mr. Thompson or Mr. Gilmore, depending on the nature of the question.

MR. CHAIRMAN: Mr. Green, do you have a question, sir?

MR. GREEN: Excuse me what is your name again, sir?

MR. BETTON: Betton. B-E-T-T-O-N.

MR. GREEN: Thank you I'm sorry.

On the first page, Clause 4. The object and powers of the Institute are to prescribe such tests of competency, fitness and moral character that may be thought expedient to qualify for admission to. Now, first of all, let me say that I understand completely that you intend by this to cover conduct which has to do with a person keeping accounts properly for a customer, but are not the words broad enough to give you the right to prescribe that a woman who lives with two men shall not be admitted to the Institute. I really don't think you want that, but if I look at that Section, moral character, isn't that a kind of a lofty position for the council to try decide what is the proper moral character for . . .

MR. BETTON: Excuse me, Mr. Green, I didn't hear the last part of your question.

MR. GREEN: Isn't it more than you would want to try to do to define what moral character will permit me to be a Chartered Accountant.

MR. CHAIRMAN: Mr. Betton, do you wish to answer that or would you like Mr. Thompson to answer that one?

MR. GREEN: Does Mr. Thompson want to answer that?

MR. THOMPSON: I will try for a moment.

MR. BETTON: Is he the expert on moral character?

MR. THOMPSON: In reply to Mr. Green's question I would say that this provision has been in our Act as far back as I'm aware and I do not believe that we have ever had to make that judgment.

MR. GREEN: I accept what you are telling me and I will accept responsibility for not going through every statute of the Province of Manitoba and finding something that offends me and then asking that it be repealed. But now it's here and when I look at it, you know it bothers me some to think that your Institute has the right, and by the way its not you alone, I mean these things are relics and I'm just wondering whether you really, and since you haven't had to deal with it, you say as long as its been there you never had to deal with it, do you really want to make standards of moral character for people who are — (Interjection)— Mr. Thompson says yes. Well then may I ask, Mr. Thompson, whether it would not be right that I could say that moral character involves my looking down at the moral character of a woman that sleeps with two men and you could exclude her from practicing Chartered Accountancy on the basis of that judgment of the Institute?

MR. THOMPSON: Well, accept that I think that different people have different opinions of what is moral character, Mr. Green.

MR. GREEN: I agree with that, that's what bothers me. I am certain that what you want, or what I would have thought you wanted, is the right to deal with such an element of character, I'm trying to leave out the word moral, as would render a problem with regard to him practising Chartered Accountancy as a Chartered Accountant. I mean what if the person is known to you to go to the race track and bet on horses and somebody says that the particular council in that year thinks that attendance at the race track is bad moral character. Isn't that a bit broad for what the council needs to deal with its problems?

MR. BETTON: I guess I would perhaps have a great degree of confidence in the decisions that council would make. Council comes from a wide background as you can appreciate and I don't believe that any judgment that would be made would necessarily be unfair.

MR. GREEN: Okay, fair enough.

My next question deals with the question of the fine. I'm happy to see that you are one association that says that you don't want to levy the costs of the entire proceedings against a person who happens to be suspended, but is there a limit on your fine?

MR. BETTON: No, sir, there isn't.

MR. GREEN: If there's no limit on your fine, who gets the fine when it's paid.

MR. BETTON: I believe the Institute would receive the fine.

MR. GREEN: Mr. Betton, my little devious mind works that, well, if you don't have to pay the costs but you can pay the fine and there's no limit, you can collect enough fine to pay for the cost. I mean is that an unfair thought that has crept into my head?

MR. BETTON: I suppose you could interpret it that way.

MR. GREEN: Thank you. Then I have to withdraw my congratulations because I don't see that you've made any step towards undoing the problem.

MR. CHAIRMAN: Any further questions to Mr. Betton or his associates?

Mr. Cherniack.

MR. CHERNIACK: Mr. Betton, I'm looking at your appeal provision and I'm looking for a provision, I guess, under your Section 7 of this bill. Is there an appeal provision for a person who is denied

registration in the association or is it only on discipline? In other words, a person applies to become an articled or apprenticed student . . .

MR. BETTON: Student in Accounts.

MR. CHERNIACK: . . . and you reject him for any reasons. Is there a provision for appeal?

MR. BETTON: Most of the applicants that we would turn down as students are probably because they lack the educational qualifications that are set out in our by-laws. Those are administered as uniformly as we can administer them. There is a national co-ordinating body that helps set our educational standards. We feel that the administration of the educational qualifications is done on a fair basis and our Institute is probably the one most competent to administer those educational requirements. On that basis there is no appeal procedure.

MR. CHERNIACK: Mr. Betton, would you say there's no appeal because there's no need for an appeal?

MR. BETTON: Based on the fact that I don't believe, and I can stand to be corrected, but I don't believe we have ever turned down an applicant other than on educational background.

MR. CHERNIACK: Mr. Betton, you're on dangerous ground because my memory must be much older than yours, because I am older than you are, and your profession has been known in years gone by to have made rather arbitrary decisions about admissions. So there's no real reason for you to assume that the past or the future Board necessarily goes on some uniform fair basis that is not subject to review by an outside body. You do provide for an appeal when there's a discipline imposed. The expulsion, the suspension, the reprimand or payment of a fine — that's the decision of your Board. You're saying that you don't want to recognize the advisability of an appeal from the person who applies for admission as a student or a person who comes in from outside the province who would probably be able to qualify as a Chartered Accountant?

MR. BETTON: I'm having a little trouble determinining — I guess thinking about what circumstances where we may get into this situation, Mr. Cherniack. Again, I guess I feel that the educational requirements are fairly and best administered by ourselves.

MR. CHERNIACK: Where in legislation are the educational requirements set out?

MR. BETTON: They're in our by-laws.

MR. CHERNIACK: And they say that there are certain standards and the Board, I assume, will decide whether or not the student measures up to that educational standard or does not.

MR. BETTON: In process, we have an Education Committee.

MR. CHERNIACK: But there will be a decision made as to whether or not the particular applicant conforms to the . . .

MR. BETTON: Yes.

MR. CHERNIACK: You say that should not be subject to review?

MR. BETTON: That is our position that it has not, we don't feel up till now it has been necessary.

MR. CHERNIACK: I'm under the impression that the other legislation we've been looking at does recognize the right of an appeal for a person applying to become a member as well as a person who is a member. I would urge strongly that you reconsider your position and recognize that somebody should have a right to say I'm being kept out of that exclusive profession unfairly and have a right to have it reviewed. I'm suggesting to you that's not an improper procedure.

MR. CHAIRMAN: Mr. Thompson.

MR. THOMPSON: D.A. Thompson speaking. There is some suggestion that — I think the word uppity was used, not by Mr. Cherniack, I'm talking previously. But the fact is that the Institute of Chartered Accountants is very jealous of its members, of their standards, of their competency. They prescribe standards and they prescribe examinations. They have an extensive program, not only of examining, but of provision for appeals against examinations. But in the final analysis, when a member has gone through the various stages and does not achieve the standards that have been sent by the council, then the council rejects them. Fortunately and happily that seldom happens. But in an organization that has high standards it must have the right to maintain those high standards. That is why there is no positive provision for an appeal.

I think there is a very positive statement however in the present Act that hasn't been changed at all and isn't proposed to be changed stating positively who may become members. It's Section 14 of the present Act which says that: "Any person not under the age of 18 years who satisfies the council as to his fitness, moral character" — whether Mr. Green likes that or not — and habits and as to his skill and competency and passes the examination of the institute and pays the fees fixed by by-law is entitled to become a member of the institute." It's a right that he has but he must achieve the standards that have been set by this body.

MR. CHERNIACK: Mr. Thompson, with all the deference I can muster, the right you grant them is the right to satisfy the council as to fitness, moral character, habit, etc. Therefore, that right is no right as far as I can see except the moral right, because the council not being satisfied can arbitrarily refuse to accept an applicant. I really don't see that as a right. It is a right to apply, but it ends there because the council can arbitrarily say you don't measure up to our standards as to fitness, moral character and habits. I don't quarrel with your initial objective, but I do say I'd like to be able to refer this to some outside judicial body that'll say you've used your powers in an arbitrary way and you've abused your power and thus denied people entrance to a profession.

We know and I want to make this point that I've always honoured the Chartered Accountant

profession which has never asked for exclusivity of practice, all they've wanted was reserve of title, and they have said that they are prepared to meet the market and to compete with an accountant, a public accountant, a bookkeeper or whatever. I honour that pride that makes them feel they can do it, they don't need exclusivity of practice. But, gradually there are more and more requirements of having a signature on a financial statement by a C.A. and a person coming in from any foreign country may come in and say, I believe that I have the qualities that should accept me into your organization, entitle me to use the initial C.A. and you can say no. If you say no, then I can't go to a court, I can't get a mandamus order, can I, under Section 14?

MR. THOMPSON: Not unless Council, as you point out, is satisfied as to this, this and this. If Council is not satisfied as to this, this and this, then you have no right to go to Court, that's right.

MR. CHERNIACK: That's my point, but when you said they have a right, I challenge that, I don't think that's right.

MR. THOMPSON: They have a right, but it's a conditional right. I think the crux of the whole thing is something that you said a moment ago, Mr. Cherniack. The Chartered Accountants are an honourable group of public accountants; they value the fact that they have the respect of the public generally. They value that name "Chartered Accountants", which is their sole measure of exclusivity; they value the C.A.; they do want to be able to say who is qualified under the various standards that they have set for membership into the Institute.

MR. CHERNIACK: I deny to the Chartered Accountants a higher standard or status than I would grant to the medical profession or my own profession. My own profession provides that a barrister-solicitor, to whom the governing body refuses to issue a practicing certificate may appeal to the Court of Appeal. The Medical Association says any person who considers themselves aggrieved by an order or decision of the Council may appeal.

I just don't feel that the highest standards of the Chartered Accountants is greater than that of the medical profession, which is prepared to have its decisions reviewed, and I believe the Law Society too, although it's not worded as well as I would like to see it worded.

MR. CHAIRMAN: Mr. Thompson.

MR. THOMPSON: May I just suggest that there is a significant difference that you, Mr. Cherniack, have pointed out, but that we must keep in mind . I am a member of the Law Society of Manitoba and the Law Society of Manitoba claims for itself, and is given by this Legislature the exclusive right to practice law. Similarly, the doctors who were here this evening are given the exclusive right to practice medicine. To refuse them would be to refuse them the right to practise their professions, but to refuse an applicant to membership in the Institute does not prevent him from practising his profession in the public accountancy. He may practise it in other organizations for the same purpose or he may practise it without it, so we do think there is a significant difference.

MR. CHERNIACK: Yes, Mr. Thompson, and I pointed that out to you and I gave them credit for the fact that they are not asking for exclusivity but meanwhile I think we recognize that there are certain bodies and I'm sure Mr. Betton knows which ones they are, but I believe may be a bank or whatever that will not accept a financial statement unless it's signed by a CA. Is that not correct, Mr. Betton? Aren't there certain bodies, maybe even companies that are listed on the Stock Exchange, for all I know? I don't know.

MR. CHAIRMAN: Mr. Betton.

MR. BETTON: I believe you're correct, yes.

MR. CHERNIACK: All right. Well then, if you can only submit your statement to the Securities Exchange Commission, I suppose it is, if it's signed by a chartered accountant, then indeed you are denying a potential group of people an opportunity to practise a chartered accountancy to the extent of being able to sign a statement acceptable, required by the Securities Exchange Commission. I think that we as protectors of the public interest want to make sure that more people have access to a quality service rather than less. The way Mr. Thompson describes what I think is sort of an exclusive organization that is so proud of its own name that it wants to retain the right to bar others from becoming part of them, is one that is not in the interests of the public and that should be prepared to have its decisions reviewed by a court which I have to assume is as objective as we want and one that will see to it that you don't abuse the right that you're asking the Legislature to give you and which you've already received but you want it continued and that is the right to bar others from the use of the letters, CA, or chartered accountant.

MR. CHAIRMAN: Mr. Gilmore.

MR. C.O. GILMORE: Mr. Chairman, may I speak to Mr. Cherniack's comment? The Institute of Chartered Accountants does not set laws for the Manitoba Securities Commission or the Law Society, The Real Estate Brokers Act, which is under the Securities Commission and most recently, there have been changes in those Acts. The Law Society is one of them that permits a person holding a recognized accounting degree to attest to statements and The Real Estate Brokers Act has been changed to permit that. The Municipal Act is, I understand, being looked at for changes but I must repeat that the Institute of Chartered Accountants does not have any control over these Acts and they are changing.

MR. CHERNIACK: Mr. Gilmore, I wonder why you provide for an appeal of a member who has been disciplined? Why does that go to a court? Why isn't it kept within your own organization?

MR. GILMORE: Pardon me.

MR. CHERNIACK: Why is not kept within your own organization?

MR. GILMORE: In our organization, Mr. Cherniack, the procedure is as follows: the member is charged by a Discipline Committee; the charge is referred to a hearing by a Professional Conduct Committee; the member is charged by a Professional Conduct Committee; the charge goes to the Discipline Committee who hear the complaint. The member then has the right of appeal to council and if he doesn't feel that he has been fairly treated there, he has the right of appeal to the Court of Queen's Bench.

MR. CHAIRMAN: Any further questions, Mr. Cherniack?

MR. CHERNIACK: No. Thank you.

MR. CHAIRMAN: Any other questions? Mr. Enns.

MR. ENNS: Mr. Chairman, I can't forgo this occasion, having represented the chartered accountants before us and having a memory of what took place in 1978 when a reversal of government policy took place where outside chartered accountants were asked to do auditing of various Crown corporations, Manitoba Hydro, Manitoba Telephones, MPIC and so forth, and I would invite the members of the chartered accountancy to read Hansard of that day, the speeches that were made in the House, that suggested to us that it was not possible for an outside accountancy firm to perform that duty as a spokesman suggested — they were an honourable group performing a public service. The suggestion was being made publicly and it's on Hansard that the accountancy profession would have to prostitute themselves in the interest of serving their client.

I would like to take this occasion, Mr. Chairman, to ask a repesentative of the chartered accountancy group whether or not they have received any such complaints in the last two or three years, having provided that honourable public service in making accounting practices, whether or not those complaints have been registered to you as an organization.

MR. CHAIRMAN: Are you in a position, Mr. Betton, to answer that question?

MR. BETTON: I'm sure I understand it, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack, on a point of order?

MR. CHERNIACK: Mr. Chairman, I know I have a certain amount of patience for my friend, the Member for Lakeside, but it runs out after a while and it's run out now and I think that he should just relax and either sit and listen or leave the Chamber if that's the only contribution he could make. I say that because he has distorted history and it's of no use, I believe, to this committee nor is it necessary for Mr. Betton to become part of this kind of debate that Mr. Enns wants to conduct. However, if the committee wants to hear him continue, then, Mr. Chairman, . . .

MR. CHAIRMAN: Are there any other questions to Mr. Betton pertaining to Bill 40?

MR. ENNS: On the same point of order, I want to know whether or not there have been any complaints registered officially with the official organization of the chartered accountants about the manner and the way which Public Accounts are being audited by virtue of the fact that they are being done outside of government to the extent they are now than they were in previous years?

MR. CHAIRMAN: Mr. Betton, Mr. Enns' question doesn't really pertain to Bill 40, so if you don't wish to answer it.

MR. BETTON: I believe if I understand his question, has there been any complaints registered in regard to chartered accountants assuming audits that were previously provided by the Provincial Auditor? I don't believe there have been any complaints registered.

MR. CHAIRMAN: Are there any further questions to Mr. Betton?

Mr. Green.

MR. GREEN: I'd like to ask Mr. Betton since he has travelled into this area whether, before when the chartered accountants were working for the government in auditing the books, and it was done in-house, were there complaints from the chartered accountants, not to the chartered accountants, but from the chartered accountants to the government telling them that they would like to audit the books?

MR. BETTON: I don't believe so, Mr. Green

MR. GREEN: You don't believe so; that happened all by itself. Okay.

MR. CHAIRMAN: Any further questions to Mr. Betton and the group representing the chartered accountants? Seeing none, thank you for your presentation. Any other persons present wishing to make representation regarding this bill, Bill 40 An Act to Amend the Chartered Accountants Act? Seeing none, we will move on to Bill 47, The Interior Designers Association of Manitoba Act.

BILL NO. 47
THE INTERIOR DESIGNERS ASSOCIATION OF MANITOBA ACT

MR. CHAIRMAN: Is the Association of Canadian Interior Designers, Paul Zaidman? —(Interjection)— Interior; well, it says Interior on the sheet I'm reading from. Is there a Mr. Paul Zaidman present? Yes? All right. When you introduce yourself, Mr. Zaidman, perhaps you can make the correction — the list I am reading from did say Interior not Industrial.

MR. PAUL ZAIDMAN: I represent the Association of Canadian Industrial Designers and we are here to make comment about the Interior Designers Act. We have prepared a brief that I'm sure all the committee members have copies of.

MR. CHAIRMAN: It's being distributed right now.

MR. ZAIDMAN: Then you wouldn't have had a chance to read it; I will read it for you.

MR. CHAIRMAN: Proceed please.

MR. ZAIDMAN: Before we discuss the particulars regarding this Act, we would like to establish the reason for this presentation and how it came to be. The Association of Canadian Industrial Designers, Manitoba Chapter Incorporated is comprised of 38 members, 32 of which are professional members practising industrial design, graphic design, communications and advertising design and interior design in Manitoba. We are one chapter of four in a body which is constituted on a national basis since 1953 and which has an approximate membership of 385 people across Canada.

The Executive Committee in general membership of A.C.I.D.M. have been apprised of the Act, Bill No. 47, as proposed by the I.D.I.M. We were invited to make suggestions for amendments to this Act only a week before it came into its final form and then to the House for its first reading. Well, this Act will affect certain of our members in particular. It was felt by our members that rather than approach the the Act from the point of suggesting amendments, we must approach from the point of total opposition to the process. It was felt that suggesting amendments would be lending tacit approval and credibility to an Act which we consider to be pernicious and for which no compelling need has been demonstrated.

Therefore, in accordance with two motions by the general membership of our association taken at two separate general meetings we have, having been designated to do so, undertaken to prepare this presentation outlining in general and in particular, our opposition to the legislation. Just a note in passing, regarding the vote in our association meetings, all attempts were made to hear both sides of the issue and despite the lack of any meaningful interprofessional consultations, the I.D.I.M. position was argued by one of our members fairly and succinctly with no attempt made to color or cloud the issue at hand. In both cases, the vote was unanimous in favor of opposing the legislation. I will add at this point, we have to indicate at this point, that a day-long telephone poll of our members today indicates some movement of opinion within our group as a result of amendments proposed by the Interior Designers group in the last 24 hours. However, even though there has been some positive reaction to these proposals which do address themselves to many of our concerns, the movement is not sufficient to void our previous mandate to oppose this acting principle and the particular.

We begin by outlining our objection to this legislation on fundamental grounds. We feel that design professions do not lend themselves to any kind of legislative control. Design as a process is free and interpretative and interior design, while having associated with it, a degree of technical, managerial and logistical skill is still, when all is said and done, a profession that requires some taste, and in that respect is linked conceptually to some element of art. As such, if the term interior design or interior designer is carved out for use by only certain people, we feel that the legislation would have the effective elevating that element of art that accompanies the profession. The Act would thereby cease to control the professional designation only and would begin to place regulatory boundaries on the creative process as well and once this happens the Act begins to regulate practise of the profession itself. That is to say, as this Act does, that only registered interior designers will be able to practise in the elements of the art associated with interior design and therefore, because they will be the only ones allowed to practise, they will be the only ones who will be creative in the design of interiors.

In this century, many design professionals have emerged who have been taken at face value, may have been prohibited from practising at their art if this Act had been enforced and had they been practising in this province at that time.

A man by the name of La Coeur Boucher (phonetic), for example, who was a cubist artist and a contemporary of Picasso. This gentlemen was a pioneer in the use reinforced concrete and its application to buildings in the first half of the century. He was renowned for his explorations of the relationship of interior to exterior form and the relationship of light to interior surface materials and scale of buildings in relation to human form and function.

Similarily the firm of L. Snathe Incorporated (phonetic), who designed such things as the 1951 Studebaker, which in its time was a revolutionary design concept, and the interior of the U.S. Sky Lab Space Station, to this day are retained by some of the most prestigious firms in the World including the Hudsons Bay Company to do the interior design and space planning functions for them and yet this is primarily a firm of industrial designers.

If these people and many others who come to mind had been reduced to scrutiny under a law, it's very likely that many of the creative aspects of their designs may have been encumbered, but more particularly under this Act would have been restricted in gaining the experience to even become accepted under this Act. In fact Coeur Boucher may well have been prevented registry because he spoke French. This Act does not ensure that French is an equal language and provides only for the mastery of the English language, therefore leaving open the possibility of discrimination.

Obviously our examples are carried somewhat to an extreme, but we do so to make the point that creative design cannot be reduced to the ifs, ands and buts of a law, that the connotation of the very word "design" implies no limitations except within the parameters of the design problem.

The proponents of this Act make the basic assumption that designating the term "interior design" and "interior designer" will have the net effect of expunging those who are not qualified from the profession and that by doing so, they will be protecting the public. Let us examine this assumption, pointing out its deficiencies and exposing some of the basic hypocrisy that is associated with it.

First and foremost, the Act purports to protect the public by registering all those qualified to practise interior design through various entry criteria. The converse of this is to say that those who are not registered are not qualified to practise, but of course we know this to be untrue because over the years this province has displayed a high level of quality in interior design, which has not always been provided by designers framed under the criteria established in this Act. Therefore we can only assume that a

deliberate attempt has been perpetrated to construe unregistered interior designers as unqualified interior designers. If so, it misleads the public and as such does not act as a protection to the public but a needless obstacle in obtaining the goods and services offered by interior designers. In fact, what this Act will accomplish is the limitation of the freedom of the public in their choice of professional designer for their work by establishing within the parameters of the law who is and who is not recognized as an interior designer.

For all their assertions to the contrary, during out discussions with the IDIM that other professionals would be able to practise as space planners, design consultants or whatever, the fact still remains that the public understands the term "interior designer" as pertaining to the design, construction and decoration of interior spaces. As such, this designation carries a professional connotation that may not generally carry over into other allied terms.

To set the term interior designer or interior design apart is to indicate to the consuming public that anyone who is not designated as a registered interior designer will not be as professional or competent as a member of the IDIM.

Second, while restricting the access of the public to design services, the Act would have the net effect of restricting trade and will have the potential for increasing the cost of interior design services by elimination of competition. Interprovincial trade would be affected by preventing those from outside the province from practising freely within the Manitoba marketplace and by forcing them to submit to professional standards criteria imposed by the council.

These are areas of ongoing federal investigations under The Combines Investigation Act and may in fact contravene sections of that Act. If passed, sections of Bill 47 may be illegal and amendments to loosen its parameters would have to follow. If so, the intent of the Act would be void, which in effect would nullify its purpose.

Third, as written, this Act seems to show great concerns for dangers to the public yet nowhere in this Act has any provision been established for the education of both practising and graduate members in the vital areas of business practice and the use and application of codes and statutes designed to protect the public. This is still left to the experience of the designer in the marketplace. What kind of public protection can this be? The clear implication of the Act, however, is that those not registered as interior designers do constitute a danger to the public.

Our contention is simply that the public is already well protected in areas where real dangers exist. These areas including structural, civil, mechanical, electrical, health and fire are more than adequately covered by federal, provincial, and municipal statutes and codes requiring building permits and inspections.

Since the registration of interior designers will not imply public responsibility in any way, will not require indemnification of either the association or the individual interior designer, how then can it be construed that registration will protect the public? If this Act were to be useful at all, it would require the total and complete public indemnification of both the association and the the individual designer, which would at least guarantee the right of recourse in case of gross incompetence or inability. As written, however, the Act would only require the offending member to be expelled from the association, with no liability on the part of the association for its members' actions and with the expelled member turned back into the nether regions of space planners and interior decorators, which would simply add to the impression that unregistered designers are unqualified. In short, the IDIM want the right to register interior designers in an attempt to control the level of services offered, but do not want to have anything to do with their members once the regulations have been contravened and disciplinary action taken. We would call this irresponsible and hardly a protection to the public.

Since we contend that the public is already protected by other statutes in areas where real harm can be done, it leaves primarily the areas of aesthetics to be regulated. This Act does not guarantee that even registered designers, registered interior designers, will make proper aesthetic choices. How can we then assume that it can be regulated? Everyone is entitled to their own bad taste and since this approaches the area of client satisfaction, our contention is that it cannot be reduced to regulation under a law.

In summing up, we believe quite emphatically that the marketplace is the most forceful determinant of the quality of practice and services offered. Forced to respond to an ever-changing market, the profession has managed to keep itself current, responsive to client need and for the most part free of the kinds of people this Act is directed at. Advertising in a well directed and truthful campaign, the abilities and range of services offered by professional interior designers, who are members of IDIM, would far exceed both the effect the Act will have in restricting freedom to work and choose and its value as an Act protecting the public.

This Act is constituted, we think, to thin the interior design profession in this province for the protection of those who would be registered and to protect the economic milieu in which the registered designer would then practise. We assume that it is the responsibility of the Legislature to provide legislation that serves the majority of the public and protects and enhances their life. We also assume that needless regulatory intrusion to serve special interest groups is not in the public interest.

The only conclusion that can be drawn therefore is that this Act is not the result of any compelling public outcry but is ill-conceived, without proper provision for consultations with other professionals who would be affected by its thrust and applied to the few who will practise under it and not the public it is purported to protect.

I sincerely hope that the Act will be rejected completely so that the dangerous precedence of regulating a creative profession will not establish itself cloaked in the credibility of a law.

MR. CHAIRMAN: Mr. Zaidman, do you permit questions from members of the Committee?

MR. ZAIDMAN: As many as you like. I'll note, before you do that, that appended to our presentation is a letter from the law firm of Nemy,

Brown and Roy, which is nothing more than a legal opinion, our having asked them to review the Act.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Zaidman, do you have a copy of your brief?

MR. ZAIDMAN: Do I have a copy of the brief?

MR. GREEN: Has it been distributed?

MR. ZAIDMAN: It was distributed. If you want another copy, I have one.

MR. GREEN: I didn't get one, but I'll get one.

Mr. Zaidman, what is the organization that you represent?

MR. ZAIDMAN: We're an organization of designers that believe more in a multidisciplinary approach to design, without any formal and legislative control on the process that we're involved in. We're called the Association of Canadian Industrial Designers and as I pointed out, included in there are graphic designers, communications designers, interior designers and industrial designers.

MR. GREEN: Does a person have to be a member of a statutory association to belong to your organization?

MR. ZAIDMAN: No, sir. He has to have proved to the satisfaction of members that already are members that he has the competence to practise in the field he says he practises in.

MR. GREEN: There is nothing that your association can do to prevent me from running around, as inept and as incompetent as I may be, saying that I am an industrial designer, hire me?

MR. ZAIDMAN: No, there's nothing we can do to prevent that.

MR. GREEN: And if there is somebody silly enough to hire me and I do the work and they are silly enough to pay me for it, there is nothing that can happen to me?

MR. ZAIDMAN: Well, there's things that can happen to you.

MR. GREEN: They could sue me.

MR. ZAIDMAN: Yes, that's right.

MR. GREEN: Just normal civil remedies?

MR. ZAIDMAN: That's right.

MR. GREEN: Now, I would assume, although I'm not certain, that if we go ahead with this Interior Designers Association of Manitoba Act, that it may, despite your best intentions, require you to come next year and say we want an Industrial Designers?

MR. ZAIDMAN: No, and that's the reason for the presentation in the form that we have given it to you. You will note in the first page after our preamble that the opposition to this Act is done on the basis of fundamentals. In other words, we were invited by the IDIM to make suggestions for amendments and our members felt that doing this would simply lend credibility to an Act that they did not agree with at all. They do not agree that any legislative controls should be applied to a creative profession.

MR. GREEN: I appreciate entirely what you are saying and I am saying to you that if we don't yield to your very profound objection, that five years from now, or some years from now, because everybody is being registered and held out as registered, etc., that in order to survive, you may find yourself forced, not through principle but through survival, to say hey, the only we can survive is if we get something like this too.

MR. ZAIDMAN: I would tell you that if the association that I belong to ever did that, that I would stand here and do the same thing that I am doing now.

MR. GREEN: I believe you entirely; I'm not challenging that at all. I am saying that that is a danger that we could bring upon ourselves by going with this type of legislation, that we will force other people to suddenly feel that they have to do the same. Not you . . .

MR. ZAIDMAN: I don't know that you would force other people to do the same. It has to be, I guess, the will of the organization to want to do so and the people within it. I don't know how to answer you in any other way.

MR. GREEN: Thank you, Mr. Zaidman. I just want to make a very short comment, that I was beginning to think that I was crazy but now I find at least there are two of us.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Zaidman, it's a very extensive presentation you have made and all of it relates to the desire by this group to take two names, two words, because they are not names — I suppose they are generic descriptions of something — the two words "interior designer" make it very exclusive. I note that you do use the word designer and they want to deny you the right to use the word designer with the word interior.

What I am getting at, it seems to me that to some extent the opinion you have attached, which I have just scanned, goes beyond what is, not the intent but the effect of this bill. We have already talked a good deal about exclusivity of practice. They are not saying that they want to deny anybody the right to sell services that they sell but they want to take those two words and make them their own and not yours.

It occurs to me that this is asking a great deal, but suppose they had the same bill as it is and they said, instead of the words "interior design" they would say we want to be called members of the — What did you say? IDIM or something like that. Then that would sort of remove your objection I think.

MR. ZAIDMAN: It would pretty well substantially remove what we object to.

MR. CHERNIACK: Because I looked in the yellow pages of the phone book and I saw interior designers and there were a great many of them who obviously were not members of this group entirely and I looked and I found interior decorators and they are painters. It seems to me that what they are asking for is powers to exclude members and powers to discipline members but, in the end, they want to take those words "interior design" and make them exclusively theirs. That is really your objection I think.

MR. ZAIDMAN: Yes, but it occurs the other way around. On face it appears only as an Act that will set apart two phrases. In effect what it does is begin to regulate the profession and that's where our opposition stems.

MR. CHERNIACK: I assume what they would next do is say only interior designers can do the job that you the consumer wants done.

MR. ZAIDMAN: Well that's the implication of what we've said.

MR. CHERNIACK: But they could do that anyway, all they have to do is designate themselves some other way, like IDIM, and I'm assuming that's not . . .

MR. ZAIDMAN: What you are saying, for example, is if they carved out the term registered interior designer as opposed to just interior designer.

MR. CHERNIACK: Frankly I don't like their using the words interior designer because I say they are generic names.

MR. ZAIDMAN: I can't comment other than to say that was the basis for the beginning of the opposition in our group of people and it remains the general basis for opposition.

MR. CHERNIACK: So that, from your standpoint, if they had a name that was non-descriptive of the work they do, then I assume you would grant them their right to have a club and exclude members that way.

MR. ZAIDMAN: The Act is patterned after several of the ones we've heard in the past couple of days. It has really incredible powers in punishment, both economically and in a long-term sense for a person's career.

MR. CHERNIACK: The dilemma that I see is that we have talked about chartered accountants and they seem to want the same powers that the interior designers want and then we saw the respiratory technologists and they want to cut off any other person from doing that kind of work and that's a dilemma, but that's apparently what you fear; it's the encroachment and setting themselves up as being superior to your group. Do you the same work as industrial design?

MR. ZAIDMAN: Certain of our members do some interior design work, and I will take the pains to point out that it's not because certain of our members do interior design work that we have undertaken the opposition; it is because there is the ability under this Act for them to, in some way expand by-laws to include many different kinds of work that are now not considered interior design work. Now I have to say also, as I noted in what I was saying, that within the past 24 hours the IDIM have made really substantive amendments that I am aware of, or suggested that they could make amendments to this, and I think that their speakers after me will tend to diffuse or at least answer some of the opposition that we have provided to it, so you should hear that. —(Interjection)— Well I think that their legal counsel is here.

MR. CHAIRMAN: Any further questions to Mr. Zaidman? Seeing none, thank you, sir.

Mr. Abe Anhang. I also have Michael Cox, Margaret Stinson, and Rodney — is it Spring? Are you people going to make individual representation or a group representation? Mr. Anhang can you clarify that for us?

MR. ABE ANHANG: Yes, we were going to bring the entire association to speak this evening, 150 strong — a little joke — but in truth we are only going to restrict ourselves to Margaret Stinson, the past president, and myself. The other group are here, some four or five others, but they won't be participating at this time.

MR. CHAIRMAN: Okay, please proceed.

MS. MARGARET STINSON: My name is Margaret Stinson. I am the past president of the Interior Designers' Institute and I am chairman of our legislative committee, and I would like to make some general remarks without addressing, in particular, anything that Mr. Zaidman has said at this point.

Now Interior Design is a relatively young profession. The professional association in this province, the IDIM, was only formed 27 years ago, and I think there was about 15 people at that time, and there was The Interior Designers' Act in 1954 which did very little more than incorporate us.

Now since then we have grown to include about 150 members who do less residential than large scale commercial and industrial work. The growth in the profession is due to increased public awareness of the benefits of good design and the growth of the service sector of our economy over the other sectors. Now we are very pleased with the growth but it has caused problems for us and we have tried to cope with them and we feel we have not been successful in coping with them with the means at our hand.

The problems. Persons who are not qualified can hold themselves out as interior designers in the hope of financial gain and at present they are perfectly within their rights in so doing. The result is growing potential for incompetent service to unsuspecting clients. The public has no means of making a distinction now. The onus is on the potential client to investigate very carefully before he hires which, of course, a sophisticated client would do. However, many of our clients are first-time users, homemakers, small business operators, that type of thing, and not all of them are aware by any means that it is a buyer beware situation.

Another kind of problem exists where a client makes the unpleasant discovery, while he is paying

for a design service, that his designer is also collecting hidden commissions from suppliers to the project. Now this is perfectly legal too. We do not believe it is ethical however and the public doesn't seem to believe it is ethical either; we get complaints about it. Yesterday we had another complaint about people asking if this kind of practise was condoned by us.

We have used all of the means at our disposal, we believe, to advise the public that really the only safeguard they have now is to hire one of our members to be sure of getting a qualified person. To inform the public properly at present we think would take an advertising campaign on a scale that we can't afford.

On the ethical problem the IDIM can't even assure the public of the ethics of its own members now because if a member is reprimanded he can just quit to avoid changing his ways. We believe that the solution to these problems lies in our proposed new Interior Designers' Act. This Act will require that any person claiming to be an interior designer be qualified, be a member of the association and adhere to a code of ethics. I would note that to be qualified requires four years of interior design education, plus two years experience, or some equivalent combination of less education and more experience. While most of our members are U of M Interior Design graduates, we also have members who qualified via the extensive experience route and we will be continuing to consider such candidates.

Now we are asking, not for practice legislation but for use of the title, interior designer. We feel that this will not interfere with many other people and firms who offer services or supply goods related somehow to the design of interiors. We have no wish to interfere or hamper them in any way. We do wish to make it possible for the public to make a distinction between an interior designer who is qualified and a person who is passing off as such.

Now our Act also provides for the discipline of members who are found guilty of professional misconduct but the rights of the individual and the protection of the public have been very carefully considered through a system of checks and balances in our inquiry and discipline process. The individual member or complainant has the right of public hearing and the right of appeal. The public is represented on both the Complaints Committee and the Discipline Committee.

Now I realize that in asking for this legislation we are asking for power that we do not now have and that this entails responsibility. May I assure you that we would take this responsibility very seriously; we believe we are capable of handling it.

Thank you, Mr. Chairman, that's all I have to say.

MR. CHAIRMAN: Mr. Anhang do you have some comments to add to Margaret Stinson's?

MR. ANHANG: Yes, if I may, Mr. Chairman, and members of the committee. I have been sitting here for two evenings, Mr. Chairman, listening to the various arguments on fundamentals. We have been listening to seven other professional organizations, some of them asking for legislation for the first time, others asking for basic changes and amendments to existing legislation.

The fundamental question, Mr. Chairman, is whether or not interior design, which has been recognized as a profession for in excess of 50 years, should finally — and they have 150 registered members in this province, and they have an entire faculty at the University and you support that — whether they should finally be given the exclusivity — yes, that's the word, exclusivity — the right. In Medical School they put out medical doctors; the Law Schools put out lawyers; the Dentistry School puts out dentists; and I'm suggesting that the Interior Design School should finally be allowed to put out interior designers and that they should be given the exclusive right that they should be the only ones that can call themselves interior designers; otherwise why bother, why bother indeed.

One of the members of the committee, Mr. Chairman, touched on a point which is very very important. One need not go very far but to look in the yellow pages under Interior Design; what do we find? We find a gentleman who is in the sandblasting business. He calls himself an interior designer We find a number of florist shops; they are interior designers, in a manner of speaking I guess they are. We find a lot of painters. I guess they feel that passing off as an interior designer may get them an extra job or what have you; charge a higher fee. We have a large number of people in the community today who are passing themselves off and yet, side by side, Mr. Chairman, with those people we have a group who have gone to and have taken the trouble to learn a specialized field of knowledge; four years it takes and two years of apprenticeship, six full full years; and we have one competing with the other.

I am suggesting to you, Mr. Chairman, it's time that we recognized that interior designers should not be second class, third class, four class. Lawyers are called lawyers when they come from the Law School; dentists are called dentists when they come from the Dentistry School, etc., etc; why not interior designers from Interior Design School?

Even having said that, Mr. Chairman, we have, I believe, one of the most extensive grandfather clauses that one can find in legislation. It is not only retroactive, it's post active. If someone starts today in the interior design field, not having gone to school, and practises extensively for the next four or five or six years and comes in to ask to be approved and registered as an interior designer, he can be registered. It is not as if it's cut off in 1981 as many grandfather clauses are designed to do at a transitional period. We are saying that you can become a registered interior designer by experience, whether that happened prior to 1981 or after 1981.

Now, Mr. Chairman, in a way I am a little sorry that the previous speakers comments about artistic professions and creative professions wasn't made when the architects were here and perhaps some of the other gentlemen in the medical profession.

I had always believed, Mr. Chairman, that in most professions there's an opportunity to be creative. There's the nuts and bolts of it and then there's people who work on the creative side of it as well. I daresay even lawyers can be creative. — (Interjection)— Speak for yourself. What my point is, Mr. Chairman, is that I don't believe that just because one deals in the design field one can suddenly say, gee you're dealing in an artistic area, therefore you shouldn't legislate. I'm suggesting to you that in every profession there's an art — the art

of medicine; there is the art of law; chartered accountancy, some of them are very very specialized areas — it's probably an art. I think every profession is an art form to some degree. Why the industrial designers or anyone else should suddenly say that this is an art form and stay away. I really believe that the distinction is probably ill-founded.

Now, Mr. Chairman, Margaret Stinson has indicated to you the frustration that the IDIM has had in the last several years, dealing with discipline. Now there are some bad apples in the barrel and there is a practice known as kickbacks and kickbacks operate this way. If you hire a person to do interior design work, they may not disclose to you that when they go down to the rug manufacturer or the distributor, they will get a kickback for having designated that particular manufacturer's rug and that's reprehensible. When it was brought forward as an item of ethics, the member decided that they could resign; they could resign with impunity because they didn't have to join in the first place.

Now these are the kind of problems that they are running into and the question basically is, if there's going to be a governing body, who's going to be the governing body? There are abuses; who's going to regulate this body? Now if the government is prepared perhaps the way they regulate journeymen, perhaps that's one way but as a profession, Mr. Chairman, I'm suggesting that it's more appropriate that it be a self-governing body and that they be given the right to set the admissions; to set the standards; and to discipline. Most significantly, Mr. Chairman, some 25 sections of this bill of only 46 sections, deals with the question of discipline. How do you increase, elevate the standards of people who are practising in the field? This is really what we're driving at. How do we regulate it? Because there is no regulation today.

The IDIM is the creature of a private Act that was passed in 1957. It is not compulsory and a person who does not wish to join doesn't have to join. A person can hold himself out as an interior designer in this province, whether or not he's taken the formal schooling; whether he belongs to the IBIM; or whether he wants to just on a whim because he believes it will give him an advantage and call himself an interior designer. In other words it's totally unregulated.

Now, Mr. Chairman, the ACID representative had made reference to our having approached him; to that we plead guilty. Yes we did approach him as we approached most other organizations whom we felt might have opposition. The reason for that, Mr. Chairman, was because we wanted to legitimately hear what they had to say. We approached the architects. You see this bill was put forward a year ago and they had heard about it and they had seen it in the earlier drafts and they'd asked us to reconsider a number of the articles and we did and the architects, finally after having seen the final draft said, thank you for providing us with a copy of your most recent draft. Our legal committee and our solicitor have now reviewed the Act and I'll be able to indicate to you the position of the Manitoba Association of Architects.

We are not opposed to the statute, recognizing that the intent of it is to define and protect in name, your association and members and the professional standards required for membership. It goes on, Mr. Chairman, to make two suggested changes in the draft which we made and it was the architects who I believe totalled some 200 members, they decided that they would back this particular Act.

The Manitoba Design Institute, Ian Campbell writes to the president of the IDIM: "Thank you for your letter with the attached proposed legislation. Our Board of Directors have discussed your submission and we support the basic principle and intent of the proposed legislation which is clearly to establish the designation in interior designers. We also wish to recommend that your association provide through the by-laws and regulations, a process or method whereby a creditation of an interior designer's professional status is determined".

In other words they are concerned about the same matter and they are hiring these interior designers and they would like to know, how do you determine who is an interior designer? You look in the yellow pages, how do you know?

Finally, Mr. Chairman, the gentleman who's been practising in this community as an interior designer for some 25 years, Leslie Girling, he's a gentleman who came by his particular registration by experience rather than academic qualifications. He says, "Thank you for the information on the amendments made to the proposed bill to license interior designers. The changes leave me feeling much more comfortable with the bill and now I feel I can give it my total support", signed Leslie Girling.

Now, Mr. Chairman, finally I was pleased to hear Mr. Zaidman indicate that his members were polled today. My understanding is that of 32 members, 11 are still opposed in principle but that the balance are not fundamentally against. Some are for it, some of them are standing neutral in the position and some were unavailable.

So basically it would come down to an organization of whom 11, which is less than a majority, are fundamentally opposed. Now for those 11 and for others, we have suggested that several amendments which I believe will go a long way to satisfy a number of their concerns and they deal with the following three issues, Mr. Chairman.

First of all there's the question of lay representation. The concern of the ACID group is that under the by-laws, the council has the right to expand the definition of what an interior designer does. We are suggesting, Mr. Chairman, that we inject into the council 25 percent lay people; 25 percent of the council and the council is anywhere from 6 to 21 people; 25 percent of the council would be lay members and it's that same council who would have to be consulted and they would be making the decisions as to the definition. That would be as part of Article numbered 3(2). We would simply add a phrase in there that there would be 25 percent of whom would be appointed perhaps by the Minister of Consumer and Corporate Affairs or what have you.

Secondly, Mr. Chairman, the concern was expressed that persons from other provinces who are qualified there, coming to Manitoba, like Mr. Lacabossier would have the right to practise here. We would say that any other province that is a signatory to the Interior Designers Institute of Canada, IDC, which I believe constitutes all the

provinces of Canada, then they would have the right to automatically be members of the institute here. An Ontario member would be recognized here; a member from Maritimes, Newfoundland wouldn't be recognized here.

The third item, Mr. Chairman, deals with the question of liability. In the Architects Bill this evening, Bill 22, there's a section 10 that deals with the establishment of a Claims Committee and we would be prepared to take that section 10 verbatim and inject it into The Interior Designers Act. That's similar, Mr. Chairman, to the Law Society Claims Fund which provides indemnification for members of the public who are damaged by members of the association through their negligence or fraud. Now that extends itself as well to an insurance fund which may be established at some future date. So there's a claims fund and an insurance fund, both under section 10 of The Architects Act.

Those are the three fundamental amendments, Mr. Chairman, that we have discussed with the ACID, which we are prepared to inject into the legislation which we are proposing before you.

MR. CHAIRMAN: Would you Mr. Anhang, permit questions? Mr. Green.

MR. GREEN: Mr. Anhang, the people who graduate from interior design — I presume they're given some type of degree. What is the designation? Bachelor of Interior Design?

MR. ANHANG: BID.

MR. GREEN: I would also presume that only those people can properly carry that designation, that university designation by their name, the same way as any other university designation it would be fraudulent for me to say, Sid Green, BID, if I was trying to sell interior design work and I didn't graduate. So they do have the protection of their degree which they can use as a designation.

MR. ANHANG: It's a very minute protection I believe, Mr. Chairman. Lawyers have LLb and yet we use it so rarely. We call ourselves lawyers.

MR. GREEN: Mr. Anhang, I really wanted to know whether I'm correct in assuming they have the designation, BID, as a protection as small as it may be.

MS. MARGARET STINSON: We have members who do not have a BID.

MR. GREEN: Yes, but those who do have the BID do have the protection of the fact that other people cannot hold themselves out as having obtained that training.

MR. ANHANG: Yes, Mr. Chairman, in the same way that Mr. Green had to ask us what was the name of the degree. Unfortunately 98 percent of the public has to also ask that. They are not aware that BID stands for Bachelor of Interior Design.

MR. GREEN: I appreciate that and I'm not at the moment saying that it's a very substantial protection — I didn't argue that — I'm merely asking whether that is the case.

Now you see I have a problem. You've indicated all the others that have got these things and I would like to figure out a way of undoing the ones that have already got them and you're adding on another one.

You are aware that a person goes to university and can become a Bachelor of Music. That is correct, is it not? You're aware of that?

MR. ANHANG: Yes, but I haven't seen any Bachelors of Music opening up a store and I don't see in the yellow pages other people wanting to pass off their Bachelors of Music.

MR. GREEN: But you do know that people run around calling themselves musicians.

MR. ANHANG: Yes.

MR. GREEN: And you wouldn't want me to pass a law saying that a person who didn't get a Bachelor of Music should be prevented from calling himself a musician.

MR. ANHANG: I think there's a number of differences. First of all a musician can be one who plays an instrument; it can be a teacher; it can be a variety of things.

MR. GREEN: Yes, but none of them thus far — and I presume I shouldn't count my professions before they are legislated — next year I may be getting people coming in here saying that people who don't go through our training and belong to our organization, which is The Musicians Union — and they would never do it because they don't have that many bachelors — but can call themselves musicians. You wouldn't suggest that I pass a law preventing a person from calling himself a musician?

MS. STINSON: A musician's competence is displayed in about the first five minutes of his performance. An interior designer . . .

MR. GREEN: That is a matter of considerable taste, that is a fact, a very very considerable taste as to whether the competence is such. As a matter of fact, there have been musicians who have thought to have been incompetent, who have gone on to be world and renowned musicians without the training. — (Interjection)— No, no recognized by everybody. Some with no voice training at all have become great great artists.

There is also a degree in Fine Arts, is that not right? Bachelor of Fine Arts. I mean, could I be expected to pass a law saying that nobody can call himself a fine artist unless they get that and yet the university is graduating them and we're putting them in the public and they're painting and they've got the training and yet thus far — I'm not saying it won't happen — I've been asked to legislate that nobody can call themself an artist or a fine artist, except that they belong to the Institute of Fine Art. But isn't that something like what is being requested at the present time? I mean, to use your argument that they went to school, that we paid for the university, that they got their training, that they got their degree, and then we unleash on the public people who paint, who have never done it and somehow whose work is considered to be superior to those who have gone to school.

MR. ANHANG: My response to that, Mr. Green, is simply that the moment you license one you do open the door; there's no question of that. Why, indeed, should everyone who feels they are competent in the law not be entitled to call themselves a lawyer; why indeed?

MR. GREEN: Well, perhaps we should be sitting in committee with all the professional list deciding which one we are going to strike off the list, rather than which one we are going to add on.

I want the Institute to know that I have sympathy for their position but Mrs. Stinson has said that they have grown, that they are doing very well, that they are prospering. Somehow the public has been able to ascertain, for the most part, that these are the people to go to, without my help or the help of the Legislature.

MR. ANHANG: Mr. Chairman, I think that the fact they have done well speaks well for them. I think the question is how much better could they have done in protecting the public had they had this particular specific.

MR. GREEN: Would it surprise you Mrs. Stinson and you, Mr. Anhang, that I have been in politics for 18 years and in all of those 18 years I have spoken to thousands and thousands of people and not one of them has said protect me from those non-qualified interior designers? That is a fact.

MR. CHAIRMAN: Mr. Cherniack, did you have some questions?

MR. CHERNIACK: I want to get clarification of the type of needs a person has when that person decides he needs an interior designer. What does he expect to get when he employs the services of an interior designer.

MRS. STINSON: He expects to employ someone who has a knowledge of interior construction, some attendant knowledge of building codes; he expects to employ someone who has aesthetic ability; who has a technical knowledge of products and finished; a knowledge of sources and the organizational ability to hang it all together and sensitivity, in the first place, I suppose, to find out what the client really does need.

MR. CHERNIACK: Would you say that every graduate from the Department of Interior Design has all those qualities, the taste, the knowledge, the complexity of the . . .

MRS. STINSON: I would feel fairly confident in saying yes.

MR. CHERNIACK: Are you saying that people have been poorly served by going to the yellow pages and picking somebody out of there?

MRS. STINSON: What we know of the problem exists largely from what we hear from people who are disgruntled. They come to us simply because we exist and they want to complain to somebody so they pick us to complain to.

MR. CHERNIACK: All right. What I really am thinking, and that came up in our discussion with Mr. Zaidman, is that what you are asking for is the control of the use of the title that describes your profession?

MRS. STINSON: That's right.

MR. CHERNIACK: That's all you're asking for?

MRS. STINSON: That's right.

MR. CHERNIACK: Since the words "interior design" have been used for many years by people other than your group, you are taking away from them an opportunity to use a descriptive phrase that they have been using all along. I want to ask whether the consequence of legislation that you want would not be just as well served if you restricted the use of the title, Member IDIM, or Member, Interior Design Institute? That would be pretty clear. People would know that they are members of the Institute and then, just like the chartered accountants, you would be able to build the prestigious name that you want to have and yet you wouldn't be taking words which I term generic and taking them and capitalizing them and owning them. Under those circumstances, would there be any right by anybody else to object to your taking the name, "Member, Interior Design Institute"?

MRS. STINSON: I think we have that right now, do we not?

MR. CHERNIACK: Well, you may have . . . and what's wrong with it?

MRS. STINSON: It hasn't done too much good.

MR. CHERNIACK: For whom?

MRS. STINSON: For the people who seem to have problems.

MR. CHERNIACK: Well, but you say you hear from people who have problems. We hear, and Mr. Anhang hears, from people who have problems with lawyers who are licensed to practice. Everybody knows about that; there are problems, even with other professions. I am just suggesting that the power you are asking for is to take away from a group of people the use of words and you say it's not helping. You say it will help if you say that nobody who is not a member of our institution may call himself an interior designer, therefore they won't be used by the public. That's what you are saying, that the public will be warned they are not interior designers.

MRS. STINSON: We feel that this would be a very good thing if only people who are qualified can call themselves interior designers. Anyone who is qualified can come and join.

MR. CHERNIACK: Well, anybody that you accept as being qualified. But I am still saying — I won't pursue the argument because I think it's clear — I am suggesting that you should not have a problem if you were asking the right all the powers of control of your membership and restrict anybody else from using the designation.

MRS. STINSON: We are the only profession that doesn't. I don't understand why you see interior design as having a problem.

MR. CHERNIACK: Because there are many people who practise interior design today, legally, lawfully, and who are interior designers in the eyes of a certain public and you're taking it away from them. That's why I am opposing it.

MRS. STINSON: No, we are inviting them to come and join.

MR. CHERNIACK: I'm sorry, you may say we will now take in everybody, everybody who calls himself an interior designer, regardless of his qualifications, we are going . . .

MRS. STINSON: No, everyone who is qualified is invited to join.

MRS. STINSON: So your qualification may be a graduate of the department. It may be that we will test their tastes and if they have a good sense of color or whatever, we will take them and, if they don't, we won't take them. So you are taking away from some that opportunity to call themselves an interior designer.

MRS. STINSON: I think the only people who can possibly lose are people who are not qualified and who are passing themselves off as interior designers.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Mr. Kovnats.

MR. KOVNATS: I would like to direct my questions to Abe Anhang, if I may. I feel I can call him Abe, considering I'm a little taller than he, I know a little bit more about football refereeing than he and I have known him for a lot of years.

I would like to ask Mr. Anhang, considering you mentioned a little earlier a chap by the name of Girling, who has probably been in the business for somewhere in the area of 25 years. Let's use him for an example. How would you identify this man as being qualified to call himself an interior designer, which I would have very strong feelings after 25 years that he would be just as qualified as somebody who has got two year's experience and four years of university. To what degree would a man like that be considered being an interior designer?

MR. ANHANG: Well, first of all, Mr. Chairman, through you, I think the work that he does, and has done, speaks for itself and no one could possibly go down to an office that he has designed and say that's not the work of an interior designer. Now, it doesn't take 25 years to become an interior designer through experience. I would think that a person like that could be qualified after three, four or five years. That's how he came to be an interior designer, by having done it and done it well.

MR. KOVNATS: Just to get a little bit further here, Mr. Anhang, you suggested, "I would think that he would." I would like to have something a little bit more concrete before I could support such a thing.

MR. ANHANG: To indicate that in the process of granting registration for experience, under the grandfather clause, there has to be people who are going to sit and be the judges. Mr. Girling, by virtue of his own experience, will be one of those people. That's how highly we regard his particular capability. He will sit in judgment on the others who will be coming in; he'll be one of the three or four.

There was no question when he put in his application, in fact, the meeting took less than five minutes because the people who were sitting, the IDIM Institute, knew so well of his work in the city that they passed it through in less than five minutes.

MR. KOVNATS: Mr. Anhang, I would think that we would have to have something more concrete than just that special feeling towards this particular person, or others like him. There would have to be something more specified as to how they qualify.

MR. ANHANG: We have attempted to specify the way in which he would qualify. I can just give you that wording if you wish. Mr. Chairman, these regulations, as you know, accompanied the draft that we sent intothe Legislative Counsel. Dealing with the question of Registration of Interior Designers by virtue of experience or equivalent education only, it reads, "Any person who furnishes such evidence to the council as it may require that he or she has acquired an education substantially equivalent to the program completed by the interior design graduates, or has by virtue of experience attained a level of competence as an interior designer, upon payment of a fee is accepted," and that's how broad it is. Now, it doesn't say you have to write an exam, because you don't; it doesn't say that you have to have five projects which are inspected, because that may be more than enough. We haven't attempted to restrict the exact examination or the way in which it would be done.

It does speak though, of "by virtue of experience attained a level of competence." That's the wording.

MR. KOVNATS: Just one last remark. It seems to me that I did receive some correspondence from Mr. Girling previously and he wasn't in support of all of this. The only thing going through my mind at this point is, you know, why is he in such complete support now? Because he's been accepted? That's the only thing that's going through my mind and I don't think you can answer it, Abe, I'm just suggesting that there is something that is bothering me in this regard.

Thank you.

MR. CHAIRMAN: Are there any further questions? Seeing none, thank you very kindly.

Are there any other persons present tonight who wish to make representation regarding Bill 47, The Interior Designers Association of Manitoba Act?

Seeing none, Mr. Downey, did you say to me earlier that there is a person who wishes to make representation regarding Bill 19, An Act to amend The Veterinarian Medical Act?

MR. JAMES E. DOWNEY: That's correct, Mr. Chairman, there's an individual here that the members opposite may want to question on Bill 19, and he is here.

MR. CHAIRMAN: He's from out of town, I understand. Would the person come forward to the lectern and identify yourself, please.

DR. BLAINE THOMPSON: I'm Dr. Blaine Thompson. I'm representing the Manitoba Veterinary Medical Association. My capacity is chairman of the Legislative Committee. I, off the start, won't express my appreciation for coming out to another meeting. I went through all this last week in the Agricultural Committee and in that committee I gave a brief which responded to Mr. Uruski's questions and comments that arose in the Debates and Proceedings on April 9th. I went through that, as I say, in brief form and answered questions throughout. I have been led to believe there's been no other concerns that had arisen from the amendments and I'll stand pat at that. I'll wait and entertain any questions and concerns that may come from another area.

MR. CHAIRMAN: Do members of the committee have any questions for Dr. Thompson in respect to the bill? We spent some time last evening on it and seemed to have run into some stumbling blocks.

Mr. Cherniack.

MR. CHERNIACK: Now that Dr. Thompson is here I'd be glad to ask him whether having . . . I don't know when you arrived, Doctor, but I assume you've been here for awhile this evening. You've heard some discussion relating to lay membership on the board. Before we go into that could you just clarify the extent to which your practices as a group are available to individuals or through any sort of institutionalized way like, say, a nurse operates out of hospitals or provides services to individuals. Is the work you do salaried or is it fee-for-service and is it to individual farmers or is it done through some clinic? Could you clarify, please?

DR. THOMPSON: Yes. Our membership represents salaried practitioners who may be employed by Government but also includes privately employed practitioners who serve clients of every degree whether it be pet practise, large animals, beef, swine and so on. As I say though again, our membership though comprises salaried and fee schedule practitioners.

MR. CHERNIACK: Well you heard the fact that just about every one of the professional bodies that have come before this committee have either volunteered or accepted the suggestion that there be lay membership on the board to represent the public. I don't see any provision for it here. Is there any provision in your Act itself? This is an amending Act.

DR. THOMPSON: Yes, I believe there is stipulation set out in our board which designates that two lay members are appointed for 3-year terms. I believe that you have not discerned a difference between council and board.

MR. CHERNIACK: You're quite right, we didn't when we first looked at it, but it was pointed out to us and there is the distinction, you have two separate bodies. As I recall it now — is it the council that is made up entirely of elected members and the board which is appointed?

DR. THOMPSON: Yes, that is true.

MR. CHERNIACK: And the board is appointed, I believe, from a list of 12 people submitted by the councils?

DR. THOMPSON: That is the way it originated. It is maintained by a list of 2 people supplied by the association and the Minister chooses from one of those. Now, this is to replace people that are ending their terms. You've read just the first part of "to establish the board". It was set out that 12 people would be put up for an election or for a promotion to the board.

MR. CHERNIACK: As I understand it, the provision is that the association submits 12 names to the Minister who then recommends 6 of those names to the Lieutenant-Governor-in-Council. So that in the end, as I read it, all of the members of the board are selected from a list submitted by the association. Is that right or not?

DR. THOMPSON: That's correct.

MR. CHERNIACK: That is correct. And the lay people are also people that are selected by you? Is that right?

DR. THOMPSON: That's correct.

MR. CHERNIACK: On what basis then would you select these lay people, since their role is to represent the public, the consuming public with whom you deal, what criteria would you set for your selection?

DR. THOMPSON: As a rule these people are generally involved in the field of agriculture. People that are sometimes experts in certain fields of agriculture; they may be farmers; they may be university professors. Generally, someone that's interested and has a vested interest sometimes in the agricultural industry. I can't really give you anymore explanation than that.

MR. CHERNIACK: What are the respective roles of the board and of the council?

DR. THOMPSON: The board and the council?

MR. CHERNIACK: Yes.

DR. THOMPSON: The council is the, I say again, is the elected body of the association. It deals with the internal workings, sets by-laws of the association. It is not responsible for enquiries against a member; it is just a transfer house for complaints. The council really accepts complaints; is the receiving house for complaints. The board, on the other hand, is really the judicial body of the association and it's somewhat removed from the overall workings of the association.

MR. CHERNIACK: Well, Dr. Thompson, the way I read this bill the board is not just judicial. The board is investigated and the board prosecutes and the board conducts the inquiry and makes the decisions. I think that's where we bogged down the other night

where it was felt by some that the board did not have the objectivity of making decisions when indeed what was proposed was that it would conduct the investigation and the whole process, and it would thus be the investigator, the prosecutor and the judicial body all at the same time. I think that's where we bogged down and you may be aware that there are procedures outlined in other legislation already passed and proposed that separates these functions to make sure that, in the end, the body that makes the decision as to complaints is not part of the body which has investigated and prosecuted. Do you recognize the advantages of that other system as compared with what you've proposed?

DR. THOMPSON: In our opinion, judicial refers to all capacities of investigating, implementing sentences or fines, carrying out the whole process of a complaint procedure. How many people do you suggest the board should consist of?

MR. CHERNIACK: No, I am suggesting that it might make more sense for the council to receive the complaint, do the investigating and then submit its evidence, its prosecution, to the board for the board to hear and say, yes, you're being fair, you're not being fair, to the member and that would remove the board from having to find its own investigative arm as being correct. That would create a judicial function that is removed from investigation. You know, the Attorney-General has the police investigate something and then he prosecutes and he appears before a court which has not any preconceived ideas and that is the separation of investigation and prosecution. What we should be concerned about here is for the protection of the public and the protection of the individual and that could be against the investigating body as well. That's my suggestion.

DR. THOMPSON: Okay, I'll, as an example, give an illustration of say a complaint. It comes into our Chairman of our Ethics and Grievance Committee, that is within the council; he receives any complaints from individuals; we discuss that at our council meeting, and authorize him to make correspondence, if necessary, to the member who the complaint is made against and to the person lodging the complaint. Oftentimes these things are settled or resolved without having to take any further action with the board. As I say, there is a certain amount of buffering ability within the council itself to weed out and act on some of these complaints themselves.

MR. CHERNIACK: The board or the council?

DR. THOMPSON: The council. Then, at that stage, if it's agreed in council, all information gets passed on to the board; it gets completely taken out of our hands.

MR. CHERNIACK: Doctor, what you are describing is not what I read the Legislation to say. As I read the Legislation it say that, and I read it, I presume you have it, ''14(l) any person may complain in writing to the board.'' That's not to the council, to the board, ''concerning conduct or practise of a registered member''. I assume that means any member can complain about another member or any person from the consuming public can complain. For instance, the board may proceed to conduct an investigation and if it is satisfied the complaint is frivolous it shall dismiss the complaint.

Where the board receives a complaint, which it does not dismiss, it may proceed to hold an inquiry. Where the board proceeds to conduct an inquiry it shall give the registered member notice and then the hearing is held. So, what you've described as being the role of the council is in your Legislation given to the board, and it seems to me, if what you described is desirable — and it sounds to me like it is — then it's the council that should receive the complaint; it's the council that should conduct the investigation; it's the council that should be able to dismiss the complaint as frivolous or vexatious, and it's also the council that might be able to settle the matter, you know, amongst the members themselves. But then, if it decides to prosecute, then it should go before the board and, therefore, the board now sits, not having any preconceived ideas, not knowing what the complaint is and then they can be objective. And, if that's the way it is then it seems to me that's not the way the Legislation is.

DR. THOMPSON: The board has no reachable arm to the public. When complaints come in where do they come to? They have to come through to the association, to our Ethics and Grievance Committee.

MR. CHERNIACK: But that's not what it says, Dr. Thompson. It says a person may complain to the board. Now, I agree with you, what you have described I think is good. They go to the council; the council investigates; the council dismisses it as vexatious, if it is; the council then decides to prosecute and then it goes to the board. Then I can see why you have a board separate from the council. I'm not sure I agree that the board should be appointed by the council, which it is, or selected by the council. But that's not what it says here. It says a person may complain to the board. It seems to me that's where we bog down and I thought that Mr. Ferguson was going to discuss with you making changes that would carry out what appeared to be desirable.

MR. CHAIRMAN: Any further questions to Dr. Thompson?
Mr. Green.

MR. GREEN: Dr. Thompson, how many veterinary surgeons are there in the Province of Manitoba?

DR. THOMPSON: Approximately 175 or 178 members.

MR. GREEN: 178 members. My understanding is that, at one time, the province was the licenser, and the delicenser, of the veterinarians and, really, they asked you people to do this. Is that correct? Do you remember the history of that? Did the province used to license vets or suspend the licences of vets, that there was some provincial . . .

DR. THOMPSON: That may well be. The Veterinary Medical Act now has that function.

MR. GREEN: I appreciate it's now in this Act.

DR. THOMPSON: Yes.

MR. GREEN: I am really trying to find out whether you really regard this as something that you want very badly or whether you are doing the public a service by doing it? In other words, do you prefer it this way or would you prefer it was done by a licensing body of the government?

DR. THOMPSON: By a licensing body of who?

MR. GREEN: Of the government. Has that ever entered into you mind? I'm not trying to trick you, I'm trying to find out whether you regard this as a desirable thing or is it really a bother for you to administer these licences?

DR. THOMPSON: We think it's highly desirable.

MR. GREEN: You do regard it as a highly desirable thing that you do this licensing and discipline?

DR. THOMPSON: Yes, we do. Most associations would like to see new members coming in scrutinized under their own auspices.

MR. GREEN: That's fine.

DR. THOMPSON: I would like to see that happen and continue to happen.

MR. GREEN: I'm certainly not criticizing that, Dr. Thompson, and I really want you to be sure that I'm not arguing that it shouldn't be. I was trying to find out whether this particular association wanted it or whether it had it foisted on it. My impression is that at one time the province did it by themselves and really asked the veterinarians to take it over but, if that history is of no consequence, I really don't want to go any further on it.

I wanted to ask a question with regard to Section 14(7). Have you got your Act in front of you?

DR. THOMPSON: Yes.

MR. GREEN: Now, I suspect that this is drawn by lawyers and not by veterinarians and I'm not trying to ask you to comment on the legal language. I gather that you would like the right to suspend a veterinarian if he is operating in such a way that you know that people who are supposed to be served by them are going to be hurt; their animals are not going to be properly treated or they're not going to get value for their money. Is that fair?

DR. THOMPSON: That's true.

MR. GREEN: Because you have the right to suspend a member for what is called here, "has committed any act or omitted to do anything which, in the opinion of the board, constitutes unprofessional conduct." Now, that's pretty broad and I want to ask you whether you would regard that as giving you the right to suspend somebody for doing something which, in the eyes of your members, is immoral on the part of this person, which has nothing to do with veterinary practices? Let's say he got involved in an affair with somebody's wife or something, is that something you would want to suspend a vet for?

DR. THOMPSON: We are referring to unprofessional conduct within the context of veterinary medicine.

MR. GREEN: Okay. I certainly think that's what you want and I happen to agree very much with you. 14(7), if you'll just follow the wording of it, if it read as follows: "where after hearing evidence and submissions at an inquiry in respect of a registered member the board is satisfied that the registered member" — and now I'm going to depart from the text — "has conducted himself or herself in the practice of veterinary medicine in such a way as would constitute a continuing hazard or injustice to the consumers or potential consumers of veterinary medical services".

Do you think that would cover everything that's listed in there?

DR. THOMPSON: That, I think, is a referral that's more ambiguous than the ones that are written here, I believe.

MR. GREEN: Pardon me?

DR. THOMPSON: I believe that that statement is more ambiguous and harder to interpret than the one that is given here.

MR. GREEN: You think that that is more ambiguous? Well, I'll read you (d): "has committed any act or omitted to do anything which in the opinion of the board constitutes unprofessional conduct." So the opinion of the board as to what constitutes unprofessional conduct, according to the present Act, can mean anything in their opinion. I'm relying on their opinion?

DR. THOMPSON: That is true.

MR. GREEN: I have read you a statement which says that he has conducted himself or herself — and if that is ambiguous and you want to refer to the old style of legislation, I'll say — "conducted himself in the practise of veterinary medicine in such a way as would constitute a continuing hazard or injustice to the consumers of veterinary medical services". Would that not cover everything that you are listing here, but it would be specifically relating to the way in which he conducted veterinary medicine and would specifically imply that his continued practice would be a danger or an injustice to the consumers of his service? Would that be ambiguous to you?

DR. THOMPSON: Yes, it will. I'll read now what it states here in the amendment.

MR. GREEN: I haven't got the amendment, perhaps, I have read the amendment to 14(7), right. Go ahead.

DR. THOMPSON: "Where a member has committed any act or omitted to do anything which in the opinion of the board constitutes unprofessional conduct for a registered member or constitutes incompetence or gross negligence in the practice of veterinary medicine". I see nothing wrong with that.

MR. GREEN: I have suggested to you that "in the opinion of the board constitutes unprofessional conduct," I don't know what, in the opinion of your board, would constitute unprofessional conduct. I have no way of knowing what you would regard as unprofessional conduct but I do know that if I limit it

to conducting himself badly in the delivery of veterinary medical services, that that would be the limit of your authority. Would that be a problem for you?

DR. THOMPSON: It would for me personally. I'm not sure about the board.

MR. GREEN: Well, I'm sorry, Mr. Thompson, but I have to tell you, so that you can answer me, that I would be worried if I was a veterinarian and the board members didn't like me, to subject myself to the opinion of the board as to what constitutes unprofessional conduct, since that has never been defined. However, that's fine, you say that that would be a problem to you.

MR. CHAIRMAN: Dr. Thompson.

DR. THOMPSON: It's a judicial problem that the board has to deal with. They are registered members. They are registered members with two lay people on the board. Hopefully they have some concern for the public image and public safety.

MR. GREEN: Unfortunately, I have had experience with this type of thing and I have not seen it exercised in that way, as you suggest, but I tell you that we are also concerned. We are Members of the Legislature and we are sitting here giving you a power, which you say you think is right and I'm not arguing with that, to wipe out a man's professional career, and I think that for the sake of all of your members, I want to make sure that it's limited to a power to do so if he practises bad veterinary medicine, which is what we are protecting.

DR. THOMPSON: You are saying that that statement is better than the one that's written here?

MR. GREEN: It's clearer to me. You have a problem with it and I will have to respect your problem. To me it is clearer but I respect the fact that you have a problem with it.

Thank you.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, to Dr. Thompson, first let me say that we appreciate him returning to the committee to help clarify some of the questions that were raised the other evening, particularly on the issue of the complaints going directly to the board, as it is written here, versus the complaints going to your association or committee.

Could I ask you the question, is this a change — I don't have the old Act in front of me at this time — is this a change from the way in which it was prior to the writing of these amendments?

DR. THOMPSON: No, it's been conducted in that fashion since the creation of the board in 1974, I believe.

MR. DOWNEY: So really you are saying in practice, even though it is written this way, in practice the committee would take the complaint and deal with it internally and if it was not resolvable at that level, then it was referred to the board?

DR. THOMPSON: This is true.

MR. DOWNEY: Are you suggesting to us that you do not feel that it would be in the best interests of your membership to spell out in the Act, where it now says "board" to change that to your committee; you don't feel it would be necessary to make that change to clearly spell that out, as I understand what you are saying?

DR. THOMPSON: That's correct. The idea of processing some of these complaints initially is to save the board a certain amount of time and expense that's incurred in these complaints. Quite a few of them turn out to be a matter of misunderstandings, public relations problems, which are settled very quickly with a letter or a telephone call from a member of the association.

MR. CHAIRMAN: Mr. Downey, and to Dr. Thompson, could legal counsel perhaps assist us here.

Mr. Tallin.

MR. RAE TALLIN: This board is really a government board and it's assisted in all its transactions by the Attorney-General's department and the problem arose because of the way the complaints were coming into the board. This Act says "that any person may complain in writing to the board" and that's what starts the board's procedure. It does not eliminate the council from hearing complaints or anything they want about a person and then the council may make the complaint to the board if they choose. But as anybody who belongs to a professional associations well knows, it's very difficult to get people to put their complaints in writing and, as a matter of fact, the Law Society does most of the complaints on their own. This complaint here is like the charge under a Law Society Act. The charge is formulated by the Discipline Committee and that's all this was intended to do was so that the Board would know what the complaint was when it came in. The Council may still do some inquiries on its own in order to formulate a complaint that they want to put forward.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Suppose we ask Mr. Tallin. Mr. Tallin how do you interpret 14(2) "the Board may proceed to conduct an investigation".

MR. TALLIN: It does an investigation itself. Now that investigation may be only reading reports that other people have taken and deciding whether or not . . .

MR. CHERNIACK: No, you've got the judicial body making the investigation and deciding whether its frivolous or not.

MR. TALLIN: Yes.

MR. CHERNIACK: And if it's not frivolous then it proceeds to hold an inquiry.

MR. TALLIN: You're talking about the principle. I was talking about the question of the complaint. You

were saying that they couldn't make a complaint; they thought that there was some implication that people couldn't complain to the Council. They may still complain to the Council . . .

MR. CHERNIACK: Oh, as a matter of fact Dr. Thompson said they can't complain to the Board because they can't get to the Board. He said they're not available to the public, that it goes to the Council. I thought the sensible thing would be any person may complain in writing to the Council and then the Council should make the investigation, then the Council should send it to the Board for review.

MR. TALLIN: I think the intent of the government when they introduced this bill in 1974 was that the Board was supposed to be hearing complaints, either from the Council or from individuals if they weren't satisfied with what the Council did with them.

MR. CHERNIACK: Well by all means; by all means, I think that the Council or an individual should have a right to go to the Board, but that's not what it says here.

MR. TALLIN: That's right.

MR. CHERNIAK: Well I think it should.

MR. TALLIN: I was just saying though, that if you let the Council do the investigation they may decide not to do anything more with it.

MR. CHERNIACK: Well yes, but then I will come to that. I think the complainant should have a right to appeal it, just like in the other legislation we've been dealing with.

MR. TALLIN: I think in 1974, and again today, this year, what was being attempted was to make a simple process rather than a very complicated process and this was intended to be a very simple and cheap process because the government pays for this process.

MR. CHERNIACK: Where is that set up?

MR. TALLIN: In the Act. The cost of this Board is paid for by the government. It's a government Board.

MR. CHERNIACK: It's not a government Board. The government appoints them from a selective list.

MR. TALLIN: But nevertheless, the government takes responsibility for it because it pays all the costs of it.

MR. CHERNIACK: I guess, all right. Mr. Chairman, I don't want to belabour this.

MR. CHAIRMAN: No, Mr. Downey was questioning Dr. Thompson when Legal Council wanted to assist. Mr. Downey.

MR. DOWNEY: Just very brief. It appears as you've indicated Dr. Thompson that the process of a complaint has worked quite well the way it has been written. It would appear the way you have presented or have redrawn the amendments and presented them through the Member for Gladstone, that you would wish the Committee to proceed basically the way the Act is written and would be satisfied if we were to pass the amendments to the Act pretty much along the lines that are in the Act at the present time.

DR. THOMPSON: I do.

MR. DOWNEY: Thank you.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Firstly, I had raised the other day the thought that the Council should be elected all at the same time and for the same term, rather than half a Council in alternate years. My suggestion was that if the membership wants to change the Council it should have a right to do so, rather than only change half the Council. Does that appear to be unreasonable to you — my proposal?

DR. THOMPSON: Well that presents quite a few problems such as handing over power to another council. It's difficult enough with a small council of only six members and a presiding president. As is, when you change three members every year to maintain some continuity without having to stall procedures until a new council is indoctrinated into the system, we've split it up into alternating terms simply because of that reason in that, because it is a small Council it's much easier to carry on business through year to year. Often what happens is a president is elected — he has spent his two year term on and then is elected into the president position.

Now we find that's much better than, say, having to elect a president straight out from the members at large. I'd rather have it remain that way simply for continuity of the council.

MR. CHERNIACK: My next question. I'm looking at 14(22) which provides for a temporary suspension and I want to suggest that it may be just an oversight. Are you looking at it? "On receiving a copy of a conviction of a registered member for an offence for which the Board may cancel the registration; the board may suspend the member from practice". Which means really cutting him off work. He can no longer work, right? "And thereupon the registered member is suspended until the suspension is lifted, superseded or annulled by the board" I suggest it's an oversight; it should all say, "or the court", because the court should have the right to annul the suspension or lift the suspension. Is that not so? I mean you have an Appeal Court.

DR. THOMPSON: Yes, that's true, however the judge that resides over the appeal may simply confirm the order of the board.

MR. CHERNIACK: Of course.

DR. THOMPSON: In fact, in most cases that may occur.

MR. CHERNIACK: Yes.

DR. THOMPSON: Then why should the court have to suspend the order?

MR. CHERNIACK: It's the other way around Dr. Thompson. The Council has presumably suspended a member, suspended his membership, and then it goes to the court and, as you say, usually the court will confirm it so there's no problem. But if a court reverses the decision of the council, then surely it would want to lift the suspension and, just as it says, "until the suspension is lifted, superseded or annulled by the board", it should be, "if the court so decides to do on the appeal". I thought it was an oversight.

DR. THOMPSON: I don't believe it is. I think there's certain provision made in 16(2) and (3) that should give ample opportunity for a court or judge to make any changes as necessary or required.

MR. CHERNIACK: The court will 16(2) the judge on hearing the appeal may confirm the order of the board; cancel, reduce or increase the fine; cancel or amend the order of the board; or make such other orders may be just; which may include a lifting of the suspension. Well then when it says temporary suspension, it's a temporary suspension, then the court should have the right to lift the temporary suspension. It has the right under 16(2) to hear the appeal and make that decision but I suggest to you it should also have the right to say, let this guy go back to work until the final adjudication because we feel that the decision by the board was excessive.

DR. THOMPSON: Section 16(2)(d) I believe gives that authority to the judge.

MR. CHERNIACK: Well all right, then I'll get into a legal discussion as to whether it's advisable to put it in or not.

All right now, 15(1): "Where the board has made an order, the member may appeal the order". What about if there's a complaint? Would you grant the complainant the right to appeal the order?

DR. THOMPSON: Would you illustrate that please?

MR. CHERNIACK: Well there's a complaint from some person that this veterinarian did not handle his job well with this individual, say a pet's owner and it complains to the board that this man didn't do a proper job. The board then says, no we're satisfied, he did okay. Would you grant to that complainant the right to appeal the decision of the board?

Well you see we go back to where it says, "a person may complain to the board and the board may then hear the complaint against a member", against a member. Now if the board finds that the member was at fault and the board penalizes that member, then under 15(1) that member has a right to appeal it to the court. I am suggesting that if the board does not penalize the member then the person complaining should have an equal right to appeal that decision.

DR. THOMPSON: That has happened in the recent past and that complainant chose to go through other legal channels, which are certainly available to every individual.

MR. CHERNAICK: What is that?

DR. THOMPSON: Suit — took the individual to court and as an interest sake, everything was upheld as to the board's decision. A person has other legal recourse as well.

MR. CHERNIACK: But why shouldn't that person have the same right to go in this quick way to the Court of Appeal to review the decision of the board? If you give the member the right, why not the complainant?

DR. THOMPSON: I don't believe that's the fashion in which a board, a judicial board of an association works.

MR. CHERNIACK: Well I think it's the fashion in just about every bit of legislation we've been looking at the last couple of days. No? The complainant has no right? I'll have to look at it.

Finally, I think this was discussed in the Agriculture Committee. You had in the Act a provision for a hearing afresh by the court on the appeal process. You have taken that away and yet that experience was trial de novo as provided in the Act.

DR. THOMPSON: Well, we feel here again that the judge has certain powers accredited to him further down in section 16(2) and (3) and that those are — well, we discussed this as well at the meeting the other night. What powers does the judge have? Court of Queen's Bench Judge — what powers does he have?

MR. CHERNIACK: He has the power to do as in 16(2).

DR. THOMPSON: That's right.

MR. CHERNAICK: But I'm suggesting . . .

DR. THOMPSON: He can throw everything out, completely if he feels like it and draw witnesses and affidavits all over again and I think that its adequately explained in 16(2).

MR. CHERNIACK: The present legislation provides that the hearing by the court shall be a trial de novo. You know what that means? It means he hears the whole thing afresh and comes to his own conclusions. You've taken that out and you've provided that it shall be founded on the proceedings taken before the board. I wanted to know if you had bad experience with the existing legislation which provides for trial de novo. Have you had a bad experience with it that made you change it?

DR. THOMPSON: Not to my knowledge. There may be but not to my knowledge.

MR. CHERNIACK: Was it the decision of your council to change it then?

DR. THOMPSON: I believe what the original — I think that the original people that worked on this from what I can . . .

MR. CHERNIACK: Mr. Chairman, I'm sorry I can't hear Dr. Thompson because of cross-fire coming across here. It's bad, if you'll only stop it . . .

DR. THOMPSON: From what I can gather, now this is past history for me seeing as I didn't work on a lot

of this material, but from discussing this with the people that did, they felt that there was enough power offered to the judge in these upcoming sections here.

MR. CHERNIACK: Do you mean members of your association?

DR. THOMPSON: Yes.

MR. CHERNIACK: It's not the question of a power, it's the opportunity for the judge to hear a de novo and you have taken that away from him. I know the power is different; this is the opportunity to use his own discretion and that's been removed — I just wondered if you had a bad experience — it affects other legislation too. Are you not aware of any? I suppose we should leave it at that.

DR. THOMPSON: You're admitting then that you do not believe that this . . . I am surprised you are not affording amendments to this Section 16(2). If that's not adequate, what is then?

MR. CHERNIACK: I don't know if we understand each other, Dr. Thompson. 16(1) provides that the appeal shall be a trial de novo; and 16(2) then says the powers of the court. You have not changed 16(2) but you are changing 16(1) and you are taking out the manner in which the court will hear the appeal from a trial de novo into a review of the proceedings, and because you are asking for this change I am asking you why you want the change, and whether you had a bad experience that prompts it? If you don't know then it's . . .

DR. THOMPSON: What the amendment to 16(1) does, is sets out the manner in which the appeal is founded; only founded.

MR. CHERNIACK: Yes, that's right and it changes what it was. You see the present Act says "the manner shall be by trial de novo". You are changing that and saying "the manner shall be by copy of the proceedings", and I am just asking you why you are doing that? As I say, if you are not clear on why by all means say so, we'll find out from the Minister possibly.

DR. THOMPSON: As I say the judge or the appeal is strictly founded on the board's enquiries — that is the starting point for the judge — he has in his power as set out 16(2) all these other alternatives which he can proceed through. I think this 16(1) is probably redundant or just not necessary.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Any further questions? Mr. Walding.

MR. WALDING: Dr. Thompson, I have been listening very carefully to what you've been saying and the points that were raised on this matter of the council and the board in the matter of handling complaints, and as I understand from what you said and the Act that was quoted, that complaints according to the Act are supposed to go to the board, but your association out of experience and practical ways of handling things, have had those complaints go to the council where they've been dealt with and the frivolous ones weeded out, etc., which sounds to me a sort of reasonable way of proceeding, yet it would seem to be slightly at odds with the Act.

Do you see any reason why we shouldn't change the Act so it conforms more closely with your practical experience of these things so that you won't be at any slight variance with the Act and more in line with the way it is set out in the Acts for other professional associations?

MR. CHAIRMAN: Dr. Thompson.

DR. THOMPSON: I think it's a matter again probably of a complainant's right to a legal counsel if any of these complaints are squashed in the review from the council. I don't really see a problem in the fashion that it exists now. It does not say that every complaint has to be forwarded to the board, and I will say again the only way for complaints to be registered are through our association; there is just no other means. I think mainly it's a matter of saving time and saving board expense really. As I say, it has worked well in the past. I don't think I would recommend really changing it.

You're submitting that every complaint and any complaint, goes directly to the board?

MR. WALDING: Not necessarily. What I'm saying, is that you have worked out a system that has worked very well and you would like to continue it but that system itself is at some variance with what the Act says. I'm suggesting that we change the Act to conform with what you are doing so that your board will have no fear that it's doing something slightly irregular — not that people should not be able to go directly to the board — but they should follow the procedure you have worked out in taking it to the council because they know where the council is and who the chairman is, or whatever. But if they're not satisfied they can still go the board directly which is what the bill says. Do you see any problem with making those changes?

DR. THOMPSON: As I say, I don't find a real necessity to do it.

MR. WALDING: Okay, I was trying to be helpful to you, that's all.

I had another question, Mr. Chairman, if Dr. Thompson is prepared.

MR. CHAIRMAN: Dr. Thompson, are you prepared to answer another question?

DR. THOMPSON: Yes, Mr. Chairman.

MR. WALDING: I didn't know whether you were going to make another comment. As I understood your replies to Mr. Green, the matter of controlling the profession was not forced on Vets several years ago — I think that's what you said to him — that you accepted the responsibility willingly and this is what you wanted to do. Did I hear you correctly?

DR. THOMPSON: Yes, I'm not sure I follow your meaning though.

MR. WALDING: I just wanted to establish that and then go onto the main question itself. I can't think of

any other professional Act that we have dealt with where the actual disciplinary body is in fact a government-sponsored, controlled and paid for, organized. Now what would your reaction be or the reaction of the association if that government involvement in the disciplinary affairs of the VMA was removed and it came entirely within the purview of your association the same way that it is with most other acts?

Is that a matter of assuming full responsibility for your affairs or do you not consider it necessary? Are you happy with the present arrangement?

DR. THOMPSON: We enjoy the present situation because the board is quite removed and it does contain lay members which is certainly adequate in that fashion. If you have to or want to have the council actually continuing or concluding the process, I think that becomes a problem of impartiality, really.

MR. WALDING: I am not urging the idea on you, I am asking for your reaction. As far as the impartiality was concerned, supposing the board was called a disciplinary committee — as I think it is in a number of other Acts — and that the council itself would set up a disciplinary committee that would hear these things instead of the government choosing from some names that . . . so that the two would be separated from that point of view. That would constitute the VMA taking full responsibility, as you have said it's willing to do and wants to do. Do you see any problem there?

DR. THOMPSON: As I say I see no problem in the way that it is handled now. I think it's beneficial the way it is handled now as to what you are really proposing. Are you saying that you would exclude those lay members?

MR. WALDING: No, no, you'll still have your lay members if you want them.

DR. THOMPSON: But are they involved in other activities of the association? Are they members at large?

MR. WALDING: It would depend on what was written in. I'm proposing it as a matter of principle to you. The details can be discussed later if you think that the principle is a good one. Some acts that we have looked through have a council made up of six, two lay members, and it will have a disciplinary committee of four on one or some other arrangement and the ways of selecting the lay representation varies somewhat through the acts.

DR. THOMPSON: We choose to leave it the same because it pretty well does guarantee an impartial judicial body, especially when you consider the means by which these people are selected. It's not a board that is strictly set out by the association. The members are somewhat selected but it's the ultimate choice of the Minister who sits on that board. We'd rather leave it the way it is really.

MR. WALDING: I was putting it to you as a matter of principle following from your answers to Mr. Green's question about being willing and wanting to take the full responsibility. It would seem that there is a measure of government responsibility involved here. If that's the way that you want to leave it, fine. I just had one other question that I wanted to ask you.

The question that we raised last night having to do with lay members involved lay representation on the council, and I understand that there is not at the moment. Does your association have any view on this regard? Do you think it would be a bad thing if two lay members, however chosen, were added to your — is it a six or seven man council?

DR. THOMPSON: Yes, it's six and the past president resides as well at these meetings. Well I disagree with that; I strongly disagree with that actually. I believe the lay people that represent the public are already sitting in the highest seats; that's right. I would rather maintain the internal workings and decisions and so on within the members of our association.

MR. WALDING: Is there a particular reason for this? Yours would appear to be the only association that would seem to have violent objections to it, out of all the bills that we've handled so far.

DR. THOMPSON: I think the public is well represented by those lay people being on the board and I don't see that a representation of them on the association is really going to do that much more.

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

MR. CHERNIACK: Looking at the existing Act, I don't see that the council has any real function or power. It seems to me that the board has the power to license, to suspend, to control the practise of Veterinary Medicine. Is that right? There's a long list of what the by-laws may be but even there they say that it's all subject, "The Government in discipline of its members with the respect to matters that do not fall within the jurisdiction of the board." The other sets fees, I think. Is that right, Dr. Thompson? I mean, am I really mis-reading this?

DR. THOMPSON: You've picked out certain powers that are put in the hands of the board but the association has other functions as well. They prescribe code of ethics, standards . . .

MR. CHERNIACK: I used the word "power", and function absolutely — all sorts of worthwhile things, academic standards, standards of practice — but the power seems to me to be in the hands of the board and I misread it. I really thought council had this obligation.

DR. THOMPSON: No. It's broken down and it's laddered into each council and versus the board.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Mr. Uruski.

MR. URUSKI: Are there two sets of fees that are payable by Veterinarians, one to the board for registration and to the council for your association's work? Are there two sets of fees?

DR. THOMPSON: Yes, there are.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, we have no further questions of Dr. Thompson at this time. I wonder if we could proceed to approve the remainder of the bill at this committee because we've gone over it mainly and we could move the remainder of the bill and clear it off the committee.

MR. CHAIRMAN: Mr. Downey, we're on Clause 12, and we made an amendment last night of 14(6), but we have not passed any part of the clause.

MR. CHERNIACK: It's 20 minutes after 2 and we have to . . . at 10:00 o'clock tomorrow morning.

MR. CHAIRMAN: Well, I'm only the chairman, Mr. Cherniack. If you wish to move a motion . . . You've heard the motion by Mr. Cherniack that committee rise. All in favour, please indicate by showing of their hands.

A COUNTED VOTE was taken the results being as follows:
For, 4. Against, 6.

MR. CHAIRMAN: The Motion has been defeated 6-4. Mr. Downey.

MR. DOWNEY: Mr. Chairman, if I could, I think we've gone through it pretty thoroughly with Dr. Thompson here. We can do it clause-by-clause or . . .

MR. CHAIRMAN: Well, we started off clause-by-clause, yesterday, and we are on Clause 12, on Page 3. What I would point out to members of the committee is that 14(6) has been amended and has been approved.

MR. CHERNIACK: Mr. Chairman, I can't hear you.

MR. CHAIRMAN: Order please. I will repeat. We are on Clause 12. 14(6) has been amended, but the clause has not been passed as amended. Are there any other amendments in Clause 12?

MR. CHERNIACK: Mr. Chairman, now I'd like to get clarification from Mr. Tallin. He says that there's nothing to prevent the council from dealing with any complaints but as I understand it council has no power to do anything.

MR. TALLIN: He has no power to make a decision on the complaint but they can process a complaint.

MR. CHERNIACK: Process means what?

MR. TALLIN: They receive it, they do some investigation on it to see whether they want to pass it on.

MR. CHERNIACK: All right, now, I'd like to know since that is the case and I think it's a good idea, the judicial function is clearly with the council. Now why shouldn't 14(1) and what's the argument against 14(1) saying, any person may complain in writing to the council concerning the conduct or practise; and then 14(2) saying, the council may proceed to conduct an investigation and dismiss it if it's frivolous; and then say, the council may refer to the Board the complaint for the Board to hear it. Why should the Board be investigating, dismissing, prosecuting and adjudicating? It seems to me the contrary to the principle of the justice that the member is entitled to.

MR. TALLIN: I presume the only reason is for efficiency so the one Board deals with it and organizes the whole thing. It's not unlike that form of justice which is the inquiring magistrate throughout most of Europe and I don't think their form of justice is that much less efficient than ours as far as justice is concerned.

MR. CHERNIACK: But it's alien to ours, isn't it?

MR. TALLIN: It's different from ours.

MR. CHERNIACK: All right, different or alien. But it seems to me that we're accustomed to a certain procedure of investigation and I don't understand why the point made by Dr. Thompson can't be built into it so that what he says they do is describe that they do it because they don't have to do it. If this says it shall be done this way, then this is the law, not the practice of law but the Act is the law. I don't know, the Minister obviously has much more to do with the Board than I would have thought because he pays the Board, he pays their expenses and I'd like to know from him.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, I think it has been clearly pointed out that the processes worked quite well, that there isn't any basic change from how it has operated; indicated by the association that the Board has lay representation on it protecting the interests of the public. I think there has been sufficient discussion on this particular part, Mr. Chairman, as explained; satisfied with the comments that legal counsel have made that we are not going to cause any great problems with the carrying out of veterinary medical services in the province and would proceed to put the question on this particular clause.

MR. CHERNIACK: Mr. Chairman, the Minister says there's no real change but there is a change. Section 14 is repealed and the following is substituted. Now what is repealed is the provision that the Board may do various things, suspend and fine the member under certain circumstances; it provides for two weeks notice which is here under (4); it provides that the notice shall contain particulars of the demand — yes, it has here in (4) — "all parties to the inquiry have the right to be represented at the inquiry by legal counsel". I don't see it here. Is it here, Mr. Tallin? I don't see it.

MR. TALLIN: I don't know but there is no reason why they wouldn't be allowed I wouldn't think.

MR. CHERNIACK: Yes, it's in here, Procedure in absentia, but there is nothing that I see in the present legislation which provides that the Board conducts the investigation. The fact is we hear from Dr. Thompson that it's not the Board that conducts

the investigation, it's the council. So when we hear from the Minister that there's no change, I think there is a change and I think we ought to stick with what there is and what Dr. Thompson said there was, is that the council hears the complaints and investigates it. All right, Mr. Chairman, I don't see any particular value in further debate. The Minister has announced he's not going to change it so I'll move that in 14(1) we replace the word "Board" with the word "council".

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman, it's late but I perceive a certain vindictiveness here. I mean if — (Interjection)—

MR. GREEN: Well, just a minute now. If Dr. Thompson says that — maybe this is an error in drafting for all we know — he said that the council does it, we're going to put in that the Board does it. If it's true that it was the council and there's to be no change and that the only change in the Act is really a matter of dealing with the order of things, does the Veterinary Association want to change it from the council conducting the investigation to the Board conducting the investigation?

MR. CHAIRMAN: Mr. Tallin first.

MR. TALLIN: Just from one point of view, in my discussions when I was drafting this — my discussions with the Registrar of the Board — he told me that he did receive complaints from people so that the Board does receive some. Now they may not receive all of them but he receives complaints from people.

MR. DOWNEY: Mr. Chairman, I ask the question directly of the representative of the Veterinary Medical Association and my question, were they satisfied with the way the bill is written here in this particular amendment? Could he perceive any problems? Basically that was the question, did they see it operating better by making an amendment? The answer that I got was "no", that the organization, the operation, as he saw it would be just as well served the way it is written in the amendment. I agree with that approach so I think, Mr. Chairman, we can proceed to . . .

MR. CHAIRMAN: Mr. Cherniack, do you have an amendment?

MR. CHERNIACK: Mr. Chairman, I thought Mr. Downey asked Dr. Thompson whether he's satisfied with the way they've been doing it up to now and he said "yes".

MR. DOWNEY: In that way it was written.

MR. CHERNIACK: Well, you see, I don't recall him saying "the way it was written". He said "the way they've done it" and what Dr. Thompson said in spite of what Mr. Tallin was told by the Registrar whom I assume is not here, that Dr. Thompson said there is no place for the Board. He said the council gets the complaint; council looks into it. It decides whether or not it's a vexation and often settles the matter at the council level which I think is the best way without going to the Board. Now it seems to me that this is logical and I think Dr. Thompson said that's the way they've been doing it. Really, that's what I thought.

MR. CHAIRMAN: Clause 12, as amended, on 14(6) — pass.

MR. TALLIN: Is that the motion that was amended?

MR. DOWNEY: Just a minute, what are you doing here?

MR. CHAIRMAN: It was amended on 14(6) last night.

MR. CHERNIACK: That's right.

MR. CHAIRMAN: There is no other amendment in front of me.

MR. CHERNIACK: I just moved it, did you not hear me?

MR. CHAIRMAN: Well you have to write it out.

MR. CHERNIACK: Oh, all right. All right, if you want to take the time for that.

MR. CHAIRMAN: I will stop and let you write it out.

MR. CHERNIACK: It's all right, if you've got that much time. It's only 2:30.

MR. CHAIRMAN: You saw the happenings last night. The legal counsel was writing them out for you.

MR. CHERNIACK: Mr. Chairman, really. The proposal I made is so simple, I don't know who would need to have it written out to understand. I move that the word "board" be replaced by the word "council" in Section 14(1) and if you want it written out I'll write it out for you.

MR. CHAIRMAN: The legal counsel is writing it out. We have an amendment to 14(1).

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

Yeas 4; Nays 6.

MR. CHAIRMAN: The amendment has been defeated.

Clause 12 as amended, and when I say amended, I'm talking about last night's amendment.

MR. GREEN: No, 14(2), Mr. Chairman.

MR. CHAIRMAN: Okay, 14(2).

MR. GREEN: I move that the word "board" be replaced by the word "council."

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

Yeas 4; Nays 6.

MR. CHAIRMAN: The amendment has been defeated.

Clause 12.

MR. GREEN: 14(3), Mr. Chairman. Did you pass 14(2)?

MR. CHAIRMAN: Yes. Well, we're dealing with the bill clause-by-clause, not section-by-section, so I've got to get through to the end of the clause before I can call the section.

MR. GREEN: In 14(3), I move the word "board" be replaced by the word "council." —(Interjection)— He's trying to make a point but I think he can't make it at this stage because you've got 14(1) and (2) with "board" already passed, and now 14(3), you were going to say that council refuses — under (a) and (b) you can't do it.

MR. CHAIRMAN: The amendment is withdrawn? (Agreed) 14(3) — pass; 14(4) — pass; 14(5) — pass; 14(6), as amended — pass; 14(7) — Mr. Green.

MR. GREEN: Mr. Chairman, I despair of the ability to be in any way effective at this time but I feel that we are at a stage where we are enshrining things and expanding on things which permit professional associations to do more than discipline for what is strictly unprofessional conduct. Despite what Mr. Thompson said, and I make this criticism not merely with regard to this Act but with respect to the other Acts, I think that it is not fair to the veterinarians — I'm not dealing now with anybody else — to have them subjected to being disciplined for things as vague as "committed an act which, in the opinion of the board, constitutes unprofessional conduct." I am further scared by what Mr. Thompson said, that he needs the phrase "moral character." I think that what the veterinarians have to do is to protect the consumers of veterinary services from somebody who is going to be a danger to their animals that are being looked after by the vet, or who is going to do it in such a way that they're not going to get value for their services and that's not, Mr. Chairman . . .

MR. CHERNIACK: Mr. Chairman, I'm sorry to interrupt but I am trying to listen — on a point of order . . .

MR. CHAIRMAN: Order please. Can the members of the committee please give Mr. Green their attention, please.

MR. GREEN: There is a section here, "constitutes incompetence or gross negligence" in the practice of veterinary medicine. Now, that could be a single act of gross negligence, which Mr. Thompson has never indicated, that the complainant could sue for an recover damages for. But what I am worried about is a man being struck off the record for doing something which anybody could have made a mistake and being punished by, perhaps the criminal charge which is laid against him, which this implies, and also losing his right to practise. What I would like to try to get into these Acts is that these disciplinary proceedings are intended to give the various councils the right to suspend a person for conducting themselves badly and in such a way as would indicate that the continuance of the practice would be of harm to the person that he is going to serve.

I have used the wording, Mr. Chairman, and I can't make an amendment but I possibly will do so — maybe I'm just going to give notice that I'm going to do so in the House — that where, after hearing evidence and submissions at an inquiry in respect of a registered member, the board is satisfied that the registered member, and I'm just going to read this, "has conducted himself or herself in the practice of veterinary medicine in such a way as, in the opinion of the board, would constitute a continuing hazard or injustice to the consumers or the potential consumers of veterinary medical services." I think that's why you suspend, that you are worried that if this man is still in the practice, that his patients, and we're talking about animal patients now, either are not going to be properly treated or, and I put an alternative, or they're not going to be treated at all and therefore this man shouldn't be out there in the field. For that reason, Mr. Chairman, I have not liked, and I know that this is late in the game but nevertheless, when something is brought to your attention you have some responsibility to deal with it and I would think that the provisions in each of these disciplinary Acts are too broad. Some are worse than others, this happens to be one of the better ones, one of the more limited ones, but they are too broad and I want to indicate, Mr. Chairman, that I am not able to make an amendment but I think that this section is too broad.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, for the purposes of the proper discussion of the point made by Mr. Green, I would be prepared to move it.

MR. CHAIRMAN: All right. Is everybody familiar with the amendment?

MR. GREEN: I have written it down and I'll give it to Mr. Tallin. The motion is that all the words after "member" be deleted, (a), (b), (c), (d) and (e) is out, and it would read, "has conducted himself or herself in the practice of veterinary medicine in such a way as would constitute a continuing hazard or injustice to the consumers, or potential consumers, of veterinary medical services."

MR. CHAIRMAN: Mr. Cherniack, you have moved that amendment?

MR. CHERNIACK: Yes, Mr. Chairman. I would like to suggest that we have heard tonight, I should say yesterday — last night, Mr. Chairman, we heard a fair amount of discussion —(Interjection)— I don't know why it's amusing, Mr. Chairman. At twenty to three we are debating a bill without the need of all the delegations. I think all of us were prepared to wait to hear the delegations and not make them come back again but we are coming back again and it's, to me, the utmost stupidity at twenty to three to be performing a legislative function dealing with important legislation because of the whim of some people. But tomorrow morning at 10:00 o'clock we are expected to be here. However, if we are forced to do it, we are forced to do it as well as we can. But let the burden be on those who are forcing us to stay here at this hour to know that the legislation that they are dealing with is damned important legislation.

MR. DOWNEY: Has the amendment been put to the committee yet?

MR. CHERNIACK: Yes, and I'm speaking on it. I have moved it and now I wanted to comment on it. We heard discussions about peer group judgments and one of the things that worries me and one of the things that we have been dealing with that I am concerned about is the fact that I accept peer group judgment but I really feel that when meetings are held in private, when there are opinions which base decisions and when there is some principle here that was being espoused in this legislation saying that an appeal to a court shall be on the basis of the proceedings, that you have the proposed legislation here which says that a person has committed any act which in the opinion of the board constitutes unprofessional conduct, or even more peculiar, has omitted to do anything which in the opinion constitutes unprofessional conduct, I just don't know whether Mr. Tallin is satisfied with this wording, "has omitted to do anything which in the opinion of the board constitutes unprofessional conduct." It begins to sound to me like he has omitted to do something unprofessional and therefore they can judge him incompetent because he has omitted to do it.

I don't know how an appeal court getting the transcript will see that this person did something or other and, in the opinion of the board, it constitutes unprofessional conduct. How is that appeal court going to say it's not in the opinion of the board; the board didn't have the opinion when, in fact, it will say so? That's why I think that the amendment as suggested, which I moved, gives the court the requirement to review the basis on which a decision is made. There is nothing here; there is nothing in this (d) that indicates the basis of the decision. All it is is an opinion and I think that that's a very important and vital aspect of the peer group's decision and it may well reflect itself in other legislation we have yet to deal with.

So I really think that just to close your ears to it, close your eyes to it, don't say anything just vote is a terrible way and an irresponsible way to deal with legislation that has come before this session. Really I again point to Mr. Ferguson and want to know what role he's playing here. What is he doing here? He hasn't said anything of any use to the Committee. All he's done is being belligerent all the way through. The later it gets the more belligerent and it doesn't help the Committee at all.

MR. CHAIRMAN: Okay, let's get back to the business at hand. We have a motion by Mr. Cherniack. Are there others that wish to speak to the motion?

Mr. Green.

MR. GREEN: Mr. Chairman, Mr. Ferguson is not doing justice to himself. He really is not because late as it is we are trying to do something. Look there usn't a pressman in the place. Nobody is making miles here. We're looking at a piece of legislation and we're trying to make it sensible. That's all that we're trying to do and we're tired but the Committee has said we're going to stay so we're staying.

Look at the first (a), 14(7) Where after hearing the evidence and submissions at an inquiry in respect of which a registrar of the board is satisfied that the registered member has had his right to practice veterinary medicine in any place outside of the province suspended or cancelled. Now you're not only asking me to deal with the opinion of this Board, you're asking me to deal with the opinion of a Board and I know nothing about. They suspended his licence and cancelled it. The guy may have had his licence suspended in British Columbia and they may have done it for immoral conduct. He was sleeping with two women. —(Interjection)— For what? I don't know what. Why can't we — (Interjection)— I know that Mr. Ferguson says that and I know that is always the argument — when did they ever do it — when they do it to you. It's for whom the bell tolls. I have seen it done; not with the vets. I have seen it done and I tell you that if you say that we should pass this because we'll never do it, it's not an argument. They have the right to do it. Who am I protecting here? I am protecting myself. I am protecting . . .

MR. CHAIRMAN: Order please. Let Mr. Green finish his statements.

MR. GREEN: I am trying to protect some vet who I don't even know, who may not even be a vet today . . .

MR. ENNS: But he could be friend.

MR. GREEN: And he could be a friend of the Member for Lakeside. So what are we saying? Look at it. The words are, "has committed any act or admitted to it which' in the opinion of the board' constitutes unprofessional conduct, constitutes incompetence or gross negligence or is unfit to practiCe veterinary medicine."

What is, in the opinion of the board, excuse me that's where a member is unfit to practice veterinary medicine, does that involve a moral fitness and, if it doesn't and I hope it doesn't, and I don't think Mr. Thompson would regard it as such, but I don't want to give power to people on the basis of them saying it's unfit to do that.

So what I have put into the words which Mr. Cherniack has moved is that what he has to do is something relative to his practice which would show that he's a menace. Now that's, in effect, what the amendment says; that this guy is a menace in the practice and if so, suspend him; if not then there is no necessity for it.

MR. CHAIRMAN: Mr. Downey.

MR. GREEN: By the way he can be sued — one more word — if a man does a bad thing with one farmer he can be sued, he can be fined, he can be —(Interjection)— Well yes he can, Mr. Chairman, . . .

MR. CHAIRMAN: Mr. Green has the floor.

MR. GREEN: . . . Legislative Counsel will confirm that if the man does practice badly on a particular farmer and that farmer takes to him to court, aside from the disciplinary — as a matter of fact this discipline will not recover anything for the farmer — so he can sued, he can recover all of his damages, but this is discipline, this is to get rid of him practising in the profession.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, I have some concern. The Honourable Member for Inkster makes some good points but I think in our earlier discussion and I want to be clear on it and possibly it is becoming a little more clear all the time. As I understand the proposed amendment to the Bill or the proposed parts that we are dealing with where we are dealing with a board passing judgment, or passing judgment on what constitutes unprofessional conduct, having nothing to do with veterinary medicine, as I understand it, is covered when you add in: Constitutes incompetence or gross negligence in practice of veterinary medicine. It's spelled out that's what they are passing judgment on. That is in my — (Interjection)— and you don't say anymore. You know, the Member for Inkster says, he stops, he says constitute unprofessional conduct. But there is more to the conduct for a registered member or constitutes incompetence or gross negligence in the practice of veterinary medicine. Now I would interpret the law to say that he is only being judged on his incompetence in veterinary medical practice and not his moral lifestyle if he serviced the farmer's wife when he went out instead of the farmer's cows. Then I would say that he would not be judged on the basis of incompetence.

MR. CHAIRMAN: Order please, Mr. Downey has the floor.

MR. DOWNEY: I do take it seriously and I want to make sure that we are not allowing a board to pass judgment on a person's personal conduct outside the practice of veterinary medicine and I think that what we have got here is doing that; it is protecting that individual.

MR. CHAIRMAN: I might point out to Mr. Downey and others that even though there aren't large numbers of people here that Hansard is still recording your conversation.

Mr. Green.

MR. GREEN: Mr. Chairman, may I make the following suggestion to see if we can go through this. May I suggest that we go through the rest of the Act and leave 14(7) the way it is. Mr. Cherniack has moved a draft amendment which has been thought up this evening. Usually you get things better drawn by Legislative Counsel, that the Committee go through the entire bill there may be other complaints; that Mr. Tallin has heard some of the concerns, he has heard your suggestion of the concern, and see whether he can bring back an amendment which will deal with what we all say is to be dealt with, namely, that there is to be a suspension or a discipline when it relates to the practice of veterinary medicine, not merely with regard to having done something wrong but where it is regarded as a menace or a hazard in the future. Now, can that be done? Mr. Tallin is nodding his head.

MR. CHAIRMAN: Is it the will of the Committee to accept Mr. Green's suggestion and that is that we carry on with the bill and leave 14(7) lay in abeyance. Is that agreed? Mr. Cherniack you're the mover of an amendment, will you agree to that?

MR. GREEN: Of course I will, Mr. Chairman. I did want a chance to point out to Mr. Downey that he read (d)(ii). If he read (d)(i) only, which I think ought to be read, has committed any Act which in the opinion of the board constitutes unprofessional conduct for a registered member and that's a period in effect because the next is or. Now I think, therefore, this is not necessarily related to the practice of veterinary medicine, it's related to what the board thinks is unprofessional which may well be, you know, getting drunk at midnight. Anyway we'll hear what council draws.

MR. CHAIRMAN: Okay. All right, 14(7) is laid over. 14(8) — Mr. Green.

MR. GREEN: Mr. Chairman, I object to this clause. I'll object to it in every bill. It is wrong, Mr. Chairman, to say that the Inquiry Board, if they don't dismiss the complaint can assess all of the costs. Now, I appreciate the fact that there has to be some way of dealing with this. I would say that a person can be levied a maximum fine. There is a maximum fine in one of the other bills but we should not be making the judgment of that board an incentive defined against the plaintiff, the other person, and furthermore the cost can be enormous. Now, this particular Act, I don't think they would be what they would be in The Medical Act but they could be very high, Mr. Chairman and a person shouldn't be jeopardized to the extent of being thrown out of the profession and fined $15,000, which is what happened to a doctor last year and could break a veterinarian. I just don't like the clause. I would like to see it removed.

MR. CHAIRMAN: Any further discussion on 14(8). Mr. Enns.

MR. ENNS: Mr. Chairman, I don't believe that is consistent with the former Minister of Natural Resources decision. Inasmuch as that when a farmer made a complaint against the Department of Natural Resources on a drainage issue — I don't have to name names — and laid a complaint against the government and challenged the water resources in a court action and subsequently lost the court action because the Minister was right and the department was right. The Minister consistently refused to mitigate the costs of the individual involved.

MR. GREEN: It was $500 involved.

MR. ENNS: No, no. It was $3,000 involved. I'm now being faced with that question as a residue of the Minister's lack of compassion but he is suggesting, on the one hand, that a person can bring a complaint against an association, in this case the Veterinarian Association, and not have any responsibility of the costs associated with that cost. Yet, when he was the Minister he thought that was entirely right to have a member bring, you know, a member of the public bring those costs against the government and have the whole weight of government not acknowledge those costs.

MR. CHAIRMAN: Mr. Cherniack on 14(8). (Interjection)—

MR. CHERNIACK: Mr. Chairman, I love hearing from the Minister of Natural Resources at 3 o'clock

in the morning when we're being compelled to sit here against some of our better judgment. Mr. Chairman, I don't know that I go as far as Mr. Green in fighting any imposition of costs but on this bill I point out to you that the fine is paid to the Minister of Finance. I point out to you that under a section of the Act, which is not being changed, "the members and the registrar of the . . . " I'm reading now, Section 11(1), "the members and registrar of the board shall receive such allowances and expenses as the Lieutenant-Governer-in-Council may determine".

So, here we have this Act provides that the board shall conduct the inquiry, make the investigation, adjudicate. It has the power now to fine up to $500 to be paid to the Minister of Finance. Under the legislation the government pays the expenses and, on this basis, it seems to me that Mr. Green's argument is much stronger than, you know, I think it'll be in other cases. But here the expenses, this is all government we find out and for the government to be indirectly imposing costs, expensive inquiry, I think is wrong. I think the Minister ought to withdraw it because now we're talking about government money and I suggest that 14(8) should not be proceeded with.

MR. CHAIRMAN: For clarification, Mr. Cherniack. You're suggesting that Mr. Downey withdraw 14(8)?

MR. GREEN: Mr. Downey indicates that because it's money that must come out of his department that he should suggest the withdrawal of 14(8) as being an unnecessary additional imposition on a member who has already paid a fine to the Minister of Finance. Mr. Downey pays all the expenses through his department. I see it's his department that pays it under Section 11(1). I think it's an unnecessary one. Aside from the fact that it's an additional penalty.

MR. DOWNEY: Mr. Chairman, on two points. I would like to go back to, and I know we're discussing 14(8), I would like to go back to 14(7) and pass it if I could have agreement and then if it's reworded it could be introduced in third reading in the House and I think that would be a better way to clean this bill off instead of coming back. (Interjection)—

MR. CHERNIACK: This meeting is deteriorating as anybody with any experience would know it would at 3:00 in the morning. If I knew that there was going to be an election called tomorrow I'd sit here all night but this is nonsense and the Minister is proposing some way to ease this along and I say if he's forcing us to stay here this late at night for no good reason, then why is he now proposing a different approach?

MR. DOWNEY: Mr. Chairman, I put the question on 14(7) so we can . . .

MR. CHAIRMAN: Sorry we agreed to withhold Mr. Cherniack's amendment on it and to proceed to 14(8). If he's prepared to withdraw his amendment? Okay, then we'll go through the bill and then we agreed to deal with his amendment at the tail end of the bill. 14(8) Mr. Green.

MR. GREEN: I don't know if my friend from Lakeside will understand me because of the hour and only because of the hour but the costs that we are talking about here are diffent then the cost of an unsuccessful litigant. An unsuccessful litigant is awarded costs by the court which are generally nominal. In addition that unsuccessful litigant has paid a whole slew of money to the lawyers and nobody would suggest, no Minister would suggest that the Crown go to the assistance of unsuccessful litigants. In this case it's a man who has been disciplined. The costs of his own lawyer, they are paid, there's no question about it. In addition to paying the costs of his own lawyer and the fine, this is asking him to pay the cost of the investigation and the proceedings, and that cost is never paid by an unsuccessful litigant, that is completely unique.

MR. CHAIRMAN: 14(8) — pass — No? You want yeas and nays?

MR. CHERNIACK: What did you call?

MR. CHAIRMAN: 14(8) — pass —

QUESTION put, MOTION carried.

A COUNTED VOTE was taken, the result being as follows:
Yeas, 6. Nays, 4.

MR. CHAIRMAN: The Motion is carried, 14(8) is passed. 14(9) — pass; 14(10) — pass; 14(11) — pass; 14(12) — pass; 14(13) — pass.

MR. CHERNIACK: Mr. Chairman, just slow up, please.

MR. CHAIRMAN: 14(14) — pass; 14(15) — pass.

MR. CHERNIACK: Mr. Chairman, I'm sorry, just give us an opportunity to read what you're passing.

MR. CHAIRMAN: 14(16).

MR. CHERNIACK: I wonder if we can enquire what Sections 87 and 88 are?

MR. CHAIRMAN: Mr. Tallin, can you assist, on 14(16), what Sections 87 and 88 are?

MR. TALLIN: They're the ones where they have to give special notice of the inquiry under The Evidence Act of a Commission of Inquiry.

MR. CHAIRMAN: 14(16) — pass; 14(17) — pass; 14(18) — pass.

MR. CHERNIACK: 14(18) applies to any crime in Canada. Is that it? A certified cause of conviction crime anywhere at all. Is that the usual clause, Mr. Tallin? Is there anything exceptional about that? It doesn't mention the seal; it sounds like The Evidence Act.

MR. TALLIN: It's got to be under the Criminal Code or any other Act of Parliament or Act of the Legislature, of this Legislature.

MR. CHERNIACK: Yes. Okay.

MR. CHAIRMAN: 14(18) — pass; 14(19) — pass — Mr. Uruski.

MR. URUSKI: After the Section 14(19), I move the amendment that the hearings to be private as similar to Section 36(6) as in The Registered Nurses Act, where all the hearings of the discipline committee — or is it the Board — shall be held in private unless the person whose conduct is the subject of inquiry applies to the Board for public hearing, and the Board is satisfied that none of the parties to the hearing would be prejudiced by the holding of a public hearing. But where the Board determines that there may be prejudice to any of the parties to the hearing, it shall give written reasons thereof. I so move, Mr. Chairman.

MR. CHAIRMAN: Are all members of the committee familiar with the amendment? Mr. Walding.

MR. WALDING: Mr. Chairman, we can assume that this is government policy since I understand that it went through last year and was approved in all three Acts by the government, so we would confidently expect the government to support this amendment.

MR. CHAIRMAN: Are all members of the committee familiar with Mr. Uruski's amendment?

MR. CHERNIAK: Mr. Chairman, we didn't explore this with Dr. Thompson. I don't know whether the hearings are in public or not.

MR. CHAIRMAN: Mr. Uruski, would you restate your amendment and maybe Mr. Downey and Mr. Sherman . . .

MR. URUSKI: Mr. Chairman, I can give them The Registered Nurses Act that was passed last year — 36(6) of last year's Act, not this year's Act — the professional act that was assented to on July 29, 1980, and that deals with the hearings. I should mention, Mr. Chairman, I did question Dr. Thompson on this matter and if I recall his comments — and he can correct me if I'm wrong — he indicated that he felt the hearings were private and were a private matter, although they were not clearly specified in the Act as I had asked and I had raised it, but he implied that these hearings were in fact private.

This amendment that's being proposed really sets out the matter much more clearly, Mr. Chairman, and if the individual, the member about whom the inquiry is being held, wishes to have it public, then he can apply to have it public, so it leaves it open that the hearings shall be private unless the member against whom an inquiry is being made, requests that it be a public inquiry and clearly setting that procedure out.

MR. CHAIRMAN: Mr. Downey on Mr. Uruski's motion.

MR. DOWNEY: Just for a point of clarification if I could.

MR. JENKINS: Mr. Chairman, on a point of order, would you please remove this gentleman from me, he's sitting here and annoying me.

MR. CHAIRMAN: Mr. Enns, would you please move over one chair.

MR. ENNS: Sure.

MR. DOWNEY: Mr. Chairman, I would like to deal with the issue that's before us and get on with it so we can clean this up as quickly as possible.

As it is stated in the Act now, the interpretation from Legal Counsel would be that the hearing would be in private and the amendment as proposed, as I would understand it, is that it would be in private unless the person who is going before the Appeal Board wanted it in public. He would have that choice?

MR. TALLIN: Right.

MR. URUSKI: That's what's in The Registered Nurses Act.

MR. CHAIRMAN: Are we ready for the question on Mr. Uruski's amendment to 14(19)?

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: 14(20) — pass; 14(21) — pass; 14(22) — pass — Mr. Cherniack.

MR. JENKINS: I move that the words "or The Court of Queen's Bench" be added at the end of this clause.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Might I suggest, "or on appeal"?

MR. CHERNIACK: Pardon?

MR. TALLIN: "Or on appeal", because it may go to the Court of Queen's Bench, then to the Court of Appeal and then the Supreme Court.

MR. CHERNIACK: Just "or on appeal"? Does that take care of it then? "By the Board or on appeal". All right. I move that the words "or on appeal" be added to this clause.

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: 14(22) as amended — pass. We can't deal with Clause 12 because we're holding back 14(7) till the end of the Bill, so we'll move on to Clause 13. Do you want to go section-by-section? 15(1) — pass — Mr. Uruski.

MR. URUSKI: I'd like some clarification on 15(1) because it specifically deals with the making of an order under Section 12 or 14. Is there any other order that the Board could make, other than under those sections?

MR. TALLIN: Just a moment till I take a look. The Board acts under 12 and 14.

MR. URUSKI: 12 and 14?

MR. TALLIN: Yes. There's no further mention of it.

MR. CHAIRMAN: 15(1) — pass — Mr. Cherniack.

MR. CHERNIACK: I move that the words "or the complainant" be added in the second line after the

word "member" where it appears for the second time. Do you want that in writing?

MR. CHAIRMAN: Any discussion on Mr. Cherniack's amendment? Mr. Cherniack.

MR. CHERNIACK: The point I want to stress is that the legislation provides that the Board receives the complaint, conducts the investigation, decides to proceed with an inquiry, holds an inquiry, proceeds to find that the complaint was not justified. All this is done within the confines of the Board, which is a board selected from a list given by this Association. I believe that a complainant making a complaint has a right to feel that there was no cover-up, that there was a proper review, and therefore should have the opportunity to appeal so that the court could consider what went on before it in a private hearing. That's why I suggest that it is in the public interest to enable a complainant who has a complaint which is obviously valid enough in the eyes of the Board to justify an inquiry, that that complainant should have a right to make the appeal, and that's the purpose of this amendment.

QUESTION put on the amendment, MOTION defeated.

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

Yeas, 4. Nays, 6.

MR. CHAIRMAN: The amendment is defeated. 15(1) — pass; Clause 13 — pass; Clause 14, 16(1) on the back page — pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want again to suggest that — I gave you the whole picture of how I see the board dealing with this, all within the confines of the board, privately almost secretly, and then the court is not permitted to do more than look at the proceedings? When we asked Dr. Thompson, he had no explanation as to why there was a change. I really would want to ask whoever is responsible for the change to explain why the change. Dr. Thompson didn't seem to feel the need for the change; I think that was clear. He said they'd never had a problem. I think that somebody — and I don't know where to look, Mr. Chairman, but I can look at the Minister — to explain why it is that there is this change. What's the purpose of the change?

MR. DOWNEY: Mr. Chairman, not being aware of any specific cases that created any difficulty, as I understand the point the Member for St. Johns is trying to make, that by the initial way the Bill was written that the judge could go back and completely open up the case and review all evidence leading to the full investigation, whereas it is proposed now in the amendment it would be that the evidence provided to the Board, the decision made from that evidence would be all that would be taken into account or could be completely thrown out and put before a complete provincial court. Is that not correct?

MR. TALLIN: No, if I can . . .

MR. DOWNEY: Maybe Legal Counsel could explain.

MR. CHERNIACK: Sure let Mr. Tallin explain the difference.

MR. CHAIRMAN: Mr. Downey, you'll have to repeat it. Mr. Tallin was busy writing out something. 16(1) here on the back page. Could you repeat, Mr. Downey?

MR. DOWNEY: Yes, the changes from the last Act as now being proposed in the amendment. The proposal as I understand it is to remove the right of the judge to take a full and complete look at all the history of the case leading up to the appeal — or the evidence, I should say, leading up to the decision by the Board and now it's just restricting it to the material that was provided to the Board, or the evidence that was provided to the Board, on that one specific case. Is that correct? I don't know what the legal term is that you refer to prior . . .

MR. TALLIN: With trial de novo. They would start fresh and put in all the evidence again and I presume that there might be leave, if a witness who had given evidence in the first hearing was unavailable, it may possibly be permissible, the court might allow that evidence to be written, to be read in, but that will be a very unusual occurrence. Apart from that, whatever happened in the first hearing is of no importance to the judge on a trial de novo. This would say that all that the court has before it is the evidence that forms the record of the first hearing and the arguments that stem from that, and the arguments would be either that the Board had made a perverse finding of fact from the evidence or that they had made a mistake of law in the way they dealt with something in their order and they are two completely different forms of proceedings.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think that the major difference between a trial de novo and the copy of the proceedings is that the Court of Appeal, the court appealed to, has an opportunity to hear the evidence, see the witness, come to his own conclusion as to the weights to be given to the evidence of the person, may ask questions of that person to obtain clarification, and then makes the decision in the same way as the Board made the decision. In the change, what is proposed is the court will read what the Board was told and then have to find either an error in law or an obvious case of unacceptable procedure, I think that's it.

MR. TALLIN: Or a perverse finding of fact — very rare.

MR. CHERNIACK: That's so rare that I don't quite explore it. That is what I believe is the essential difference and I wanted to know why the change is made. I'd really like to know who made the change, and why the change is made. Now, I don't know just who did that.

MR. TALLIN: I think this was one of the things that came out of the suggestions from the Board, recommended by the Board's solicitor probably. Whether the Board felt strongly about it or not, I don't think it was the Association that was really recommending this.

MR. CHERNIACK: Mr. Chairman, My question would be, why should the Board's solicitor want to change from the trial de novo principle which is not exceptional, not new, to this other one. I don't understand; just because he said it, does that mean that it should be done. It seems to me that there's no point to that. If there had been no problem, then why would they change it. We heard before. Dr. Thompson explained procedures and Mr. Downey said well, if they're satisfied with the way it was, why bother to change it? Now I'm asking you, why change it? —(Interjection)—

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, if the legal counsel and advice that the present system is adequate and there isn't any apparent need to introduce this new or different system, then I have no problem with leaving it the way it is and voting that Section . . .

MR. CHAIRMAN: The procedure will be then that we vote against 16.1. 16.1 - pass? Then just vote against it. 16.1 is lost and therefore, clause 14 - pass? Defeated . . .Clause 14 is struck from the bill. Clause 15 - 18.1 pass. Clause 15 - pass. Clause 16; we're almost finished gentlemen. Clause 16 — Mr. Walding.

MR. WALDING: On 15, I wonder why there should be a change. I don't see what the difference is between duly registered under this Act and a registered member.

MR. CHAIRMAN: Mr. Tallin, can you answer Mr. Walding's question?

.MR. TALLIN: I think this was just straighting out language, myself.

MR. WALDING: Were the previous words . . .

MR. TALLIN: A registered member is defined and what it says is, no person shall practise veterinary medicine unless he is duly registered under this Act. There is nothing to say what's duly registered and what's just plain registered or anything else, so we just clarified the language to say, unless he is registered — a registered member.

MR. CHAIRMAN: All right, Mr. Walding? Clause — 15 pass. Clause 16.

MR. CHERNIACK: I wonder if Mr. Tallin, Mr. Chairman, could explain. I understand the purpose, of course. We're changing some of the accreditations body, but why drop the word willfully? We're keeping willfully in (b) and dropping it in (c); why is that? What's the point to that?

MR. CHAIRMAN: Mr. Tallin, can you assist?

MR. TALLIN: I really don't know why the distinction between (b) and (c). I would have thought that willfully would have been difficult to prove in either.

MR. CHERNIACK: Well falsely assumes willfully, surely? They wouldn't charge him with an offence if he truly believed that he was indeed a graduate. He must know that it is false in order to make him liable for the offence. We are talking about a criminal act here, and surely the removal of the word willfully makes it appear as if he could be in error and is still guilty of an offence. Is no mens rea involved there?

MR. TALLIN: No, I don't think so.

MR. CHERNIACK: Should there be? It did say willfully and now it is being changed.

MR. TALLIN: I suppose willfully is, in order to claim something, you must be willing it. You must be making the claim. I don't see what willfully could really mean there, although I must admit that I think the same criticism is . . .

MR. CHERNIACK: It should be consistent either way.

MR. TALLIN: I would prefer to take willfully out in both, because he has to be — but there is no amendment to (b) at the moment.

MR. CHERNIACK: Well, we'd better do that. We'd better have a motion on that, Mr. Chairman.

MR. CHAIRMAN: Mr. Downey moves. Would you repeat it please, Mr. Downey.

MR. DOWNEY: I so move.

MR. CHERNIACK: 3:26. I want that on the record. 3:26 a.m. We're dealing with a bunch of sheep in the Veterinary Bill.

MR. TALLIN: Motion that Bill 19 be amended by adding thereto, immediately after Section 16, the following Section. Clause 19(b) of the Act is amended by striking out the words (willfully and) in the first line thereof.

MOTION presented and carried.

MR. CHAIRMAN: Clause 16 as amended — pass; Clause 17 — pass; Clause 18 — pass; Clause 19 — pass; Clause 20 — pass with the corrected spelling error; 21 — pass. All right, we've got to go back to Clause 12, Section 14.7. Mr. Cherniack, you earlier moved a motion. I'm sure everyone's familiar with the motion. We had a lot of discussion on it.

MR. TALLIN: I'm having some difficulty — I'd like to ask Mr. Cherniack this. If the motion that Mr. Green suggested first were put forward, it would mean that on the basis that the conduct of the registered member would constitute a continuing hazard or an injustice to persons using his service, they would impose a fine, which to my mind seems a very peculiar type of penalty for that kind of a situation. I was trying to redraft the whole sub-section so that it would be something along this line: After hearing evidence and submission at an inquiry in respect of a registered member, the Board may by order dismiss the complaint, or if the Board is satisfied on the basis of the conduct of the registered member, that it would constitute a continuing —(Interjection)—

MR. CHERNIACK: I'm sorry, I've lost . . .

MR. CHAIRMAN: Order please. We're almost finished, please bear with us.

Mr. Tallin.

MR. TALLIN: After hearing evidence and submissions at an inquiry in respect of a registered member (a) the Board may by order dismiss the complaint; or (b) if the Board is satisfied on the basis of the conduct of the registered member that it would constitute a continuing hazard or injustice to persons using his services in veterinary medicine, if he were permitted to continue to practise, the Board may by order impose terms and conditions on the registration of the registered member respecting his practice of veterinary medicine, or suspend or cancel the registration of a registered member.

Now if you want to continue with the penalty section, there would be a clause, or Clause (c). If the person has violated or failed to comply with any provision of this act, you may impose a fine of not more than $500.00 on the registered member, to be paid to the Minister of Finance.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I recognize that Legal Counsel is working diligently and strenuously to provide some acceptable alternative wording, but I feel it incumbent to advise the Committee that alternative wording will not be acceptable to me and I won't support the Clause or Section in any form other than the form in which it is presently written. I make that statement to the Committee because it is consistent with the provisions in The Medical Act and I will not put myself in a position of supporting the provision in one act and not supporting it in another, and I can justify it in The Medical Act. I can justify it, in fact, in any professional act having to do with a profession that deals with matters of health. In this case I recognize we're talking about the health of animals not the health of humans, but I apply it to the field generally. I believe that the authoritative body in such a profession must have the right in terms of protecting the reputation and the image of that profession and the confidence of the public in that profession to make this kind of judgement. Whether or not the conduct of that member that is in question is specifically related to his or her professional activities or not, I think that their lifestyle activities have a reflection and a bearing on the profession, on the image of the profession, and on the confidence of the public in that profession. So I will be voting for the Section as it is worded and not as it may be amended.

MR. CHAIRMAN: Mr. Cherniak, do you want to proceed with your original amendment, or do you like some of the wording that's been provoked.

MR. CHERNIAK: I'll accept Mr. Tallin's suggested wording.

Mr. Cherniak's motion.

MOTION presented and defeated.

MR. CHAIRMAN: 14.7 — pass; Clause 12, as amended — pass; Preamble — pass; Title — pass; Bill be reported — pass.

Mr. Cherniack.

MR. CHERNIACK: On the question of bill be reported. I want to point out to the honourable members of this Committee the stupidity we've gone through. When we listened to all the presentations, we did it out of a sense of courtesy to all the people who spent last night here to till 12:20, I think, and today till about what 1:30 or so when they were through, and because of this Committee's blockheaded decision to force us to stay until 3:35, we've been dealing with a Bill which could have been well dealt with during the day, tomorrow or whenever it came about and we would have been able to deal with it in a sensible way, instead of which we've been forced to sit here for no good reason. If there were people waiting to talk to us, to address us, that's a good reason. But to force us to sit here, I think it's just absolute stubbornness in order to accommodate what I think is one member's desire to assert his vindictive nature. And I say that every member, every member of the Government side that forced us to stay here and voted, did so in a very foolish way.

To force Legislation to be dealt with at 3:30 in the morning, I think is ridiculous and I think that they have saved not a moment's time, because this will be remembered and it will not be considered a co-operative gesture on anybody's part to force this to happen, —(Interjection)— Mr. Chairman, I want to point out to you that if we're to come back at 10:00 tomorrow morning, it means that there will be what five hours approximately. And the Minister of Economic Affairs is sitting there for no good reason, except that he likes to be there and is now contributing, Mr. Chairman. —(Interjections)

MR. CHAIRMAN: Order please, order please. Mr. Cherniack hasn't finished. Mr. Cherniack are you through your comments?

MR. CHERNIACK: I'm almost through because I want to go home.

MR. CHAIRMAN: Mr. Downey, do you . . .

MR. CHERNIACK: I'm not through Mr. Chairman. I want to suggest to you that in all good sense, just to see how sensible we can be, that we ought to adjourn until say 11:00 o'clock tomorrow morning to accommodate to the point that has been spent at this hour. Now I'm through.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: I'm not going to hold the Committee any longer. We moved from Agriculture to this Committee to accommodate the opposition; otherwise it still would have never been in this Committee. It was an Agriculture Committee and we, through co-operation, moved it here so that he could deal with it. And that's why we're sitting here, Mr. Chairman, dealing with it so he could deal with it.

We propose Mr. Chairman, to be co-operative and that is why we wanted to deal with it tonight. Mr. Chairman, I will let the rest of the people go home and I want to thank the support staff for the effort they put into passing this Bill.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would accept the proposal and support it, that the Committee reconvene at 11:00 a.m. tomorrow and I move Committee rise.

MR. CHAIRMAN: The Bill has to be reported. Is that passed? - pass.

Committee rise and Committee shall sit at 11:00 a.m. tomorrow morning (Friday).