

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Wednesday, 10 July, 1985

TIME — 10:00 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. C. Santos (Burrows)

ATTENDANCE — QUORUM - 6 *Members of the Committee present:*

Hon. Ms. Hemphill, Hon. Messrs. Kostyra and Penner

Messrs. Birt, Downey, Harper, Kovnats, Santos, Steen and Corrin

MATTERS UNDER DISCUSSION:

Bill 3 - An Act to amend The Vital Statistics Act; Loi modifiant la loi sur les statistiques de l'état civil.

Bill 8 - The Ambulance Services Act; Loi sur les services d'ambulance.

Bill 16 - The Heritage Resources Act; Loi sur le patrimoine.

Bill 18 - An Act to amend The Highway Traffic Act; Loi modifiant le code de la route.

Bill 19 - An Act to amend The Highway Traffic Act (2); Loi modifiant le code de la route (2).

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MR. CHAIRMAN, C. Santos: Committee, please come to order. Before we rose last night, we decided to proceed according to the order in which the bills appeared, clause-by-clause.

The Attorney-General.

HON. R. PENNER: I would ask that the following bills be dropped down on the list: No. 14, the Member for Fort Garry advises me that he needs a little time to prepare some amendments he has in mind; No. 36, The Mortgage Dealers Act, can be dropped to the bottom; No. 55, the amendment to The Liquor Control Act, I would like dropped to the bottom; No. 58, An Act to amend The Mortgage Act, I would ask be dropped to the bottom - of course, you're going to have to have a lot of room at the bottom there, there is not much room at the top - and 85, The Health Services Insurance Act (2), dropped to the bottom.

MR. CHAIRMAN: Is that agreed to by the members of the committee?

The Member for Arthur.

MR. J. DOWNEY: A question for clarification, when the Minister says they're dropped to the bottom, does that mean that they'll be dealt with at the latter part of the Session or is he intending to totally remove some of them from the . . .

HON. R. PENNER: No no, I don't want to give any indication at this stage that I'm intending to totally remove. There are some, quite frankly, that I want some further consideration on, such as The Mortgage Act. We invite recommendations from Mr. Birt. We want his opinion on the amendments.

MR. J. DOWNEY: Okay.

MR. CHAIRMAN: Is that clear now? We are dropping Bills No. 14, 36, 55, 58 and 85, according to the order they appear, down to the bottom of the list.

Since we have heard all presentations, we will now proceed clause-by-clause. We'll start with Bill No. 3 at the top of the list.

**BILL 3 - THE VITAL STATISTICS ACT;
LA LOI SUR LES STATISTIQUES
DE L'ETAT CIVIL**

MR. CHAIRMAN: Clause 1 . . .

HON. R. PENNER: Could you go page-by-page?

MR. CHAIRMAN: We shall proceed page-by-page then. Pages 1 to 4 were each read and passed.
Preamble—pass; Title—pass.
Bill be reported—pass.
The next bill is Bill No. 8.

HON. R. PENNER: The Minister is not here. He should be very shortly. Could we just hold that until he comes?

MR. CHAIRMAN: We'll drop it to the bottom of the list?

MR. J. DOWNEY: No, just hold it until he arrives.

MR. CHAIRMAN: Or we'll just skip it, and come back to it when the Minister arrives.

HON. R. PENNER: Yes.

MR. CHAIRMAN: Why don't we just skip it and come back to it when the Minister arrives? We'll skip No. 8 until the Minister arrives.

MR. D. ORCHARD: He wasn't here last night either.

HON. R. PENNER: He was well-represented though, Don.

MR. D. ORCHARD: Yeah, you said an awful lot last night when . . .

HON. R. PENNER: Well, some of us speak little but think lots.

MR. D. ORCHARD: Some of you don't think at all.

**BILL 16 - THE HERITAGE
RESOURCES ACT; LOI SUR
LE PATRIMOINE**

MR. CHAIRMAN: Bill No. 16. We shall proceed with Bill 16, The Heritage Resources Act, page-by-page. Bill No. 16, the Heritage Resources Act, Page 1

HON. R. PENNER: Page 1, I have an amendment, Mr. Chairperson, to propose.

MR. CHAIRMAN: Amendment.

HON. R. PENNER: I move
THAT the French version of Bill 16 be amended by striking out the title thereof and substituting therefor the following title:

**“LOI SUR LES RICHESSES DU
PATRIMOINE”**

MR. CHAIRMAN: Agreed? (Agreed) Page 1 - the Honourable Attorney-General.

HON. R. PENNER: I move
THAT section 1 of Bill 16 be amended

- by striking out the words “this act” in the 2nd line of the definition of “heritage permit”, where it appears therein, and substituting therefor the words and figures “Part II”;
- by striking out the definition of “heritage resource impact assessment”, where it appears therein, and substituting therefor the following definition:
“‘heritage resource impact assessment’ means a written assessment showing the impact that proposed work, activity or development or a proposed project, as described in section 12, is likely to have upon heritage resources or human remains;” and
- by adding thereto, immediately after the definition of “heritage site”, where it appears therein, the following definition: “‘human remains’ means human remains as defined in Part IV;”.

I make motion and just add before there’s an explanation that all of these motions have been circulated in both languages.

MR. CHAIRMAN: Is it agreed? (Agreed)
The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, maybe the Attorney-General could explain what these, other than the definition on human remains, what the purpose of the amendments are, what they are intended to clarify or correct?

MR. CHAIRMAN: The Minister of Culture.

HON. E. KOSTYRA: This amendment basically is related to human remains. The only change in heritage resource impact assessment definition is that latter part where we’re defining heritage resources or human remains and then the same is true with respect to section (c).

MR. CHAIRMAN: Other questions? Agreed? (Agreed)
Page 1, as amended—pass.
Page 2, as amended—pass.
Page 3 - the Attorney-General.

HON. R. PENNER: Mr. Chairman, I move
THAT section 2 of Bill 16 be amended by striking out the word “objects” in the 5th line thereof and substituting therefor the words “resources or human remains”.
This is consequential upon amendments already passed.

MR. CHAIRMAN: Agreed? (Agreed)
The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, did the Minister of Culture find that heritage objects was not a broad enough definition and didn’t include enough artifacts, buildings, areas, resources, so that he had to change it to heritage resources?

HON. E. KOSTYRA: Yes, it’s just to give better definition to the term, that’s why we’re using resources, it is somewhat broader than objects; and also to take out “human remains” which would have been determined to be part of that, and to separate them, that they are not part of heritage resources or heritage objects.

MR. D. ORCHARD: Mr. Chairman, I suppose we could do it now or we could do it later when we get to the operative section on the human remains aspect of it. Why now are we bringing in the reference throughout the bill because the majority of these amendments deal with the issue of human remains; what stimulated this necessity? What was the flaw or the shortfall of the legislation as originally tabled in that now we are making these amendments to deal with human remains?

HON. E. KOSTYRA: A couple of reasons: (1) In the previous act they were dealt with separately though not called human remains, they were called skeletal remains; (2) I think there’s some sensitivity in having human remains being dealt with in the all-encompassing term of “heritage resource.” I think there is some sensitivity that human remains ought to be separated from that definition.

MR. D. ORCHARD: Then through the distinction or the separation of human remains from heritage resource in the general definition, are we conferring any new rights to the Crown or any new methods of - I’m looking for the right word. But are any new abilities granted to the Crown by having this distinction of human remains in terms of the way that they are required to, for instance, make sure that a disrupted, unmarked grave is restored, etc.? Is there anything that this new designation does to confer new powers to the Crown?

HON. E. KOSTYRA: No.

MR. CHAIRMAN: Page 3, as amended - the Attorney-General.

HON. R. PENNER: I have a compendious motion that takes this change with respect to human remains and

applies it to three other clauses that I would like, with your permission, to move now.

I move

THAT Bill 16 be further amended by adding thereto, immediately after the word "resources" where it appears

- (a) in the 5th line of clause 13(1)(a) and again in the 5th line of clause 13(1)(b) thereof; and
- (b) in the 4th line and again in the 6th line of subsection 17(3) thereof; in each case, the words "or human remains".

This is consistent with amendments already in place.

MR. CHAIRMAN: It will affect three sections by consistent use of the word. Is that agreed?

The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, that's fine. That's an amendment that seems to be consistent.

Mr. Chairman, in the briefs that were presented last night, there were some concerns expressed about the potential impact this legislation would have on sites adjacent to heritage sites or designated heritage sites, and that the power the Minister has acquired in this legislation is for designation of properties that are not in themselves of significant heritage value, but merely are located next to those types of properties.

One of the issues that we've discussed in the debate on second reading and it was discussed with some of the presenters last night was the issue of compensation. I note that the Minister has taken and made a number of amendments. At a later stage of this bill, he even has attempted to bring in a process by which compensation for damages could be allowed.

Mr. Chairman, the general principle of this bill is that we are protecting a heritage resource for the public, for the people of Manitoba. Yet, the onus continues to be on the owner of that heritage resource and the costs may - the Minister does have in there the ability to enter into agreements to provide funding. But by and large, the landowner, the private owner of the site or the resource or the building can be required to maintain it as a heritage resource without compensation. That issue was addressed by several people last night, and I note that we're passing this part of the act with no reference to any efforts of compensation. Can the Minister indicate whether he disagrees with the issue of compensation or whether it is his intention at third reading, say, to introduce amendments which would provide for a formula or a format of compensation for people affected by designation under this act?

HON. E. KOSTYRA: We've discussed this issue before. As I indicated, it is not our intention nor is there any provision in this act that explicitly provides for any compensation with respect to sites that are designated heritage sites.

I also indicated that it was the government's intention indeed to announce that there will be a grant program made available for sites that are designated provincial heritage sites, and a companion program for sites that may be designated by municipalities. I also indicated that there is no such provision in other similar legislation, either in the Provinces of Saskatchewan or Alberta, and we do not see the need to put such provision in this legislation.

MR. D. ORCHARD: Mr. Chairman, two areas, and the first one I'll address is the Minister's indication of a grant program. Does the Minister need legislative authority to establish that kind of grant program?

HON. E. KOSTYRA: I'm sorry, I missed the question.

HON. R. PENNER: Would you need legislative authority for a grant program?

HON. E. KOSTYRA: No, I don't. I do have legislative authority.

HON. R. PENNER: Yes, but you don't need it right now.

HON. E. KOSTYRA: Not in this legislation.

MR. D. ORCHARD: Okay. Mr. Chairman, presumably that grant program or the funding for it does not currently exist. Will the Minister be withholding proclamation of this bill until he has his grant program in place?

HON. E. KOSTYRA: The grant program will be in place very shortly.

MR. D. ORCHARD: The question still stands, Mr. Chairman.

HON. E. KOSTYRA: I don't anticipate designating any sites under the provisions of this legislation prior to a grant program being formed and made available.

MR. CHAIRMAN: The Member for Sturgeon Creek.

MR. F. JOHNSTON: Mr. Chairman, the Minister, in his sum-up in second reading, did mention the grant program that he refers to at the present time. There was a distinguished member of this Legislature, Mr. Campbell, I recall many years ago, coming before a committee of the Legislature discussing The Expropriation Act, and we have the same situation arising here.

We have the Minister saying that the government is going to set up a grant program that will work in some way to be compensation to people that have this designation put on their property. But it appears that the grant program will be at the decision or the whim of the Cabinet or the Minister, if he decides to do so.

What is wrong with putting in the act - the way Mr. Campbell always used to say, if you're going to do it, don't leave it in a situation that's up in the air. Put it in the act, so people will understand the bill and what the bill means when they read it or when it is being exercised.

What is wrong with having in this act a line that says the government will enter into negotiations for compensation to the people that own the heritage objects or resources, to give compensation to them when the Crown designates the property, the building, or if the Crown decides that objects are going to be the ownership of the Crown, what is wrong with stating in this act that the government must enter into negotiations regarding compensation to the people that are out of pocket or could be financially hurt by the

designations of this act or the designations made by the Minister? What is wrong with saying it right in the bill?

HON. E. KOSTYRA: First of all, there is provisions in the act under section 15 that allows the Minister to enter into agreements with respect to the maintenance of heritage sites, so that enabling power is in the act. What the member I think is suggesting, however, is something that does not exist, to my knowledge, in any heritage legislation, and that is, saying that the government must enter into an agreement, and that means that the government has to successfully conclude an agreement with respect to a site. The practice has been, with respect to other jurisdictions, Alberta is an example, where they've designated 290-odd sites, they've not run into such difficulty. There would be far greater difficulty if you mandated there has to be some form of compensation when there may not be any requirement for such compensation.

I also think there is provisions under the present Expropriation Act that provides for legal remedy if some person does believe that the actions of the government has been injurious to their status as a property owner. Maybe the Attorney-General can just give reference to that particular section, but there is that kind of legislative authority at the present time.

HON. R. PENNER: Yes, in fact, there is stronger machinery to permit compensation than the kind that is even suggested. In The Expropriation Act, section 2(1) "that notwithstanding any act to the Legislature heretofore enacted, whether special or general, this act applies wherever an authority expropriate land, or in the exercise of its lawful powers causes the injurious affection of land and due compensation shall be determined in accordance with the provisions hereof." And section 2(2) says that "where there is a conflict between a provision of this act and a provision of any other act, general or special, the provisions of this act," that is The Expropriation Act, "prevails". There is strong machinery of the kind that is suggested by the members already in place.

MR. F. JOHNSTON: I think the Attorney-General refers to the legislation that I've made reference to when we put it through many years ago and the distinguished gentlemen said put it in the act so that we'll know what's happening.

Can the Attorney-General give me a definition on the basis of expropriation versus designation of a piece of property, would the word "expropriation" apply in this particular act? There's no technical reasons why it wouldn't apply in this act. Does expropriation mean the same as designating a property that's held in trust, etc., that may cost the owner some financial problems?

HON. R. PENNER: First of all, expropriation is not the same as designation. However, this particular section, says, "or" injurious protection of land. It covers both expropriation and something which is done under any other statutory authority which injures, that is, causes a loss of value to the land or its use; so both are covered.

MR. F. JOHNSTON: So under The Expropriation Act, there's protection, in your opinion, that people can make

application for protection or compensation under The Expropriation Act, referring to this act.

HON. R. PENNER: Yes.

MR. D. ORCHARD: Mr. Chairman, I am pleased to have that assurance, but I'd like to make two points with the Minister. First of all, the Minister make reference, as reason for not having any specifics of compensation within this act, he makes reference and uses the reasoning that other provinces who have heritage resource acts don't have it in their act. But yet the Minister has said that this act is the best and the most far-reaching, etc., etc. Why doesn't he make it even better than the other provinces by having a clause - it may even be a clause referring to that section in The Expropriation Act, specifically? Because, Mr. Chairman, on so many occasions in the House we listen to members of this government chastising our neighbouring governments for all the bad things they do, but whenever it's convenient, they say, well, the other provinces don't do it so why should we do it?

Selective decision by this government as to what is good and what is bad and what they're going to make public and what they're going to embrace and what they're going to distance themselves from in other provinces doesn't really help in Manitoba. The Minister secondly, is espousing this act as being one of the best in North America. It's an act that's designed to foster and encourage public support, avocational archaeological support, professional support. This is an act designed to make everybody happy and satisfied in working toward the preservation of our heritage.

Mr. Chairman, there would be no better way to make people feel even happier than to have a specific mention in here of compensation. The Attorney-General says it exists in The Expropriation Act as a superseding power in another act. It would just add that final impression that this act is not offensive to anyone, that this act indeed intends to co-operate with everybody who is interested in preserving heritage resources, and not at their individual expense. I think it would be the ultimate gesture of good will for this Minister to have that kind of reference in this act and it would demonstrate truly that this act is possibly the best in Canada, if he made that final move and balanced approach to dealing with the public that may be affected by designations under this act.

HON. E. KOSTYRA: I think we'll agree to disagree. I think what we've pointed out is a number of things. One is that there is no need to have a specific compensation provision in the legislation; in fact, if one was to do that, one would invite claims where no claims may need exist and I think that would be fiscally irresponsible.

Secondly, there are provisions through natural justice under The Expropriation Act if somebody feels that they have been affected negatively by such a declaration under this legislation. Further, we indicated that we will have financial assistance available under grant program, if needed. Not in every case is there need for financial assistance with respect to heritage designation. In fact, as I indicated in second reading debate - we seem to be repeating here - that we've dealt with close to 12

designations in the last four years, many of which were private ownership, were not public ownership, everywhere from the Hudson's Bay Company in Norway House to municipally-owned property, and have been able to successfully conclude discussions with those individuals, in some cases providing no compensation, no financial assistance whatsoever, in some cases some small level of assistance was needed in order to facilitate development. So I think that we have addressed that issue and I think one has to look at how other provisions exist in other areas.

The member suggested somehow we could make the legislation better than it is and claims that I said that this is the best in North America. I have never said that. People who made representations here made that claim; I didn't. I'm not denying it.

MR. F. JOHNSTON: Mr. Chairman, we've had discussions on this bill in second reading. We've heard representations, we've even had an indication from the Minister that he's going to set up a means of compensation by way of a fund of some kind. We've got a piece of legislation here - and, quite frankly, I'm not too interested in what the other provinces do - that is going to protect our heritage.

We have, from the Attorney-General, an assurance that people can turn to The Expropriation Act and, by using it, have a way of having some compensation if it is necessary; and I say again, why not put in the bill just some small reference to the person who is not knowledgeable about all of the statutes of this province, and when this bill applies and they read it, or their advisers read it, there's a section in there that refers to The Expropriation Act or makes some reference to the fact that there is a compensation procedure available to them.

Now, if it's in the act, the act almost becomes a close to perfect - nothing's perfect - but close to a perfect situation where the protection of the people that the government is dealing with is assured. It's just one small line, as I said, put it in the bill. If you mean it, you intend to do it, and it's available right now, why not make the reference in here to the availability of it for the people who read this act.

As a matter of fact, I would even end up, Mr. Chairman, by saying I don't know that it could be done in this very moment or in the next five minutes. I would say to the Minister if he could have discussion with the Attorney-General or his officials to consider a small clause showing the people that they have protection or compensation regarding this act when the government makes decisions to operate within the bounds of this act.

HON. E. KOSTYRA: Again, I think that ability exists in The Expropriation Act. If someone feels that they have been injured, I see no need to make any reference or amendment in this act.

HON. R. PENNER: I think what should be pointed out is that you have in The Expropriation Act a whole mechanism, a whole machinery and a whole jurisprudence and since it applies very clearly and specifically to this act wherever land has been injured then to try to replicate that in this statute it would, in

fact, weaken the rights of people under this statute. We just couldn't do it.

MR. CHAIRMAN: The motion on the floor refers to clause 13 which we haven't reached yet. I think it's prematurely introduced.

HON. R. PENNER: Well, the problem I had is the way the motion was given to me as it deals with clause 13, it deals with clause 17 and since it carries forward as do the next two motions, the one idea that's already been adopted, I didn't know how to . . . I'll accept your ruling whatever that may be.

MR. CHAIRMAN: When we reach clause 13(1)(a) then we will introduce . . .

HON. R. PENNER: Then, I'll have to make these each as separate motions. Okay, fine. Legislative draftspersons gave it to me in this form. I thought they knew.

D. ORCHARD: What page are we on, Mr. Chairman?

MR. CHAIRMAN: We are now on Page 3, as amended—pass.

Page 4 - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, to the Minister. In section 4 of the bill (a), there is the requirement to publish a Notice of Intent in one issue of a newspaper circulating in the area of the site. If that's in Winnipeg, that's fine, but in rural Manitoba, you'll often run into a circumstance where a site may well be covered by one or more newspapers. Would the Minister consider an amendment - if you say one issue but say, newspapers in the area, and possibly even because in rural papers they are usually weekly newspapers, would the Minister give consideration to publishing the Notice of Intent in two issues of newspapers circulating in the area? Then you don't exclude it to one newspaper and only one issue.

HON. E. KOSTYRA: I have no problem in terms of intent what the member is saying. I would suggest that if he is willing to leave that with me and I can deal with it in report stage and make this consistent with what is in The Municipal Act with respect to the property - I believe in The Municipal Act it has two specific issues or two newspapers. I think, because so many of the other provisions in this act are done in a way that is consistent with The Municipal Act with respect to land use that this should be the same.

MR. D. ORCHARD: Okay. I'm not familiar with the provisions in The Municipal Act but the Minister has reason to believe that it's two issues instead of one.

HON. E. KOSTYRA: Or two papers.

MR. D. ORCHARD: Or in papers circulating there, so you're not restricted just to one paper? In my constituency where you may have some designations, there are probably as many as three papers overlapping a given area, and not everyone takes the same paper.

One has a universal circulation, the other by subscription. One of two things would happen; you may miss people or, certainly, you are going to discriminate slightly in choosing one paper out of three that may be circulating in the area and it would be, to me, advisable to have it in the papers that circulate in the area.

MR. CHAIRMAN: Page 4—pass; Page 5.

HON. E. KOSTYRA: On Page 5 there's an amendment.

MR. CHAIRMAN: Is there an amendment on Page 5?

HON. E. KOSTYRA: Yes.

MR. D. ORCHARD: Page 4 of your amendments, Mr. Chairman.

HON. E. KOSTYRA: Again, it comes in a couple of sections.

MR. D. ORCHARD: First motion on Page 4.

HON. E. KOSTYRA: It comes in two sections.

MR. CHAIRMAN: Are we going to accept compendious motion? What's the will of the Committee that affects more than one section?

HON. E. KOSTYRA: It's the same amendment. Why not? That's the usual practice.

MR. D. ORCHARD: Mr. Chairman, when the Minister gave us the amendments last night we went through motion-by-motion, page-by-page and found them relatively easy to follow. It takes but a moment to propose the motion. It avoids this kind of confusion. We've already wasted enough time talking about whether we can accept three pages of motions of amendment at once. We would have had those things through. Why can't we just move the amendments as they come up? There's one motion for amendment on Page 5 of the bill.

Whilst I've got the floor, the Minister is looking at the one-issue business. That appears twice in here and I presume any amendment made in the first place will follow through as an amendment wherever the one-issue notice in a newspaper appears.

HON. R. PENNER: I'm going to move this motion and if somebody thinks it's out of order, we can deal with it on that basis.

THAT bill 16 be amended by striking out the figures "10" where they appear in the 9th line of subsection 7(1) thereof and again in the 5th line of subsection 28(1) thereof and substituting therefor, in each case, the figures "21".

MR. CHAIRMAN: Pass.

HON. R. PENNER: With your permission, I would ask that we revert to the amendment.

MR. CHAIRMAN: We revert to the amendment that we rejected before because we want to be consistent.

HON. R. PENNER: There are two amendments. The one at the bottom of the first page of the amendment. I move

THAT Bill 16 be further amended by adding thereto, immediately after the word "resources" where it appears

(a) in the 5th line of clause 13(1)(a) and again in the 5th line of clause 13(1)(b) thereof; and

(b) in the 4th line and again in the 6th line of subsection 17(3) thereof;

in each case, the words "or human remains".

MR. CHAIRMAN: Agreed.

HON. R. PENNER: I would move further, Mr. Chairperson,

THAT subsection 21(1) of Bill 16 - because this is the same thing - be amended

(a) by adding thereto, immediately after the word "site" where it appears for the 2nd time in the 4th line thereof, the words "believed to contain heritage resources or human remains"; and

(b) by striking out the word "thereof" in the 5th line thereof and substituting therefor the words "of the site and the heritage resources or human remains".

MR. D. ORCHARD: Mr. Chairman, were we not going page-by-page?

MR. F. JOHNSTON: Mr. Chairman, it's pretty obvious that the Minister had his staff work on some amendments to this bill and he had them put together andm after they had put them together, you see on Page 3 of the amendments we get up to section 67. I repeat, obviously again, it appears as if the Minister or his staff suggested that there should be further amendments in this bill so we go to Page 4, which takes us to Bill 16, back to section 7; Page 4 takes us back to section 12; and then when you look at Page 5 we're back to section 12 again, and then we jump, on Page 5, to section 44(3); and then when we go to Page 6, we go to section 35. So the obvious problem is the amendments that have been presented to the Attorney-General to put before us are not in order of page-by-page.

Last night and this morning, at considerable test to my colleague for Pembina's temperament and mine, we went through this and finally got it straightened out and came to the conclusion that they're not in order, but we would try to do it page-by-page, move the amendments. I think the Attorney-General has been given a problem that he hasn't been given something that is in the proper order of the bill.

MR. CHAIRMAN: With a little patience, the committee can proceed, a little bit slowly but orderly.

The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, can I just make the suggestion that we go page-by-page, and where's there's an amendment to the given page the Attorney-General can propose it. The Minister has already caught an amendment on Page 4 which was to section 7(1) and we got that amendment through quite nicely.

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MR. CHAIRMAN: The suggestion, proposal accepted with grace?

MR. J. DOWNEY: Page-by-page.

MR. CHAIRMAN: Page-by-page. Page 5, as amended—pass; Page 6—pass.
Page 7 - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, just once again to the Minister. These last two pages have dealt with the appeal process and in cases of designation where there is an appeal from the Intent to Designate by the landowner, or by an affected or interested individual, the final decision always ends up . . . Sorry, I'll maybe start over again.

The last two pages that we've dealt with here deal with the appeal process of an appeal on the intent to designate, the Notice of Intent to designate, and the same thing applies when we get into the section on municipalities, the same basic format is in place. The problem I foresee, and once again the Minister may well say that it's the same as in other acts, but the ultimate appeal is left with the Minister whose department started the Intent to Designate. I simply question the Minister, is that sufficient protection to the individual, and should there not be an appeal to a higher authority, other than the Minister, because the Minister - it's clear when we get into Page 8, for instance, I think it is, but at any rate, when we get further on in the pages - the Minister can even reject a recommendation by the Municipal Board that his Intent to Designate should be modified. I mean, the entire authority is with the Minister in this.

The Municipal Board has been used as, if you will, a court of higher appeal, but the legislation is clear that the Minister can reject that recommendation by the Municipal Board and proceed with the original designation or Intent to Designate. Furthermore, at that stage, the Municipal Board cannot be brought in because if the Minister has not varied any aspect of his Intent to Designate, that is one of the criterion before an individual affected by the Intent to Designate can appeal. There has to be changed circumstance or a varied order for intent to designate. If the Minister rejects any variation by the Municipal Board he thereby precludes any opportunity for the individual to make a further appeal because no circumstances have changed.

People are trusting of this Minister, as was indicated last night, but I don't think that is a proper method of appeal, where it ends up with the Minister and the Lieutenant-Governor-in-Council being the final body of appeal.

HON. E. KOSTYRA: Well, I disagree. As I pointed out, again I think we're rehashing some old ground. Under the present act there was no provision for any kind of public process whatsoever, that has been put into this bill.

The other point I would make is that I think this process, again, is consistent with respect to the other processes that exist with respect to property and land use under The Municipal Act, where there is a process to the Municipal Board, but the final decision or appeal, with respect to issues relating to municipal planning

and land use, rest with either the Minister or Executive Council.

MR. D. ORCHARD: Court of Appeal.

HON. E. KOSTYRA: Court of Appeal what?

MR. D. ORCHARD: Mr. Chairman, I maybe didn't hear the Minister correctly, but I believe that decisions by the Municipal Board, as they are given in The Municipal Act, have appeal right to the Manitoba Court of Appeal, and the Attorney-General can qualify that. The Minister is not the final say in Municipal Board decisions as they apply under The Municipal Act.

HON. E. KOSTYRA: Land use. Planning land use.

MR. D. ORCHARD: Well, the Attorney-General might be able to clarify that.

HON. R. PENNER: I know that in some situations there is an appeal to the Court of Appeal. I can't say that is so with respect to all, I'd have to get a hold of the . . . We'll check it out.

MR. D. ORCHARD: Okay. Mr. Chairman, like the Minister says, there is now this public notice and public hearing, etc., etc., before any designation is made contrary to the other act. The Minister must also certainly recognize and acknowledge that there is a substantial offence and penalty clause in this act, as well; and that surely must require a court of higher appeal, if you will, than the Minister who's making the original decision and, under this act, his people making a decision that an offence has occurred and that, by summary conviction, a fine should be levied. That's the necessity for the higher Court of Appeal, in my opinion.

HON. E. KOSTYRA: I don't follow you. There is provision with respect to offence. It has to be a court decision, not a bureaucratic decision. I don't follow your question.

MR. D. ORCHARD: You say, to justify not having any higher appeal than to you, as Minister, from a municipal . . .

HON. E. KOSTYRA: It's Executive Council.

MR. D. ORCHARD: Your recommendation would be highly valued there, I presume. I know the Attorney-General is just maybe not quite agreeing.

But, Mr. Chairman, the point I'm making is that the offence and penalty section in here can provide for substantial penalties to individuals and companies. We're talking up to \$50,000-a-day for each day an offence occurs under this act.

That's where the higher . . .

HON. R. PENNER: That's covered by The Summary Convictions Act, and all of the appeals could go right up to the Supreme Court. This is different. This is designation. You're talking about offences.

MR. D. ORCHARD: Right, but under the designation, anyone who violates the designation, because the

Minister hasn't listened to him, will fall under the penalty section, Mr. Attorney-General.

HON. R. PENNER: Not automatically. If it is alleged that someone has violated designation, before there can be a penalty there has to be a charge. There has to be a trial. At that trial, every issue including the Charter can be raised. Constitutional jurisdiction questions can be raised. The appellant has a further appeal to the Court of Queen's Bench or to the Court of Appeal, and has a further appeal to the Supreme Court of Canada on issues of law. So with respect to the penalties, the whole panoply of appeal mechanisms is open.

MR. D. ORCHARD: Well, I can see that we're not going to win that argument, so we might just as well pass it.

MR. CHAIRMAN: Page 7—pass; Page 8—pass.
Page 9 - the Attorney-General.

HON. R. PENNER: The second motion on Page 4 deals with 12(1). Okay, I'll read it.

THAT subsection 12(1) of Bill 16 be amended by striking out all the words, letters and figures in the last 7 lines thereof and substituting therefor the words, letters and figures "in clause (a), (b) or (c), and subject to sections 13 and 14, submit to the minister an application for a heritage permit authorizing the proposed work, activity, development or project, and thereafter, if the minister after considering the application so requires, shall, in addition and before commencing the proposed work, activity, development or project, submit to the minister a heritage resource impact assessment or development plan or both, as the minister may require, and such other plans, documents, material and information as the minister may require, with respect to the proposed work, activity, development or project, prepared at the cost of the person." I move that.

MR. CHAIRMAN: Agreed?

MR. D. ORCHARD: Explain.

HON. E. KOSTYRA: Under the original wording, any potential building that was designated where there was going to be work done would require an impact assessment. This removes that mandatory requirement, and allows provision for a permit to be issued without having a full impact assessment.

MR. CHAIRMAN: Page 9, as amended - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, that's the same basic amendment we'll be moving on section 12(2). I think this is a step in the right direction in that it makes more flexible and less costly to the owner of a heritage resource this legislation. The Minister is heeding to some advice from a number of people, not only ourselves, but a number of people, and I think that is a step in the right direction. If we could just get him to go all the way and come up with a definite reference to

compensation, it would make this act a reasonable document.

MR. CHAIRMAN: Page 9, as amended—pass.
Page 10 - The Honourable Attorney-General.

HON. R. PENNER: I have two motions with respect to this page.

- Mr. Chairperson, I move
THAT subsection 12(2) of Bill 16 be amended
- (a) by adding thereto, immediately after the word "resources" in the 2nd line thereof, the words "or human remains"; and
 - (b) by striking out all the words and figures in the last 8 lines thereof and substituting therefor the words and figures "be, and subject to sections 13 and 14, to submit to the minister an application for a heritage permit authorizing the work, activity, development or project, and thereafter, if the minister after considering the application so requires, to submit to the minister, in addition and before recommending or commencing the work, activity, development or project, a heritage resource impact assessment or development plan or both, as the minister may require, and such other plans, documents, material and information as the minister may require, with respect to the work, activity, development or project, prepared at the cost of the owner or lessee." I move that.

MR. CHAIRMAN: Agreed?
The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, last night the Minister heard presentation from one organization or on behalf of one organization, namely, the Pembina Mountain Clays Inc. Now they made the point, and I suppose I might just as well discuss it here as anything, that under the act there is the ability to stop, order to cease the work, etc., etc. They're on a very tight schedule, and I can assure you of that because I know their operation reasonably well. They have to have their mining operation done in the summer months before freeze-up, and any delays can severely adversely effect their operation.

Mr. Chairman, I have always had a problem with section 12(2), where it says "where the Minister has reason to believe". Now granted some of the presenters last night didn't have concerns with that, because they said he's not going to act unless there is pretty strong evidence. That may well be, but the legislation is loose enough in here, where "has reason to believe" can mean almost anything.

In the instances of Pembina Mountain Clays, you could essentially shut down a half-year of operation in the wintertime and half-a-summer's mining under this act. There is no requirement for compensation until we get to an amendment that the Minister is proposing under section 18, and we'll discuss it there.

What I'd like to know . . .

HON. E. KOSTYRA: 17.

MR. D. ORCHARD: . . . from the Minister is whether the amendment that he's proposing on Page 6, that

section 18 be amended, which we'll be getting to shortly - and the Attorney-General may be the one that would answer this one. In the example of Pembina Mountain Clays, if they are shut down under an order here and they lose half-a-season's production and employment in the winter, can their damages be such that those total costs are recovered? Is that an actionable request for damage recovery?

HON. R. PENNER: I would say yes, it is. We really essentially, I think, discussed this when we discussed those provisions of The Expropriation Act which I would think apply.

MR. D. ORCHARD: Okay. Now one of the things that we can do to resolve some of the concerns that legal counsel for Pembina Mountain Clays has over even the amendment that the Minister is proposing is that the onus is on them then to go to court and, at considerable expense, prove their damages, etc., etc. Once again, we're fighting the government.

The Minister, I think, has a reasonable understanding of their operation, and I think he has a reasonable appreciation that it is with co-operation that Pembina Mountain Clays over the past number of years, probably for 30 years, has preserved the paleontological resource that is present from time to time in those bentonite layers.

What I would like from the Minister is the assurance that he wouldn't unduly use this act and the powers that are in it to harm their operation, because I can tell you that they have co-operated with the museum in Morden. As the gentleman last night, Mr. Wright, pointed out, right now there are three summer students there that are there on a full-time basis as they're mining, in the hopes that they may make a discovery that they hit a fossil remains down there. Then they will immediately move in and remove that in an expert fashion.

That working relationship has been a good one. It has preserved a lot of fossil remains, some of which are unique and some of the best in the world. I would just like the assurance of the Minister that he's not going to use some of the arbitrary powers in here to adversely affect the commercial operation.

HON. E. KOSTYRA: As I indicated last night, I think the situation that is in place between Pembina Mountain Clays and the local community is an excellent one, and one that the implementation of this act will not disturb. In fact, there could be ways of dealing with that situation on an ongoing basis where the department could issue a permit to the amateur collectors in that area to have access to that site on an ongoing basis, so it would be covered and the conditions could be those that presently exist between them right now. But there is no intention, using the specific example and specific situation that the member's dealing with, to in any way alter that arrangement, because it is very successful.

MR. D. ORCHARD: Thank you.

MR. CHAIRMAN: Motion agreed? Page 10, as amended?

HON. E. KOSTYRA: I'm sorry, there is 12(3).

HON. R. PENNER: Okay, at the bottom of Page 4 of the amendments as circulated, I move

THAT subsection 12(3) of Bill 16 be struck and the following subsection substituted therefor:
12(3) Any application for a heritage permit, and any heritage resource impact assessment or development plan required under this section shall be in such form and shall contain such information as the minister may, by regulation, prescribe.

MR. D. ORCHARD: Agreed.

HON. R. PENNER: Going back to Page 1 of the amendments, I will move part of that motion.

I move

THAT Bill 16 be further amended by adding thereto, immediately after the word "resources" where it appears

(a) in the 5th line of clause 13(1)(a) and again in the 5th line of clause 13(1)(b) thereof; and in each case, the words "or human remains".

MR. CHAIRMAN: Page 10, as amended—pass; Page 11, as amended—pass.

Page 12—pass; Page 13—pass.
Page 14 - the Attorney-General.

HON. R. PENNER: I have an amendment which I think deals with some of the concerns raised by the Member for Pembina.

HON. E. KOSTYRA: 17(3) first, Roland.

HON. R. PENNER: 17(3), where's that? Okay, we've got it. Starting with the last part of the amendment on Page 1, I move

THAT Bill 16 be further amended by adding thereto, immediately after the word "resources" where it appears

(b) in the 4th line and again in the 6th line of subsection 17(3) thereof;
in each case, the words "or human remains".

MR. CHAIRMAN: Motion accepted?

MR. D. ORCHARD: That one isn't the one I want, Rolly.

HON. R. PENNER: No, I know. We're getting to the goodie.

MR. D. ORCHARD: Which page are we on now, Mr. Chairman?

MR. CHAIRMAN: Page 14.

HON. R. PENNER: We're on Page 14, and I've got an amendment to section 18.

MR. D. ORCHARD: Mr. Chairman, before we get there, can I pose a question to the Minister on section 17(3)?

HON. E. KOSTYRA: Sure.

MR. D. ORCHARD: Under this section of 17(3), the Minister can order restoration of a site which is

damaged by, presumably, the person that owns it. Now under circumstances where that's willful damage or where they knew that there was a heritage value or it was a designated site, that may well be legitimate. I'm not disputing that.

But this also can require, if I'm reading it correctly, the restoration of a site for damages done when a person didn't know that he was damaging a heritage resource. Does this not allow after the fact designation that a site that has been damaged is a heritage site that has to be restored?

HON. R. PENNER: That's the kind of issue that can be encompassed in the appeal.

MR. D. ORCHARD: You see, what I'm getting at, Mr. Chairman, is this section starts in 17(1): "Where the Minister believes on reasonable and probable grounds", etc. This isn't the designated site provision, if I'm reading it correctly. This isn't a site that is under a Notice of Intent or a designated site. This is one where there's construction going on, and the owner does not realize that he is causing damage to a heritage site because there is no Notice of Intent and the site hasn't been declared.

That section 17(3) gives you, Mr. Minister, the power to make the individual who did the damage - and this would be without knowledge, because you've moved in because you've had reason to believe. You can ask him to restore that site at his cost. That person or that corporation may have had no idea whatsoever that the site had heritage value. Do you follow what I'm getting at?

HON. E. KOSTYRA: I'm sorry. I don't see the words that the member is putting into section 17(3). Section 17(3) talks about the damage has to stop. There's no provision there. If you look at the bottom, it says, "but shall not take or cause to be taken any further steps." That is, the Minister, so under this section, the Minister cannot order any restitution or costs associated with restitution of the site without going back to the remedies that are prescribed in the previous section with respect to the order of the judge. All it does is halt any continuing damage. It doesn't require any restitution or costs associated with the restitution.

HON. R. PENNER: If you read 17 as a whole, 17 begins by dealing with breaches of section 12 or section 14. Those breaches, legally speaking, cannot be caused by inadvertence. If a person does something inadvertently, not knowing that it is a heritage site, then he cannot be in breach of 12 or 14, so you have a stop order where the matter is then brought to the attention of the person and then that is notice to the person of something that hitherto that person may not have known, but it can't be retrospective in any way with respect to something that has been done; and then you have the stop order that is dealt with by a judge, and there, under 17(2) and further, if there is any matter where somebody feels they're being called upon to do something for which there is no fault, has a remedy before the judge, because the Supreme Court of Canada has held with respect, the interpretation of statutes, that there is no absolute liability without absolutely liability being designated.

Then 17(3) just deals with a very particular situation where a delay in getting a stop order might be prejudicial - and it will be very rare - the Minister has powers, but cannot take any further steps under this particular ministerial kind of stop order without the order of a judge, obtained under subsection (2). In other words, he must get to that judge as soon as possible. This is no different than normal provisions in civil litigation for what is called an ex parte injunction, which is returnable within a few days to a judge with notice being given to the other party; and then, to add additional protection, there is an appeal provision which will be expanded by an amendment to section 18.

MR. D. ORCHARD: Mr. Chairman, there's only one thing that I disagree with the Attorney-General on in his explanation, in that I believe he indicated that the individual so affected, potentially, by section 17 could not be unaware or be an inadvertent offender.

I think section 12(2) really leaves it that the corporation is an inadvertent offender, because we go back to that "the Minister has reason to believe". In other words, the Minister could - and I'll use the example - come to my farm and . . .

HON. E. KOSTYRA: What 12(2) says is . . . the Minister has to make the decision first.

MR. D. ORCHARD: Right.

HON. E. KOSTYRA: And unless you make that decision, then you can't say that somebody's in breach of that, so we still have to come and say, yes, this is a site that has a potential for heritage resources. Then, after that point, somebody would potentially be in breach of 12(2) and then you could order that person to stop the work, not before; and secondly, you can't order any restitution of that site.

MR. D. ORCHARD: Okay. Now I agree with the Minister, what the Minister of Culture is saying, but then in section 17(4)(a), the Minister has the opportunity to, by action in the court of competent jurisdiction, etc., etc., recover the costs and expenses necessarily incurred by the Minister in taking those steps.

HON. E. KOSTYRA: That's remedying a breach.

MR. D. ORCHARD: Right, but we go back to the fact that the breach could have been inadvertent until you put the stop order on it. Yes, it could have been.

HON. E. KOSTYRA: There's no breach.

HON. R. PENNER: Technically, in law, there's no breach.

MR. D. ORCHARD: You're saying that the breach doesn't exist until the time that you've made your reason to believe, your investigation has demonstrated that it is an historic site - it's from that point on that any damage is subject. Prior to that, it's inadvertent and there's no recourse under the breach.

HON. E. KOSTYRA: No breach.

MR. D. ORCHARD: Good.

MR. CHAIRMAN: Is the amendment agreed to?

HON. R. PENNER: This amendment appears on Page 6 of the amendments as circulated.

I move

THAT section 18 of Bill 16 be struck out and the following section be substituted therefor:

Appeals from order or action of Minister

18 A person who feels aggrieved by an order made or action taken by the Minister under section 17 may appeal therefrom to a judge of the Court of Queen's Bench within 30 days from the making of the order or the taking of the action, as the case may be, and the judge upon hearing the appeal may confirm the order or direct the Minister to vary or rescind the order and may give such further direction in respect of the order and such direction in respect of the action, as to damages or otherwise, as the judge deems proper.

MR. CHAIRMAN: Amendment agreed to? The Member for Pembina.

MR. D. ORCHARD: Once again, that will give a pretty open-ended ability to recover damages under the sections we've been talking about, under the circumstances with corporations like Pembina Clays and . . .

HON. R. PENNER: And costs, legal costs.

MR. D. ORCHARD: I believe we've got that settled.

HON. R. PENNER: Are we finished with Page 14?

MR. CHAIRMAN: Page 14, as amended—pass.
The Attorney-General.

HON. R. PENNER: With your indulgence, if we can go back a couple of pages, there is an amendment in the French version which I missed and this will relate to Page 10.

I move

THAT the French version of subsection 12(2) of Bill 16 be further amended by striking out the words "ou projets" in the 5th line thereof and substituting therefor the words "projets ou projets de mise en valeur".

MR. CHAIRMAN: Agreed? (Agreed)
Page 15—pass.

HON. R. PENNER: I move

THAT subsection 21(1) of Bill 16 be amended

- (a) by adding thereto, immediately after the word "site" where it appears for the 2nd time in the 4th line thereof, the words "believed to contain heritage resources or human remains"; and
- (b) by striking out the word "thereof" in the 5th line thereof and substituting therefor the words "of the site and the heritage resources or human remains".

MR. CHAIRMAN: Page 15, as amended—pass; Page 16—pass.

Page 17 - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, the Minister gave us information last night that there are currently seven properties so designated under the existing legislation.

HON. E. KOSTYRA: No, there's more. What I indicated was that there were seven properties, those that were owned other than under Crown ownership, that they were in some form of private ownership.

MR. D. ORCHARD: What does the Minister intend to do with passage of this act with those seven private property owners to make them aware that their designation is transferable and they now fall under the provisions of this act? Is he going to give them formal notice?

HON. E. KOSTYRA: At this very moment they are all being communicated to, in writing, by myself indicating that they will come under the provisions of the act . . .

MR. D. ORCHARD: You haven't got it passed yet, though.

HON. E. KOSTYRA: . . . if the act is passed. There are actually seven that have been actually designated where there's buildings and there's a couple of archaeological sites that have been designated there on private property. .

MR. CHAIRMAN: Any amendment on Page 17?
The Member for Pembina.

MR. D. ORCHARD: Just as a matter of information, how many sites, in total, do we have now? I'll tell you what, could you provide me with a list of them, I'm interested to know what and where.

HON. E. KOSTYRA: We will provide you with a detailed list.

MR. CHAIRMAN: Page 17 - the Honourable Minister.

HON. E. KOSTYRA: I just want to point out to members, and we will do this at Report Stage, there's reference in 23(1) with respect to a registry and there was a point made last night by the Real Estate Board with respect to the main "shall". I will move an amendment dealing with all of the areas where there is "may" with respect to registry and I think it appears in four spots, we'll change them all to "shall". I guess we could do it now actually.

MR. CHAIRMAN: Amendment, "may" to "shall". Page 17, section 23.

HON. R. PENNER: Okay, I'm going to move - let me do this one compendiously for heaven's sakes, it's just "may" to "shall".

THAT Bill 16 be further amended by striking out the word "may" where it appears

- (a) in the 1st line of subsection 23(1) thereof;
 - (b) in the 1st line of subsection 39(1) thereof;
- and

(c) in the 1st line of subsection 55(1); and substituting therefor, in each case, the word "shall".

MR. CHAIRMAN: Agreed? (Agreed) Page 17, as amended—pass; Page 18—pass; Page 19—pass. Page 20.

HON. R. PENNER: Yes, I've got me a motion here.

HON. E. KOSTYRA: We've made that motion already if it's agreed.

MR. CHAIRMAN: The motion is agreed to? (Agreed)

HON. E. KOSTYRA: It's 10 to 21 days.

MR. CHAIRMAN: Page 20, as amended—pass; Page 21—pass; Page 22—pass. Page 23 - the Member for Pembina.

MR. D. ORCHARD: Under clause (c) "the maintenance of any municipal heritage sites by the owner, or by the owner with the financial or other assistance and advice of the municipality or otherwise, and may enter into an agreement . . ."

Now, this isn't a compulsory clause, if you will, "the municipality may". And it's the same problem with provincial designations. I guess I've got some problems with it. It's the same old argument, I've presented it before. We are preserving for the general public our heritage resource at the provincial, plus the municipal level, and there is no onuses, only the "may" that the government will assist, but yet, once the designation is there, the onus is there to preserve it and maintain it, there is no complimentary onus on the government to assist the individual. Is this a case where we amend and, once again, replace "may" with "shall"?

HON. E. KOSTYRA: No. We've discussed this same issue in context of provincial and this is the complimentary enabling power for a municipality. The change will be made with respect to "may" and "shall" with respect to the maintenance of a registry, and my position is the same with respect to this as it was with respect to the provincial.

MR. D. ORCHARD: Just to comment. That's one flaw in this legislation that will cause some problem. I don't believe the Minister's concerns about the problems such an amendment would cause are sufficient to warrant its exclusion from the legislation.

MR. CHAIRMAN: Page 23—pass; Page 24—pass. Page 25 - motion?

HON. R. PENNER: Yes, I move
THAT subsection 35(3) of Bill 16 be amended by adding thereto, immediately after the word "resources" where it appears in the 4th line and again in the 7th line thereof, in each case, the words "or human remains".

MR. CHAIRMAN: Page 25, as amended.

HON. R. PENNER: No, first this amendment.

MR. CHAIRMAN: The motion is agreed to? (Agreed) On the same page.

HON. R. PENNER: Yes, on Page 6 of the circulated amendments.

I move

THAT subsection 35(5) Bill 16 be struck out and the following subsection be substituted therefor: Appeals from order or action of municipality.

35(5) A person who feels aggrieved by an order made or action taken by a municipality under this section may appeal therefrom to a judge of the Court of Queen's Bench within 30 days from the making of the order or the taking of the action, as the case may be, and the judge upon hearing the appeal may confirm the order or direct the municipality to vary or rescind the order and may give such further direction in respect of the order and such direction in respect of the action, as to damages or otherwise, as the judge deems proper.

MR. CHAIRMAN: Motion agreed to? (Agreed) Page 25, as amended—pass; Page 26—pass. Page 27.

HON. R. PENNER: I move

THAT subsection 39(1) of Bill 16 be amended by striking out the word "the" where it appears for the 3rd time in the 1st line of clause (c) thereof and substituting therefor the word "each".

MR. CHAIRMAN: Motion agreed to? (Agreed) The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, I may have missed it, but did we pass the amendment to section 35(3)?

MR. CHAIRMAN: Yes.

MR. D. ORCHARD: Good.

MR. CHAIRMAN: Page 27, as amended—pass; Page 28 - motion.

HON. R. PENNER: I move

THAT the definition of "heritage object" where it appears in subsection 43(1) of Bill 16 be amended

- (a) by adding thereto, at the end of sub-clause (iii) thereof, the word "and";
- (b) by striking out the sub-clause (iv) thereof; and
- (c) by renumbering sub-clause (v) thereof as sub-clause (iv).

MR. CHAIRMAN: Page 28, as amended—pass. Page 29 - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, just prior to the moving, under the "human remains" does the definition of human remains, the last line of it, "in respect of which there is some manner of identifying the persons buried therein" does that definition conclusively include

only unidentified human remains? In other words, human remains that are not identifiable by any markers, so that we've got completely unattached human remains, if that's the proper terminology. I know the Attorney-General will come up with a better than unattached human remains.

HON. R. PENNER: No, I know what you mean, human remains which no one claims or might claim.

MR. D. ORCHARD: Is that definition sufficient?

HON. R. PENNER: It has to be consistent with provisions in The Cemeteries Act that deals with . . .

HON. E. KOSTYRA: Does not cover those that are covered by The Cemeteries Act.

HON. R. PENNER: That's what I mean.

MR. D. ORCHARD: Okay, can I ask the Minister a question? Over the past number of years I've had interest expressed to me about cadavers in York Factory that are preserved because they are buried to permafrost and some of them, with erosion, have been exposed.

HON. E. KOSTYRA: They haven't been exposed; that's incorrect.

MR. D. ORCHARD: Do they fall under this definition of "human remains" or are they identified?

HON. E. KOSTYRA: Operative words - they again, discovered outside a recognized cemetery. Those remains that the member's referring to are in a recognized cemetery and just to correct the record, they are not exposed. Some of them have been disturbed because of ground shift, but none were actually exposed. I went there myself.

HON. R. PENNER: I move
THAT subsection 44(1) of Bill 16 be amended
(a) by striking out the word and figure "subsection (2)" in the 1st line thereof and substituting therefor the words and figures "subsections (2), (3), (4) and (5)";
(b) by adding thereto, immediately after the words "municipal land" in the 5th line of clause (a) thereof, the words "other than such Crown land or municipal land as the Minister may by regulation exclude from the application of this clause,"; and
(c) by striking out the words and figure "subject to subsection (2) and" in the 3rd last line thereof.

MR. CHAIRMAN: Motion agreed to?
The Member for Pembina.

MR. D. ORCHARD: There are the two classes here, heritage objects found on private property by the owner of that property; heritage objects found on Crown property by anyone. Does this sufficiently cover the heritage objects found on private property by other

than the owner? Where does that amendment come in?

HON. E. KOSTYRA: No, that's 44(3).

MR. D. ORCHARD: That is the 44(3) that you're adding on Page 5?

HON. E. KOSTYRA: Page 5.

MR. D. ORCHARD: Does that amendment cover the circumstance we're describing of a private collector on privately owned land where he's not the owner?

HON. E. KOSTYRA: Yes, subsection (a) says it's transferable by the person who has the custody. The custody belongs to the landowner. That custody can be transferred to any other person at any other time.

MR. D. ORCHARD: What's the formal format? An avocational archeologist would have permission of the landowner to go in and theoretically search the land? That is sufficient to confer the custody rights and the rights of transferal and bequeathing to the avocational archeologist on private land that he does not own?

HON. E. KOSTYRA: Correct.

MR. CHAIRMAN: Page 29, as amended—pass.
Page 30 - the Attorney-General.

HON. R. PENNER: I move
THAT Bill 16 be further amended by adding thereto, immediately after subsection 44(2) thereof, the following subsection:

"Transfer of custody.
44(3) The custody of a heritage object retained under subsection (1)
(a) is transferable, by the person who has the custody, to any other person at any time; and
(b) upon the death of a person who has the custody, passes to the heirs, executors or administrators of the person;
and any transferee, heir, executor or administrator so receiving the custody is deemed to be holding the heritage object in trust for the Crown and subject to any agreement entered into under subsection (2) and to the provisions of this Part."

MR. CHAIRMAN: Motion agreed to?
The Member for Pembina.

MR. D. ORCHARD: I am pleased to see that the Minister is willing to forego the Crown ownership after the original owner no longer is with us and has allowed the transferring of heritage objects within families and within circles of collectors or friends as is allowed here, presumably under this amendment. One of the more offensive parts of this bill was the automatic presumption of Crown ownership. This alleviates that. Crown ownership still overrides and we're not going to persuade this Minister to ever eliminate that, but this does remedy some of the concerns that have been

expressed to the Minister and also to myself about the act.

MR. CHAIRMAN: Motion, the Attorney-General.

HON. R. PENNER: I'm going to move that motion now.

MR. D. ORCHARD: We moved the first motion.

HON. R. PENNER: I move
THAT subsection 44(3) of Bill 16 be renumbered as subsection 44(4).

MR. CHAIRMAN: Motion pass? Pass; Page 30, as amended—pass.

HON. R. PENNER: I move
THAT section 45 of Bill 16 be renumbered as subsection 44(5).

MR. CHAIRMAN: Motion pass? Pass.

HON. R. PENNER: I move
THAT Bill 16 be further amended by adding thereto, at the end of section 44 thereof as hereinbefore amended, the following section:

"45 The property in, and the title and right of possession to, any human remains found by any person after May 3, 1967, is and vests in the Crown."

MR. CHAIRMAN: The Member for Sturgeon Creek.

MR. F. JOHNSTON: Can we have an explanation why this has been amended to be retroactive 18 years?

HON. E. KOSTYRA: It's not retroactive. That is just picking up the provision that exists in the old act - I don't have the section before me - with respect to skeletal remains that had that specific date in The Historic Sites and Objects Act. I can reference the actual section for the member, if he gives me a moment.

Section 9(1) reads in the present act: "The property entitled in and to any artifact or paleontological object found after the 3rd day of May, 1967 is and vests in the owner of the land in or under which it is found."

Oh, I'm sorry. I read the wrong section. It's section 19(2): "Property and skeletal remains. The property entitled in and to any skeletal remains found after the 3rd day of May, 1967 whether on private or public property is and vests in the government."

MR. CHAIRMAN: Agreed? Motion agreed. Motion? The Attorney-General.

HON. R. PENNER: I move
THAT section 46 of Bill 16 be amended
(a) by adding thereto, immediately after the word "object" in the 2nd line thereof, the words "or remains that are or that the person believes to be human remains"; and
(b) by adding thereto, immediately after the word "object" in the 4th line thereof, the words "or the remains".

MR. CHAIRMAN: Motion pass?
The Member for Pembina.

MR. D. ORCHARD: The Minister, in closing debate on second reading, indicated certain things. Could the Minister indicate to me whether this clause as amended requires an individual who happens to be strolling down a back lane and finds a spearpoint or an Indian arrowhead that he must report that? Where is the exception the Minister claimed existed in that example that I used?

HON. E. KOSTYRA: The technical definition would include what is being suggested by the member. Actually, this section is pretty well the same as it was in the previous act. It required the reporting.

The intention is to deal with those only that are in an undisturbed state, in situ state. So there is no intention to deal with the pieces that may be picked up that have already been in areas that have been bowed over or significantly disturbed.

MR. D. ORCHARD: Mr. Chairman, contrary to what the Minister said in closing debate on Page 3559 where he said it was not intended by the provisions of this act to have someone walking down a farm lane one day and finding an arrowhead to be in contravention of this act, indeed it is in contravention of this act, because there is no specific exclusion for the example I used and the Minister said was not the intention of the act. That, indeed, is the total scope that this act encompasses.

This section does not say undisturbed archaeological sites or Indian campsites. This just says any person who finds an object that is a heritage object ". . . shall forthwith report the find to the minister and shall not handle, disturb or do anything to the object except in accordance with such requirements as the minister may prescribe." That includes everything, and it includes the example that I gave you.

The intent may be noble, but the legislation doesn't state the intent. The legislation includes, if the Honourable Minister of Highways when he's inspecting one of his highways jobs in Northern Manitoba, because he isn't doing any in southern Manitoba, would pick up an arrowhead from the borrow pit, he would be in contravention of this act. We could nail him for \$5,000-a-day every day he had that arrowhead in his pocket.

HON. E. KOSTYRA: The last part of that section indicates: "except in accordance with such requirements as the minister may prescribe." That will be the kind of thing that will be covered under the regulations and procedures.

MR. F. JOHNSTON: For the Minister and the Attorney-General, the word "object" - we've been sitting down in this corner maybe snickering or joking a bit, but "object" is everything. Does it include my grandmother's cast-iron plate that she cooked on in 17-something in Miami, Manitoba? Does it include my grandfather's stiff collar box, round collar box?

Don't we have a better designate than the word "object"? Can the Attorney-General just explain to us? This is a pretty broad word, and anything basically

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that's over 100 years old can become a heritage object under this particular section. How do people know?

MR. CHAIRMAN: The Attorney-General has the floor.

MR. F. JOHNSTON: He's out of order.

HON. E. KOSTYRA: Page 28's definition is in section 43(1).

MR. CHAIRMAN: The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, it can include all the things that the Member for Sturgeon Creek alluded to.

HON. E. KOSTYRA: Only by designation.

MR. D. ORCHARD: Right, by designation and, once again, without compensation.

HON. R. PENNER: Not necessarily.

MR. CHAIRMAN: Page 30, as amended—pass.
Page 31—pass.
Page 32 - the Attorney-General.

HON. R. PENNER: I move
THAT section 50 of Bill 16 be amended by adding thereto
(a) immediately after the "objects" in the 2nd line thereof; and
(b) immediately after the word "object" in the 2nd last line thereof;
in each case, the words "or human remains".

MR. CHAIRMAN: Motion—pass.
Another motion?

HON. R. PENNER: Yes, another motion,
THAT section 51 of Bill 16 be amended by adding thereto, at the end thereof, the words "or any human remains".

MR. F. JOHNSTON: Is that right? Section 51: "No person shall destroy, damage or alter any heritage object, whether or not the person is the owner thereof," and then "human remains"? Should that not be after "object"?

HON. E. KOSTYRA: Yes, it is correct.

HON. R. PENNER: Should we take that motion?

HON. E. KOSTYRA: No, that is correct. No person is the owner of human remains, so it does have to appear at the end.

MR. CHAIRMAN: Section 53.

HON. R. PENNER: I move
THAT Bill 16 be further amended by adding thereto,
(a) immediately after the word "objects" in the 2nd line of section 53 thereof; and

(b) immediately after the word "resources" in the 6th line of subsection 59(3) thereof;
in each case the words "or human remains".

MR. CHAIRMAN: Motion agreed to? (Agreed)
The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, a couple of points on sections 52 and 53. I happen to know an individual who from time to time will carry a group of arrowheads in a snuff tin in his shirt pocket, and travels from time to time to Alberta.

MR. F. JOHNSTON: Is the snuff tin an object? That's what I want to know.

MR. D. ORCHARD: They may like it too and declare it.

But at any rate, when that is in his pocket, he is exporting presumably heritage objects. Does he have to get a permit to take his snuff tin full of arrowheads from Manitoba to Alberta under this act?

HON. E. KOSTYRA: No.

MR. D. ORCHARD: So the clause which says: "No person shall remove a heritage object from the province," that isn't in violation of that?

HON. E. KOSTYRA: I presume you were suggesting that individual is returning from Alberta.

MR. D. ORCHARD: But it doesn't say, no person shall remove and then return later. It says, no person shall remove.

HON. R. PENNER: You would have statutes 500 pages long if you didn't put it into the context of the meaning of words legally. — (Interjection) — Well, not unless we're going to do it in Arabic. No, there has to be what is called the animus ferandi; that is, with the intent to take them out permanently.

MR. J. DOWNEY: It contravenes the Charter of Rights and Freedom of Movement.

HON. R. PENNER: That, too.

HON. E. KOSTYRA: No, it doesn't.

MR. CHAIRMAN: Motion agreed to?
The Member for Pembina.

MR. D. ORCHARD: No, not yet. Mr. Chairman, I agree that the Attorney-General would have to have very large statutes to qualify everything but, technically, there will be technical violation of this clause.

In 53, no person shall search. What's the definition of search? What is the context of search?

HON. E. KOSTYRA: "Look for," according to the English dictionary, I believe.

MR. D. ORCHARD: If I'm out picking stones in some of my fields and I pick up an arrowhead, is that search?

HON. R. PENNER: No, you've been searching for stones, you haven't been searching for a heritage object.

MR. D. ORCHARD: This is just one of those happen-chance things, once in a lifetime opportunities.

HON. E. KOSTYRA: This is the same provision that's existed since 1967 and the obvious intent is if somebody is actively going out and searching for those things. If the member wants to pick away at his boulders he will not be in contravention of this act.

MR. CHAIRMAN: Page 32, as amended—pass; Page 33, as amended—pass.

Page 34 - the Member for Pembina.

MR. D. ORCHARD: On Page 34, there was some concern expressed last night about the priority of filing. Why does the Minister consider it necessary to have filings under this act take precedent over liens on property, first mortgages on property, etc., etc.?

HON. E. KOSTYRA: It doesn't take precedence over liens or mortgages, it's just the notice takes precedent, but there's no financial requirement with respect to the notice.

MR. D. ORCHARD: Could the Attorney-General explain the meaning of this clause and why it's necessary?

HON. R. PENNER: Which clause?

MR. D. ORCHARD: 57.

HON. R. PENNER: First of all, what we're talking about is, in effect, a notice and we're simply saying that, supposing the notice is filed as the third instrument appearing on the back of the title - there's a mortgage and a mortgage of a mortgage and then the notice - we're simply saying that that notice is as binding on the holder of the mortgage, or the mortgagor of the mortgage, as much as if that notice had been filed first, in sequence. It just binds all interests, that's all, as notice. It doesn't adversely affect the mortgage as a mortgage. Supposing that the mortgagee under the mortgage, exercising his or her rights under that mortgage, took the land in mortgage sale proceedings, they would take it with the notice and they could say, I'm not bound by the notice because my mortgage was on the back of the title first, that's all.

MR. CHAIRMAN: Page 34, as amended—pass; Page 35—pass; Page 36, as amended—pass; Page 37—pass.

Page 38 - the Attorney-General.

HON. R. PENNER: I move

THAT section 67 of Bill 16 be amended (a) - no, this will be on the next page.

MR. D. ORCHARD: Why do you have section 63 in there?

HON. R. PENNER: It's really standard in so many pieces of legislation for very good reason, but it is qualified

by the good faith provision in the third-last line so that if, in fact, anyone acts, a Minister or official, in bad faith, then they can be the subject of an action.

It's to prevent frivolous actions really which people would take to court and could end up in lengthy proceedings where, in fact, someone who is just acting under the act and in good faith. Most of those provisions, they're provisions which we might want to review somewhere down the line. Many of the situations which are covered by these sorts of things are really dealt with now more and more by the activities of the Ombudsman.

MR. CHAIRMAN: Page 38—pass; Page 39—French amendment. Motion?

The Attorney-General.

HON. R. PENNER: First of all, there are two in the one motion. I would like to do them together because they're just language motions.

I move

THAT the French version of Bill 16 be further amended by adding thereto, immediately after the word "loi" where it appears

(a) in the 2nd line of section 67 thereof; and

(b) in the 2nd line of clause 68(a) thereof;

in each case, the words "et conformes à son esprit".

MR. CHAIRMAN: Motion agreed to? Pass. The member for Pembina.

MR. D. ORCHARD: Mr. Chairman, under regulation 68(a) has the Minister got a fee schedule and, if so, will the permit be an ongoing permit?

HON. E. KOSTYRA: Can we pass 38 first?

MR. D. ORCHARD: Yes.

MR. CHAIRMAN: Page 38, as amended—pass. Page 39.

HON. R. PENNER: Just on a point of order, just before we get to 68, I do have an amendment to 67 just after (c).

I move

THAT section 67 of Bill 16 be amended

(a) by adding thereto, immediately after clause (b) thereof, the following clause: "(c) excluding certain Crown land or municipal land or both, as described in the regulations, from the application of clause 44(1)(a)"; and

(b) by renumbering the present clause (c) thereof as clause (d).

MR. CHAIRMAN: Motion agreed to? Page 30, as amended - the Member for Pembina.

MR. D. ORCHARD: Has the Minister established what his fee schedule and what the permit is going to be? I would make a suggestion to the Minister. Is he going to do this by regulation - that a permit be for more than an annual basis so you don't have people and your staff tied up unnecessarily renewing permits every year or whatever, that a permit be for a reasonably

long time? Has the Minister any idea of the kind of fee schedule that he would propose?

HON. E. KOSTYRA: I think the first is a good suggestion. In terms of the second question, yes, it's not intended to have any fee schedule at the present time.

MR. CHAIRMAN: Motion—pass. Page 39, as amended - the Member for Pembina.

MR. D. ORCHARD: I guess here is where the cost of restoration comes in in 69(2). I would just ask the question once again. We went through the discussion earlier on. I just want the assurance that if it's an inadvertent act and the Minister has used section 12(2) where he has reason to believe has gone in, any damages prior to him going in and issuing the stop order would not fall under the 69(2) section here.

HON. R. PENNER: That is right.

MR. CHAIRMAN: Page 39—pass; Page 40—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL 8 - THE AMBULANCE SERVICES ACT; LOI SUR LES SERVICES D'AMBULANCE

MR. CHAIRMAN: Bill No. 8, page-by-page.
Pages 1 to 14 were each read and passed;
Preamble—pass; Title—pass.
The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, I just want to remind the Minister that he had some suggestions made to him on how to make this act more workable. The Manitoba Association of Rights and Liberties made some of those points yesterday - not all of them did the committee concur with on questioning. The Minister has seen fit not to recognize some of the problems that were identified, and passed this act as presented.

MR. CHAIRMAN: The Honourable Minister.

HON. L. DESJARDINS: Mr. Chairman, we've checked every single one of them, and we feel that there are no problems. Some of it was misunderstanding on the part of the people that made the presentations. Other areas, we couldn't see any problem at all. So we didn't deem fit to bring any amendment in this bill.

MR. CHAIRMAN: May the bill be reported?

BILL 17 - THE TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT; LOI SUR LES DROITS DE RECOURS RÉCIPROQUES CONTRE LA POLLUTION TRANSFRONTALIÈRE

MR. CHAIRMAN: No. 17, The Transboundary Pollution Reciprocal Access Act; Loi sur les droits de recours réciproques contre la pollution transfrontalière.

Page-by-page. Page 1—pass; Page 2—pass; Page 3—pass; Preamble—pass; Title—pass.
Bill be reported.

BILL 18 - THE HIGHWAY TRAFFIC ACT; LE CODE DE LA ROUTE

MR. CHAIRMAN: Bill No. 18, An Act to amend The Highway Traffic Act; Loi modifiant le code de la route.
Pages 1 to 5 were each read and passed.
Page 6 - the Honourable Attorney-General.

HON. R. PENNER: I move

THAT Bill 18, An Act to amend The Highway Traffic Act, being chapter H60 in the Continuing Consolidation of the Statutes of Manitoba, be amended by striking out section 21 thereof and substituting therefor the following section:

Commencement of Act.

21(1) This act, except sections 3, 6, 7, 15, 16, 17, 18, 19 and 20 come into force on the day it receives the Royal Assent.

Proclamation.

21(2) Sections 3, 6, 7, 15, 16, 17, 18, 19 and 20 come into force on a day fixed by proclamation.

MR. CHAIRMAN: Motion agreed to? (Agreed)
Preamble—pass; Title—pass.
Bill be reported.

BILL 19 - THE HIGHWAY TRAFFIC ACT (2); LE CODE DE LA ROUTE (2)

MR. CHAIRMAN: Bill No. 19 - the Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, every brief that was presented to discuss Bill 19 pointed out errors, omissions, problems; that this act, the amendments in it, were not in concert with the discussions with the various groups that were here yesterday to present briefs. A number of amendments were requested. Each of those presenters, with the exception of one, if my memory serves me correctly, said that there would be nothing changed if this act was withdrawn and brought back after the Minister has had an opportunity to do his homework properly and bring in legislation that is in agreement with the discussions that he has had with the various interest groups in the trucking industry.

So, Mr. Chairman, I believe that this Minister, when he has no public support from the organizations with which his department has worked for over three years in drafting some of these amendments, wherein he is going to have a patchwork series of amendments that are not desirable, not workable and have problems, I just suggest that we proceed no further with this bill and that the Minister withdraw it and we proceed to Bill No. 36.

HON. J. PLOHMAN: Mr. Chairman, we've had a great deal of consultation and excellent support from many. I know that presenters yesterday did not spend time on those sections that they felt that they could support and they did point out some concerns that they had in some areas. I just want to clarify that the presenters dealing with the matter of the dump truck operators, currently registered as T-plated vehicles and required to register those with PSVs, is not given effect in this bill. That is proposed by regulation, and no change made in this act will affect their operations at the present time.

So I want to make that very clear, that any representation they were making, in effect, then was out of order. What they were reacting to is Page 6 of the White Paper which notes, under Changes and Regulation, that the government has announced its intent to change the regulation 231 73 with regard to trucks in that category, and that they would be required to register as PSVs, as opposed to T-plated trucks. That has not been done and, as a result of the presentations that were made yesterday and further consultation that we will undertake, we will decide in the future as to whether that regulation should be changed, but it is out of order to discuss it under any amendments to this act at the present time. So that problem has been addressed in that way.

We do have an amendment dealing with the farm truck question, so that will be dealt with.

The only other concern that was raised was with regard to the requirement to have minimum rates set under certain circumstances by the board. Of course, we will establish guidelines and working in consultation with the trucking association and other affected groups we'll make those provisions in the future. So that section would not be proclaimed initially.

So we've covered all those. Maximum rates is what the trucking association wanted, it reflects a situation out there that exists at the present time, that there are negotiated rates below the fixed rates that are required to be filed now by all trucking companies who have authorities in the province. If they set a rate that is different they have to file it with the board and it is public knowledge. So we are not changing anything in terms of the practice there, it is recognizing a practice that is there.

But in those circumstances where predatory pricing or non-compensatory pricing does take place and it is determined, as a result of guidelines set up, that it is not in the public interest then, of course, the board would have that power to set minimum rates and to require certain information to be brought forward to the board.

I think we have addressed all of the concerns that have been raised and, of course, reject the suggestion by the member.

MR. J. DOWNEY: I have a difficult time in agreeing with the Minister when he indicates that he has put everyone's concerns to rest and that only two, in fact, were in opposition. I've got yesterday's list of individuals who opposed his amendments. The Minister has not been able to demonstrate to this committee anyone who is really supportive of what his amendments are. In fact, the President of the Manitoba Trucking Association indicated that there should be another six months to take a look at this and to make sure that particularly the smaller carriers in rural Manitoba have more commodities to carry, rather than less, and that they can see some difficulties there.

The director of the heavy construction indicated that the main objective that appeared to him and to his association was that the main purpose of the government's move to make amendments was to gather some \$4 million to \$5 million in additional licensing fees.

The points have to be brought forward by the vegetable producers of this province who are already

in a very delicate situation as far as their operations are concerned and the competition that they face from outside of this country and could, in fact, impose undue hardship on restricting the movement of one neighbour to the other hauling different commodities.

The point brought forward by the member of the Insurance Agents Association of Manitoba and, Mr. Chairman, the Minister, in my estimation and in the estimation of my colleagues, has not been able to demonstrate the need for the amendments to this act at this particular time because he does not have the support of the industry.

I am, Mr. Chairman, not going to stand by and let him proceed without giving him some difficulty in this matter. I don't think he has been able to prove or to demonstrate to us with what he is proposing today he has significantly changed the intent of what he is up today.

HON. J. PLOHMAN: If you wanted specific questions, I'll deal with them.

MR. CHAIRMAN: The Member for River Heights.

MR. W. STEEN: Yes, Mr. Chairman, I have a question to the Minister and it arises from the presentation yesterday by Mr. Creek, an independent insurance agent, where he made reference to the fact that farmers would be inconvenienced when they would have to change their plates from farm use to commercial use and they couldn't buy from a local agent, they would have to go to a department licensing outlet.

Has the Minister and his department considered Mr. Creek's concerns not from an insurance agent's point of view but the inconvenience to the public and to the truck owner?

HON. J. PLOHMAN: Mr. Chairman, we have dealt with that problem, and the proposed amendment that we have in that area would, we feel, take into consideration not only the agent's concerns in that they would not be affected by anything in this act, and as well it would take into consideration the presentations made by the vegetable growers and the Keystone Agricultural Producers.

As I said earlier, the concerns raised by the dump truck operators were not valid because they are not specifically dealt with by this act. In fact, they are dealt with under Regulation 231(73). We have outlined in the White Paper that was our intention to change that regulation. That is where they would be affected if we were to go forward with it, but that is not on the table here.

MR. D. ORCHARD: Well, Mr. Chairman, the Minister has tried to defend an incompetent piece of legislation brought forward by a Minister who didn't understand what he was doing and by a Minister that in the House prided himself on months and indeed years of consultation with the industry.

Presentation after presentation yesterday, he said that I don't know how, after our consultations, this piece of legislation, this amendment comes into Bill 19 because it was not the subject and the understanding we had of where we were going in our discussions with this Minister in terms of amendments to the act.

So, Mr. Chairman, this Minister now today is telling us that the concerns aren't there, the concerns aren't real, that the concerns that all these people and everyone of them was against this legislation. everyone of them said this legislation if not passed would not affect one iota of the current trucking business in Manitoba.

But if passed, they pointed out a number of problems. Those problems aren't addressed by the amendment that the Minister passed out. He has not obviously done his homework with these people to make sure that the amendments will not adversely affect the industry. He has not done his job as a Minister of Highways and Transportation should do to assure that amendments to The Highway Traffic Act will enhance the opportunity for economic activity in the trucking industry in the Province of Manitoba for the creation of employment, for the betterment of the trucking industry not only for the employees and the people in the industry but for the customers of the trucking industry. All of those things this Minister has not done.

And he comes here this morning saying to us, well, you know, we should pass this anyway because certain sections of it that we have to work out, well, we'll proclaim them later and we'll do our negotiations that he told us one week ago that he had done, that he had completed with the trucking industry, with various groups and organizations impacted on by this legislation. Now he is telling us, we'll pass it today and then, of course, we won't proclaim it until we have done our negotiations that he always said he had done. That is sheer nonsense, Mr. Chairman.

This Minister once again has demonstrated his incompetence to bring forward legislation that is workable, that has the agreement and the support of the major players in the industry. He has done so without consultation, and where he has had consultation he hasn't listened. That was told to us time and time again yesterday by presenters of briefs to this legislation. He is sitting here this afternoon now telling us that we should pass this piece of incompetent legislation.

I remind the members of the committee once again that each person who presented a brief in opposition to Bill 19 was asked whether the failure to pass this bill will impact negatively on their industry and on The Highway Traffic Act. Each one of them said no, we can do without it; a number of them said wait six months and get the negotiations done, have the meetings, establish the criteria and then proceed with the amendments, don't do it now because they are going to be detrimental.

Why is this Minister being so perverse and insisting we deal with this legislation now and pass it, when he himself has admitted already that he isn't going to proclaim certain sections of it because he hasn't done his homework? This bill should be withdrawn, Mr. Chairman.

HON. R. PENNER: I was just going to suggest, Mr. Chairman, that there are two occasions on which the kind of debate that we are entering into now might be better focused: one is when we come at this stage to bill be reported; and secondly, of course, on third reading might perhaps be useful.

I raise this as a suggestion rather than as a formal point of order if we went clause-by-clause, if the

members wish, and specific points be raised, the Minister has an amendment; and then at the end, if the members want to formally put a motion on the record that the bill not be reported, then we'll deal with it.

We are front ending what might better be a discussion at the very end when we see what amendments in addition to that proposed by the Minister are proposed and dealt with.

MR. CHAIRMAN: There are certain rules that we have to adhere to in consideration of this bill in committee. I would like to read them to you.

"Section 763. Function of a Committee on a Bill. The function of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable.

"Section 768. (2) The debate on Clause 1 (if it is not the short title) is normally wide ranging, covering all the principles and details of the bill.

"Section 764. (1) A committee is bound by the decision of the House, given on second reading, in favour of the principle of the bill, and should not, therefore, amend the bill in a manner destructive of this principle.

"Section 764. (4) An amendment which is outside the scope of the bill is out of order and cannot be entertained, unless a special Instruction has been given by the House to the committee."

Our function in this committee is to go through the bill clause-by-clause or page-by-page or, if necessary, word-by-word, and to amend the bill if necessary. The principle has been debated already in second reading. The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, I may have to make this a point of order, so you don't rule me out of order. If I have to, I will.

What we are trying to do here is avoid a delay of this committee in the dying hours of this Session. The Minister has one amendment and all the other presenters drew problems to his attention which he has not resolved. If we go clause-by-clause, we will end up in exactly the position the Attorney-General has said in which we will have the wide ranging date for this Minister to pull it because he hasn't addressed the concerns of those presenting briefs at the committee. We want to save this committee time by not going clause-by-clause, debating the inadequacies and the failures of your Minister and embarrassing him - we simply want him to pull the bill right now and save time and move onto another bill.

We can do it the way the Attorney-General wants and be here two hours from now, still talking about Bill 19 and an incompetent Minister. We want to save the Minister this embarrassment; we want him to pull the bill right now.

HON. R. PENNER: Do you want be here two weeks from now; we'll be here two weeks from now, but let's proceed in a way in which . . .

MR. D. ORCHARD: We will be. Your choice.

HON. R. PENNER: But all I'm saying, trying to avoid the rhetoric and the lather into which the members worked themselves up into, there are rules. That's all I'm saying, let's follow the rules; let's consider clause-by-clause. If at the end of that, somebody wants to make a motion that the bill not be reported, presumably since that's the final motion, they can do so. We will have a vote and then the rest of the debate can be carried on in the House.

MR. CHAIRMAN: Page 1 - The Member for Pembina.

MR. D. ORCHARD: What is the purpose of section 2(2)(a), for the exemption for certain trucks?

HON. J. PLOHMAN: Mr. Chairman, with the (2)(a) it provides for the definition of a commercial truck and outlines clearly which trucks are exempted from that category. It's a rather unusual situation in that "commercial truck" is defined by exemption, but there are certain exemptions from the category and it dealt with certain distances being provided from cities and towns and, as well, provided for some certain exemptions that were rather ambiguous I should say, with regard to those used for sand and gravel, for highway purposes. Then another ambiguous one, as well, which said that the board, after the examination of the circumstances certifies in any year, is not to be regulated either as a public service vehicle or a commercial truck in that year. It's rather a redundant provision.

There are provisions in other sections of the act that allow for exemptions to the commercial truck in the PSV category. Section 286, under the revised act does provide for exemptions and therefore we feel that this is not necessary. It's simply a matter of pulling those two sections out of the definition for commercial truck and providing for exemptions under another section by regulation under section 286; that regulation is 231 73 at the present time that covers the sand and gravel matters. As a matter of fact, the dump-truck operators stated yesterday that they didn't feel that particular commodities should be designated as to what their use is for, or where they're going - end use.

In this particular case, we have a clause that says it's for public highway use and they would agree that that should not be in there, the end use should not be designated, and in the regulation 231 73 that is in place, it makes provisions for exemptions for the transportation of gravel or sand and does not stipulate the use. So it's already there, and it's not necessary to have it in this particular clause. It does not change the licensing requirements for the dump-truck operators

of itself, this move. It's only change is to the regulation 231 73 if we were to undertake those as indicated in the White Paper that would cause any change to the licensing requirements for dump-truck operators.

MR. D. ORCHARD: Well, Mr. Chairman, under section A, we've got mention of campers or luggage and equipment of a tourist. Now is the Minister saying that under the present act, someone in the City of Winnipeg who has a half ton truck or a three-quarter ton truck here, licensed as a T-plate or possibly a CT and he's using it for his vacation, that that is now exempted? Is that the nature of this, that they were subject to fine before?

HON. J. PLOHMAN: This is simply renumbering, relettering of the present provisions. We're not making any change there and the Member for Pembina should look closely at the present act and the act as we're proposing it. There are no changes in that section whatsoever from the present situation. The only changes are with regard to subsections 4 and 5. There is no provision whatsoever for any changes from the current provisions, for those other subsections.

MR. D. ORCHARD: Well, Mr. Chairman, just before we close. If that's the case, then why did they rewrite the section? Why didn't they just say that the number is changed from such to such, if there's no change in the wording of the section? This is incompetent.

HON. J. PLOHMAN: The point is, this is the way the legislation is drafted, where there are changes, the whole section is rewritten with those changes indicated in the act. That's the way it's been drafted.

MR. D. ORCHARD: So now you are saying there is a change in that legislation.

HON. J. PLOHMAN: I said there is a change with regard to subsections 4 and 5 only. The other provisions are not changed at all, and I said that very clearly. There is no change except for subsections 4 and 5.

MR. D. ORCHARD: You did not.

SOME HONOURABLE MEMBERS: Oh, oh!

MR. CHAIRMAN: The committee shall meet at 8:00 p.m.

Committee rise.

COMMITTEE ROSE AT: 12:32 p.m.