Second Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

40 Elizabeth II

Chairman
Mr. Jack Reimer
Constituency of Niakwa

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Wednesday, July 17, 1991

TIME — 7 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Downey, Gilleshammer, Hon. Mrs. McIntosh, Hon. Mrs. Mitchelson, Hon. Mr. Orchard

Messrs. Cheema, Doer, Gaudry, Reimer, Sveinson, Ms. Wasylycia-Leis

APPEARING:

Doug Martindale, MLA for Burrows

Gail Mildren, General Counsel, Department of Justice

Gordon Carnegie, Crown Counsel (Legislation), Department of Justice

WITNESSES:

Duane Nieman, Manitoba Pharmaceutical Association

Mark Gabbert, Citizens for Quality Mental Health Care

Jim Ross, Manitoba Medical Association

Anthony Dalmyn, Advocates' Society of Manitoba

Keith Dubick, The Manitoba Association for Rights and Liberties

Randy Komishon, Canadian Paraplegic Association (Manitoba) Inc.

John Read, Manitoba Hotel Association

Dennis Smith, Manitoba Restaurant & Foodservices Association

Leo Ledohowski, Hospitality Corporation of Manitoba

MATTERS UNDER DISCUSSION:

Bill 51—The Pharmaceutical Act

Bill 4—The Health Services Insurance Amendment Act

Bill 69—The Manitoba Medical Association Fees Repeal Act

Bill 50—The Liquor Control Amendment Act

Bill 75—The Manitoba Employee Ownership Fund Corporation and Consequential Amendments Act

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Mr. Chairman: Will the Standing Committee on Law Amendments please come to order. This evening, the committee will be considering a number of bills. The bills being considered are Bill 4, The Health Services Insurance Amendment Act; Bill 51, The Pharmaceutical Act; Bill 50, The Liquor Control Amendment Act; Bill 69, The Manitoba Medical Association Fees Repeal Act; Bill 75, The Manitoba Employee Ownership Fund Corporation and Consequential Amendments Act.

It is our custom to hear briefs before consideration of the bill. What is the will of the committee? Agreed. I have a list of persons wishing to appear before this committee to speak to the bill. The list reads as follows:

Bill 4, The Health Services Insurance Amendment Act: Mr. Mark Gabbert, Citizens for Quality Mental Health Care; Mr. Anthony Dalmyn, Advocates' Society of Manitoba; Mr. Keith Dubick, The Manitoba Association for Rights and Liberties; Mr. Randy Komishon, Canadian Paraplegic Association.

Bill 50, The Liquor Control Amendment Act: Mr. John Read, President of the Manitoba Hotel Association; Mr. Dennis Smith, Manitoba Restaurant & Foodservices Association; Mr. Leo Ledohowski, Hospitality Corporation of Manitoba; Mr. Art Roy, private citizen.

Bill 51, The Pharmaceutical Act: Persons wishing to make presentation: Mr. Duane Nieman and Stewart Wilcox with the Manitoba Pharmaceutical Association.

Bill 69, The Manitoba Medical Association Fees Repeal Act: Mr. Jim Ross.

Hon. Donald Orchard (Minister of Health): Mr. Chairman, I understand two of the presenters, Messrs. Nieman and Wilcox, have other commitments and they have only one brief. I wonder, with concurrence of the committee, if we might hear their brief first and then move in order. Would that be in agreement with the committee?

Mr. Chairman: Agreed? Agreed.

Mr. Orchard: Thank you.

Mr. Chairman: Should anyone else in attendance wish to speak to the bills, please inform the committee clerk and your names will be added to the list of presenters. Does the committee wish to impose time limits?

Mr. Gary Doer (Leader of the Opposition): No, Mr. Chairperson, nor do we want to have any other restrictions on public debate.

Mr. Orchard: Why would I be surprised?

Mr. Chairman: Therefore, there will be no imposition of time limits.

Bill 51—The Pharmaceutical Act

Mr. Chairman: Therefore, I now call on Mr. Duane Nieman and Mr. Stewart Wilcox. Mr. Nieman is the presenter. We will just circulate your presentation.

Mr. Duane Nieman (Manitoba Pharmaceutical Association): The presentation has been circulated.

Mr. Chairman: Now it is, yes.

Mr. Nieman: It is now being circulated. Actually, it is now circulated.

Mr. Chairman: You may proceed.

Mr. Nieman: Thank you very much.

The Manitoba Pharmaceutical Association is the regulatory body for pharmacists in Manitoba. We are charged with the duty of administering The Pharmaceutical Act on behalf of the province and in so doing protect the public interest in the area of pharmacy practice. Most of the changes to the act are in form and language for clarification. However, there are significant changes in the discipline process. The discipline section of The Pharmaceutical Act should have two goals, to protect the public interest and to treat the parties involved in a fair and just manner. The current act falls short in both these areas. The current procedure leads to long delays which may allow incompetent or dishonest persons to continue to practise since the current act does not allow for suspension pending of hearing.

* (1905)

Under the new process the complaints committee would be struck. This would be made up of three people who would be able to take and direct the matter to discipline committee, act on it on their own, and to judge whether or not the matter is appropriate to be handled immediately or can stand time.

The other thing that is important is we now have the inclusion of nonpharmacist licence holders in the discipline process. This was an area that was beyond our scope before and has led to problems in the past within our association.

Open hearings are now considered the thing to do. In the current act, we are holding our hearings in private. We believe a change to open hearings is in keeping with current thinking. It should be pointed out that laypersons appointed by the government will continue to be involved at all levels of the discipline process.

I thank you for your consideration, and Mr. Wilcox and/or I will answer any questions you may have.

Mr. Gary Doer (Leader of the Opposition): Thank you very much, Mr. Nieman, for the presentation and your views on the bill before the committee.

I was very happy to see your comments on open hearings, I think a concern that has been raised not only in this association but other associations as well. I was just wondering, in crediting the bill for this change into open hearings, what were the views of the membership on this change? Was it a fairly positive proposal as articulated in your brief and a lot of credibility with the membership or the association in terms of the idea of openness which you applaud in this bill?

Mr. Nieman: We have had absolutely no opposition by our membership at all in discussion. This has been one of the things that has been ongoing in our discussions with our membership.

Mr. Doer: I would like to congratulate your association's membership then on that. I think it is an innovation that the government is making consistent, I think, with the public interest for a lot of associations.

Thank you very much.

Mr. Nieman: Thank you.

Mr. Gulzar Cheema (The Maples): Mr. Chairperson, first of all I would like to thank Mr.

Nieman for his presentation. I met with the registrar, Mr. Wilcox, and we had a fair discussion. I think this bill, which has been in the works for at least five years, had consultation with the previous administration and this administration and really goes a long way to help the process. I think it is a very positive development. I want, from our party's point of view, to let you know that I think your association has made a lot of progress. I think this will be a model for the rest of the country to see that we have taken a very, very open approach—very positive approach.

I just wanted to have those comments on the record. Thank you.

Hon. Donald Orchard (Minister of Health): Mr. Chairman, I just want to thank the Manitoba Pharmaceutical Association for the amendments they are proposing because they are very progressive. I have to state publicly again, as I did in the debate on second reading, that your association has been very professional in its dealing with this government and previous governments in terms of attempting to make your services better for the public at large. You represent your association well. I thank you both for being here this evening.

Mr. Chairman: Thank you, Mr. Nieman and Mr. Wilcox.

* (1910)

Bill 4—The Health Services Insurance Amendment Act

Mr. Chairman: We will now proceed with the public presentations on Bill 4, The Health Services Insurance Amendment Act. I will call on Mr. Mark Gabbert, Citizens for Quality Mental Health Care. Do you have a written brief?

Mr. Mark Gabbert (Citizens for Quality Mental Health Care): Yes, I do, Mr. Chairperson.

Mr. Chairman: We will just pass it around. You may proceed.

Mr. Gabbert: Thank you, Mr. Chairperson.

Let me say to begin with how pleased we are to be able to be here to give our views on what we consider to be an extremely important piece of legislation.

Citizens for Quality Mental Health Care is a nonpartisan group of patients and mental health care professionals committed to preserving and expanding adequate mental health care for Manitobans. In considering Bill 4, we have been especially concerned with its impact on patients, particularly patients undergoing psychiatric treatment.

Bill 4 amends The Health Services Insurance Act in ways that, among other things, increase the Health Services Commission's ability to hold physicians and laboratories accountable for the proper expenditure of public funds. The proposed amendments go beyond existing legislation in spelling out the duties of the Medical Review Committee to investigate physicians whose pattern of practice appears to be a departure from the norm of their specialty in specifically empowering the commission to send inspectors to the offices of physicians to examine and copy records; in specifically requiring physicians to provide the Medical Review Committee with records in an acceptable form; in subjecting laboratories and specimen collecting centres to inspection without warrant of facilities, equipment and records; in deeming patients receiving insured services to have given up control of their personal medical records if their physicians are under review by the Medical Review Committee or Formal Inquiry Committee and are required by those committees to produce patient records; and finally, by depriving patients of their right to bring legal action against a physician for releasing their personal medical files to the Medical Review Committee or Formal Inquiry Committee.

Citizens for Quality Mental Health Care has no quarrel in principle with attempts to assure that public funds provided for health care are properly spent. We are not convinced, however, that the more general language of the current legislation, which tends to leave space for consideration of matters of confidentiality should be replaced by provisions which explicitly deprive patients of important rights to privacy. Nor do we think that the more aggressive and intrusive measures outlined in Bill 4 will serve the public interest more effectively than the existing legislation. What is certain, however, is that in their present form these measures pose a threat to the confidentiality of patient health records and, consequently, to the actual delivery of health care to Manitobans.

Ever since the beginning of the medical profession with the work of Hippocrates in the 4th Century, confidentiality has been an absolutely fundamental precondition for the practice of

medicine. The relationship between patient and physician has always been considered to be fiduciary, a matter of trust upon which the very practice of medicine is dependent. Today medical ethics see the patient's right to confidentiality as one which must strictly regulate the conduct of medical practitioners who are obliged to preserve the fiduciary nature of the physician-patient relationship and to prevent confidential health records from being revealed to third parties without the patient's knowledge and consent.

The importance of confidentiality to the practice of medicine is then partly rooted in the patient's right to privacy which should protect him or her from the pain of embarrassment arising from the release of health records to third parties.

Beyond that, it is only if patients can be guaranteed that their medical records will remain a private matter that health care will be sought In the first place. To put It another way, the absence of a genuine commitment to confidentiality will have a chilling effect on the willingness of patients to seek medical care for conditions the public knowledge of which would prove embarrassing or damaging to them.

In short, if we wish those who need medical treatment to seek it, we must guarantee that health records will remain confidential and that no harm will come to the reputation, interests or privacy of the patient as a result of seeking necessary care. Failure adequately to protect confidentiality would significantly undermine the efficacy of the medicare system.

* (1915)

As we have argued, confidentiality is crucial to the practice of medicine. With respect to physical illness, this is most apparent in such cases as, for example, the confidentiality of HIV testing and treatment for sexually transmitted diseases generally, although there are also many other physical conditions which the patient may wish to keep strictly between him or herself and the physician. One immediately calls to mind the matter of abortion and the extremely important role that confidentiality plays in allowing women to make a decision to seek such services.

It is with respect to mental and emotional health that the maintenance of confidentiality is arguably most crucial to the possibility of effective treatment, because despite all the best efforts of patient advocates and mental health groups, in Canadian society, mental illness continues to carry a stigma, to be a potential threat to employment and, at the very least, to be a cause of embarrassment. There is little doubt that many people who could benefit from treatment are deterred by this stigma from seeking psychiatric help, and there are most assuredly a great many others who have only sought treatment on the assumption that their having done so will remain a private matter between patient and physician.

Concern about confidentiality in cases of mental health care must go beyond a simple focus on the effect that uncertainty about confidentiality might have on a decision whether or not to seek treatment at all, for once a person is actually in treatment, confidentiality takes on an added importance. This is especially true with the case of psychotherapy. Psychotherapy proceeds on the assumption that healing depends fundamentally upon the patient being able to communicate to the therapist in absolute freedom the details of feelings and events which are at the root of the condition for which treatment is being sought. If there is uncertainty as to whether this material might be divulged to third parties, the freedom of both patient and therapist is inhibited, the entire therapeutic relationship is threatened and the process of healing can be very seriously undermined.

In short, for patients seeking psychiatric help, confidentiality is a crucial precondition both for seeking treatment in the first place and for making possible effective psychotherapy once the decision to seek treatment has been taken.

To this point we have spoken of confidentiality as an absolute right, but, of course, in our society there is no such absolute right. There are a number of third parties who have claimed to have reason to know material that might not be reasonably divulged on purely medical grounds. One thinks of the College of Physicians and Surgeons and, of course, with respect to the present act, one thinks immediately of the Health Services Commission, the Medical Review Committee and so on, because here, of course, the need to know by third parties has to do with the responsible and justifiable expenditure of public funds.

The current Health Service Insurance Act establishes the Medical Review Committee which is empowered to review the practices of physicians and order repayment to the commission of any funds the committee determines were paid to the

practitioner "by reason of any departure from the pattern of medical practice established by the committee." In the course of its investigations, the Medical Review Committee is currently authorized to have "access to the records of any person that relate to a matter before the committee and is entitled to obtain from any person information that relates to a matter before the committee."

What the current legislation does is give to the Medical Review Committee certain powers to carry out its mandate. The amendments to the act embodied in Bill 4, which is the matter before us this evening, go further and stipulate the specific measures that both the Health Service Commission and the Medical Review Committee may take pursuant to their current powers.

I note, too, here that Bill 4 also introduces an entirely new committee, the Formal Inquiry Committee, which begins its deliberations in the case that the Medical Review Committee cannot come to an agreement with the affected, or the investigated, physician on the nature of his alleged violations or the amount of the repayment that the physician is being asked to return to the commission.

In any case, reasonable people could disagree on whether these changes are required to ensure the proper expenditure of public funds. What is absolutely clear, however, is that, as they stand, the new provisions provide a serious threat to the security of patient records. They have a grave potential to undermine the certainty of the patient that his or her medical record will not become the knowledge of third parties, and will be protected against public disclosure.

Generally these threats to the principle of confidentiality consist in the following:

First, and extremely important in our view, by deeming every insured person to have authorized the release of his or her medical records to the Medical Review Committee or the Formal Inquiry Committee, the basic principle of patient control over the release of medical records, and the patient rights to confidentiality is deeply eroded, some would argue, in fact even abolished.

* (1920)

Second, nowhere does the proposed legislation require that the hearings of the Medical Review Committee and the inquiry committee be held in camera.

Thirdly, the proposed legislation fails to take into account the special need of psychiatric patients for confidentiality.

Fourthly, nowhere does the proposed legislation specify what procedures are to be used with respect to controlling the numbers of copies of confidential patient records to be produced, the way in which access to these documents is to be regulated, to whom such documents are to be returned after each use, or the ultimate disposition of such documents.

Fifthly, the proposed language does not require that information in a file which might be used to identify a particular patient be removed before any hearings authorized under the act take place.

Sixth, the proposed language does not take into account that particularly, though certainly not only, in the case of psychiatrist's files, third parties may be mentioned whose rights to privacy must also be protected.

Seventhly, by increasing the potential number of committee and staff personnel to whom patient records may be exposed, the proposed legislation radically increases the number of people who have knowledge of a person's health care record.

We are strongly convinced that the proposed legislation must be revised to take into account the threats to confidentiality noted above, and we submit the following recommendations designed to alleviate these difficulties.

The first recommendation is that the present section 77(4) of Bill 4 be deleted. I note, by the way, that in my copy at least of proposed Bill 4, this section as listed as 77.1, but I think it must be a mistake because there are 77(1), (2) and (3) and then at the top of the next page there is 77.1 again, so I am calling it 77(4) on the assumption that the numbering will get right eventually.

So the first recommendation, that the present 77(4) be deleted, that is the particular clause which asserts that every Manitoban who is in receipt of insured medical services is deemed to have given up control over his medical documents and to have authorized his physician to hand them over in whatever form the Medical Review Committee or the Formal Inquiry Committee wishes.

That should be deleted and be replaced by language indicating that the Medical Review Committee and the Formal Inquiry Committee have the right to access to the personal medical records of patients under the provisions of this act only when

there are reasonable and probable grounds to assume an irregularity in billing practices and when the public interest involved outweighs the right to confidentiality enjoyed by patients.

The great advantage of the language we are proposing is that it reaffirms the principle of confidentiality while at the same time recognizing that in certain specific circumstances, the public interest may require a weakening of that principle. This is a much sounder approach than simply abolishing the patient's right to privacy at the outset as the proposed language does.

As presently worded, the act would allow the Medical Review Committee to go on fishing expeditions triggered merely by some statistical irregularity in a physician's pattern of practice. In other words, you find somebody who is outside the average one way or the other and he may or may not have a reasonable explanation. Perhaps you have an interest in seeing to it that the pattern of his practice changes radically in different ways, so why not go and take a look at his patient records. In the current language, this would be permitted to the Medical Review Committee.

We argue that this opens the way for every sort of mischief, and I should say to the committee that admittedly very brief consultations with two different legal experts, one of whom is a well-known constitutional lawyer. Both of those experts argued that this particular clause of the proposed Bill 4, 77, could certainly be challengeable under Section 7 or Section 8 of the Charter of Rights, Section 7 being the one that guarantees the right to security of person. One of the legal persons in question pointed out that if it could be shown that people were deterred from seeking medical treatment on the grounds of this kind of measure, then a strong case could be made for violation of the Charter. Section 8, of course, has to do with unlawful search and seizure.

Second recommendation, that it be stipulated in the act that all hearings of the Medical Review Committee and the special inquiry committee be held in camera. I will not go into this in great detail except to remark that the government has itself recently amended The Mental Health Act in exactly this way, that one of the most important additions to The Mental Health Act as presented in Bill 5 was precisely the special procedures that were put in place to protect the confidentiality of records of people who are hospitalized. So it strikes us as passing odd that in this particular bill, the good sense of the government was not sort of replicated.

* (1925)

Third recommendation, that language be included in Bill 4 that prohibits the release of the original or any copy of the original of the medical record of any patient undergoing psychotherapy. It should be stipulated that if the Medical Review Committee or Formal Inquiry Committee must have information relating to such patients, then they should be provided with a record prepared by the attending physician specifically for the case in question. Such a record must be entirely free of any identifying information and must be shown to and approved by the patient prior to its release to any deliberative body.

Here, we wish to emphasize again the crucial importance of confidentiality to psychotherapy, an importance which goes far beyond the understandable concern for the patient's reputation, privacy and interest. Psychotherapy is simply impossible to undertake if the patient is not assured that the details of treatment will not go beyond the physician's consulting room. If there is a fear that third parties may come to have knowledge—and I am emphasizing here having knowledge, not simply breaches of confidentiality—of the person's condition or of any details of the treatment, the freedom of communication between therapist and patient may be inhibited and the therapy rendered ineffective.

We repeat again that the mere absence of breaches of confidentiality is not sufficient to avoid this difficulty. Rather, a patient must be certain that no third party, authorized or not, will have knowledge of the details of the treatment process.

We are convinced that only if the patient sees the communication in question—in other words, the patient has to know what is being communicated to the third party and approves of its content—can the danger of irreparable damage to the patient's treatment be avoided.

I note here, too, by the way, that recent material from the Canadian Medical Association having to do with confidentiality emphasizes increasing tendency in law and in practice toward guaranteeing a patient access to his or her medical records. What we have suggested here is partly consistent with that.

Indeed, we are not certain that even the measures we are proposing here are entirely sufficient to ensure that a person's psychotherapy might not be destroyed by the undermining of security and freedom that disclosure of confidential information in any form inevitably entails. In short, the need for confidentiality on the part of these patients is of a different order than that of any other group of patients.

Recommendation 4 is fairly straightforward. It has to do with procedures with respect to confidential material. I will not say much about it except to emphasize the point that nothing is said in the bill about what happens to these documents once the deliberative bodies are finished with them. I remind the committee again that Bill 5 stipulates in fairly specific ways what is supposed to happen to the medical record of a patient after a deliberative body deals with it, in the case of a mental patient in a mental hospital. We do not see why The Mental Health Act should be stronger in this particular regard than the health insurance act.

Fifth point, again fairly clear, I think. It has to do with the importance of deleting identifying material from any patient records that are considered by the Medical Review Committee or the Formal Inquiry Committee before those committees begin to deliberate. It seems to me the importance here is that if a deliberation goes on several days running, which is not impossible, then the people who are involved in those deliberations have before their eyes the whole of this time the names and other identifying details of a person's treatment record.

Even if we were to assume—and I am not refusing to assume that such people are perfectly able to maintain confidentiality, and we know that there is a very good record of maintaining confidentiality on these matters; nevertheless, we still have a situation where increasing numbers of people have knowledge of the medical records of others. We do not see any reason why the names and other identifying material are necessary to the Medical Review Committee or the Formal Inquiry Committee to carry out its deliberations. Why not simply mark this material as exhibits with a different number than the number of the person's Health Services Commission number? That makes the stuff identifiable for the purposes of the commission. Otherwise you have a situation where the staff of these committees is running back and forth to Xerox machines and so on and so forth and obviously this is not in the best interests of patient confidentiality.

* (1930)

Number 6, in the case of third parties, third party names should be deleted, and seventh, a point about retroactivity, which I think is very significant. If this bill is passed, it should not cover patient documents that were generated prior to the date of its receiving Royal Assent. The reason we are convinced of this is because we feel that patients who have gone into treatment prior to this act have made certain assumptions about the security of their medical records. We believe that it would be the responsibility of the physician to explain to the patient what the new regulations were and that the patient would then have to make up his or her mind about what course to take with respect to treatment. So we think that retroactivity would not be in the best interests of the patient in this particular case.

Now, there are a few places in the details of the language of Bill 4 which we would just like to bring to the committee's attention very briefly. They are basically recommendations eight through 10, have to do with what seems to be somewhat unclear language about the nature of the books and records in question. In 75.2, for example, where the Health Services Commission is empowered to send inspectors around to the offices of physicians, it should be made very clear that the records they are allowed to pick up and copy are not patients' personal medical records.

Now in that particular section of the act it seems to imply that that is the case because the language does refer to claims for benefits relating to services provided, documents relating to that. That would seem to mean administrative and financial matters, and yet, anybody who has been around legal debates over the meaning of contract language knows perfectly well that the best thing would be to make it quite clear that this does not include patient records because the nightmare scenario is the inspectors from the Health Services Commission going down to the physician's office and deciding to pack up whatever they need and not only taking financial materials, but taking boxes full of patient records, the fate of which one would not be certain about. We would not want a situation like that to arise.

Similarly in Section 77(2)(a) and (b): Section 77(2)(a) seems to refer once again to records and books that have to do with finances and

administration. Section 77(2)(b) refers explicitly, of course, to patient records. It should be made very clear, I think, in the drafting of 77(2)(a) that that language does not refer to patient records. It should be made very clear that it is only 77(2)(b) that refers to patient records, that that is the only place in the act where patient records are referred to and otherwise we are talking about much less personal kinds of material.

Such language would allow the physician, him or herself, to present to the Medical Review Committee or the Health Services Commission or the Formal Inquiry Committee material in forms which would be properly disguised and properly free of identifying material. I would say we have said in other places in this brief that we do feel the physician is in a particularly privileged position to get rid of identifying material because there is more identifying material in a file presumably than simply the patient's name. There are also other circumstances of his existence. There are his relatives, his occupation, a whole range of other things that would need to be deleted.

Finally, Recommendation 11 has to do basically with the language in Section 128 dealing with laboratories. There is absolutely nothing in that language that addresses itself in the slightest to patient confidentiality.

I admit, and of course we are perfectly aware, that there are a couple of sections in the act that stipulate that only people who are legally entitled to have access to these things should be allowed to do so. Of course, those people are never specifically defined. The number of those people seems to increase with these provisions. It is bound also to include staff as well as professional people. On balance, we think that the language in Section 128 needs strengthening.

To conclude, on balance we are disappointed by the government's failure to take more seriously the matter of patient rights to confidentiality. Bill 4 contains measures which give considerable encouragement to the Health Services Commission and its Medical Review Committee to act aggressively when investigating physicians who are suspected of practising in ways that are inconsistent with the average for their specialty.

The right to send inspectors to examine laboratories without warrant, to demand patient records and so on, inject an element of police-like surveillance into the practice of the Health Services Commission and the Medical Review Committee that the more general language of the existing legislation avoids. Further, the automatic and complete withdrawal of patient rights to control over their medical records is totally unacceptable.

Under the new legislation, more confidential documents are likely to be seen by an increasing number of third parties. It is, therefore, all the more important that rigorous protection for the right of patients to remain anonymous be written into the law. Unfortunately, Bill 4 provides only the most routinized and minimal reference to confidentiality, which takes no account of the potential for abuse that the new legislation creates.

It is not enough to protest that civil servants and physicians acting in a quasi-judicial capacity are honest and reliable. For the most part, this is no doubt true, but there are inevitably exceptions. One need only refer to the three volumes of the 1980 Ontario Royal Commission on Medical Confidentiality to get a sense of the ubiquity of violations of patient rights in this regard. We repeat, even where there is no violation of confidentiality, there may still be knowledge of confidential material which may be acted on to the detriment of the patient in question.

I would just like to distinguish once again between those two things. It is one thing to say that people who have a right to see will not say anything about this material to persons who do not have a right to see. On the other hand, if you increase and proliferate the number of people who technically have a right to see, you are increasing the number of people who have knowledge of a person's medical record and, consequently, you are increasing the number of people who may be in a position to act on that knowledge without ever breaking confidentiality in a social way, with respect to employment, or a range of other ways that nobody might ever know about, but which, nevertheless, could be quite damaging to the patient.

As we noted at the outset, our primary concern is with the rights of patients receiving mental health care. Consequently, we wish to emphasize once again how crucial the security of medical records is to such patients. For these patients the divulging of information or the distributing of knowledge about their condition, even to authorized persons, is more than simply a matter of embarrassment which might adversely affect their interests or reputation, though of course it is certainly that.

Beyond that, in the absence of guarantees that their treatment will be a matter solely between patient and physician, the possibility of treatment itself is undermined. Any measures to ensure physician accountability have to take this basic fact into account.

There is an old saying which defines a secret as something only one person knows. Everyone recognizes the truth of this adage. When people are ill, however, they must find a way to ignore this truth and entrust themselves to a physician. In doing so, they hope their secret will be kept in confidence and third parties will not be privy to their suffering. This is particularly true of patients with emotional and mental difficulties for whom the guarantees of confidentiality are essential prerequisites to the therapeutic process itself. It is not just a matter of embarrassment. It is a matter of whether the therapy is possible if in fact more than two people are involved in it.

Legislators must sometimes devise means to pry into this confidential relationship. When doing so, they must ensure that the maximum effort be made to protect the interests of the innocent sufferer who sought care to begin with and whose healing is the very purpose of the health care system. We have tried to suggest ways this purpose might be protected, while still respecting the principle of public accountability. Thank you, Mr. Chairperson.

Mr. Chairman: Thank you, Mr. Gabbert.

Ms. Judy Wasylycia-Leis (St. Johns): Mr. Chairperson, let me begin by thanking Mr. Gabbert on behalf of the Citizens for Quality Mental Health Care for taking the time to be here this evening and presenting such a thorough brief on Bill 4.

* (1940)

We appreciate very much the expression of concern around the confidentiality of patients' records, of clinical records. As you stated at the outset, I think we all believe we are trying to find a way and a legislative mechanism that ensures the government is able to deal with wrongdoing, with the cheating of the system, without compromising confidentiality in terms of patients' records and patients' interest.

I am concerned, based on your brief, that perhaps this bill is not merely housekeeping in nature, as the minister has generally categorized it, and may in fact have some flaws in some areas that we have to address this evening. Perhaps there are some areas where we can find some compromise and deal with some of the problems.

Let me start out by asking—you have said basically on the issue of confidentiality Bill 4 is seriously flawed. There are several sections in this bill that I am sure the minister and others would probably refer to in terms of trying to ensure that confidentiality is dealt with. I refer specifically to 81(5) which says: "A hearing of the Formal Inquiry Committee shall be held in private."

Mr. Gabbert: I am sorry, where is that?

Ms. Wasylycia-Leis: 81(5) on the bottom of page 9.

A second area that appears to address this is 84.1(2) which states: "When compiling the record under subsection (1), the Formal Inquiry Committee shall strike out or delete information that might identify individual patients."

Another section, of course, is 85.1(1) entitled "Disclosure of information" which spells out conditions under which information can be communicated or not communicated.

I am wondering, based on those three sections, if any of your concerns are addressed, and which are the serious outstanding matters based on those clauses.

Mr. Gabbert: Mr. Chairperson, first of all I appreciate your drawing to my attention the section which requires the Formal Inquiry Committee to meet in closed session. I think that is very important. That does meet—partly meet our concern.

So far as I know, that does not apply to the Medical Review Committee. There may be something somewhere else, although I did not see that in The Health Services Insurance Act when I looked through it. I do think if we could get that, that would help.

I draw your attention to 84.1(2). The problem we have with 84(1) is not that there is anything the matter with it as it stands, but consider it. When compiling the record under subsection (1), the Formal Inquiry Committee shall strike out or delete information that might identify individual patients.

The question we raise in our brief is this: Why is it necessary for the Medical Review Committee and the Formal Inquiry Committee to have before their eyes at all times the names and identifying information about patients? These hearings may go on for some days. There are a number of people

involved. There are staff people involved. Why is it so difficult to delete from the record the identifying material in these files before all these hearings have been done?

Look, what happens is this: There has been an investigation. The Medical Review Committee has had a hearing, presumably. Then the whole matter is being passed on to the Formal Inquiry Committee, which are different people yet again with another staff, presumably, or at least possibly. All this time patient records are floating around with people's names on them and other identifying material. We do not see the purpose in that.

It would seem to us to be the case that if dossiers were identified by number just as they are in exhibits in any kind of court hearing and so on or just as it is when somebody has to examine, let us say, exam scripts or something like that, you do not want to know the names of people, you want to have an objective opinion of that. The fact of the matter is, lots of work can get done without knowing somebody's name. We cannot see why it would be necessary for all this confidential information to be before the eyes of the committee members for all this period.

We are quite convinced that particularly for people who are under psychiatric care, this would be an enormously painful experience for them, an extremely difficult thing for their therapy to survive, particularly if they had no real knowledge of the content of the records that were also put forward. This act does not allow for psychiatric patients or any other patient to have access to what the physician sends forward to the Medical Review Committee or the Formal Inquiry Committee.

It seems to me to be a relatively simple thing. Obviously, somebody is going to have to alter the documents. Well, who is it going to be? Presumably, once you have a third party involvement, somebody trustworthy has to be able to do that, but it is not clear to me why anybody's deliberations should depend upon knowing the names or other identifying material relating to patients in question.

Now, with respect to 85.1 (1), here again I think we can only say that the intent is good, and I am not here to call into question the integrity of civil servants or physicians involved in this. What I am here though to do is to say that disclosure of information is one thing, but we have to go further than that with confidentiality. We also have to talk about limiting the amount of knowledge that people have about people's medical records.

In other words, the most honest character in the world, who would never breathe a word of something confidential outside of to those who were legally entitled, and of course it is not altogether clear who the legally entitled people are, nevertheless still has to live. Put it another way. Maybe from the point of view of the bureaucrat, does he really want to live with that knowledge himself? Does he really want to be in a position himself at some point to be able to act on that knowledge, even without divulging it to a party who has no right to have it?

So it strikes us that, yes, 85.1(1) is a very important measure. It needs to be here, as does 84.1(2). Nevertheless, we think that more could be done and that if more were done in the way we have suggested that it would be very much better for patients. I cannot emphasize that enough.

Ms. Wasylycia-Leis: Just on 84.1(2). I hear you saying that is a good provision, but you are asking the question, why does it not hold true for the whole process, including the Medical Review Committee process?

Mr. Gabbert: Well, yes, but of course you realize that we have recommended that the Medical Review Committee and all these committees meet in private. We have recommended that before the committees see this material that it be disguised. In that particular case, the identifying information would be less of a problem obviously. If the identifying information were not there before the committee the whole time of the deliberations, that would be an enormous help.

The way the bill reads now, it has to be seen. The way the bill reads now, if the Medical Review Committee says to a practitioner, we have to see your complete medical files in order to come to a decision about whether you have billed outside the average of practice for your particular specialty, and we want to see them holus-bolus the way they are, right, the medical practitioner is required to deliver them in that form, according to the language of the proposed act. The medical practitioner must package them up, because that is the form in which they are acceptable to the committee. Then the whole lot, presumably, could be before the Medical Review Committee for some time and then be transferred off to the Formal Inquiry Committees,

presuming there was no resolution of the problem at the level of the Medical Review Committee.

We just do not see that as necessary. We see that that is a terrible disadvantage to the protection of confidentiality, especially in the case of psychiatric records.

* (1950)

Ms. Wasylycia-Leis: I think you raised a very important point and a question that we will need to pursue with the minister. That is why, generally, a provision cannot be in place to ensure that patients cannot be identified at any step of the process. We will be looking forward to pursuing that with the minister.

Let me ask you about 77.1.

Mr. Gabbert: 77.1 or the real 77(4).

Ms. Wasylycia-Leis: Yes, on page 7, confidential information. That is a concern for us as well; the statement of basically insured persons deemed to have waived their rights through this provision is of concern. I do not know if there is going to be room to compromise on this or not, but we are going to attempt that this evening. I am wondering, if one was to entrench in that section notice to patients before confidential information or records are provided to the Medical Review Committee, if that would go part way to addressing your concern, at least leave a vehicle for patients to register their concern and to put forward their objections.

Mr. Gabbert: Well, there are several things to say about this. First of all, you know, we are suggesting that the problem with 77(4) is this, that suppose, for example, you have a general practitioner who is doing a lot of psychotherapy and suppose the Health Services Commission is not very happy about that, let us say a general practitioner, somebody who usually does a whole range of things, and this guy's pattern of practice is out of whack and they are trying to persuade him to do more general practice and less psychotherapy because it is not very efficient or whatever.

Under this legislation, it seems to me if in their opinion the practice of that physician varies from the average of people operating in similar circumstances, then they can begin an investigation. In the course of the investigation they can root out his patient files and so on. There may be a perfectly legitimate explanation for why he sees fewer patients than the average general practitioner. He generally does psychotherapy. He charges the Health Services Commission less for doing psychotherapy than a psychiatrist does, but instead of looking after people's tonsils and this, that and the other thing, he is doing psychotherapy. He might go to the Medical Review Commission and explain this, and in fact the Medical Review Committee might check with his patients and find out indeed if that is what he has been doing and find out whether the times they have been billed for his services, patients have actually shown up. If, of course, he is able to respond on that grounds in a reasonable way, why should anybody go after his patient records if he can make an explanation?

If the Health Services Commission does not want general practitioners to do psychotherapy, then there are other ways to manage that. You just tell them they cannot, presumably. You change the fee situation. You do whatever you have to do to change that situation. You do not, it seems to me, write into legislation the possibility of pressuring individual physicians to do this or that on the basis of being able to dig into their patient records.

I would say this about 77.1—(4)—however you want. We have suggested here that the commission should only ask for patient records when there is reasonable and probable cause to assume a genuine billing irregularity, in other words, when some investigation has really been done, and when the public interest in seeing patient information to get to the bottom of this outweighs the right of the patients to confidentiality. That can become, of course, if there is a debate about it, that could become a legal matter.

I will bet you dollars to doughnuts that if you were to ask the average Manitoban whether they would rather there were language in this bill that said that they gave up the right to any control at all over their personal medical documents to deliberative bodies of the Health Services Commission, or whether they thought they should have some rights left over to prevent this at law, that they would be on our side in this matter, that they would want to be in a position to say look, just because my doctor is going to be investigated for this or that, maybe justifiable, maybe not, does not mean that immediately the Medical Review Committee can come to his office and pick up my medical record, xerox it and take it off to a hearing. I just do not think that is consistent with the way people want medical practice to go on.

The idea that you suggest of simply notifying people in advance, well, at least people know that

their physician is being reviewed and that their medical records may be subpoenaed. I think there is some virtue to that but unfortunately it does not go to the heart of the matter, the heart of the matter being that the Medical Review Committee has sort of the straight line to these kinds of records as soon as it thinks that it is in its interest to have it. Current language is vaguer than that. Current language is more general than that. Current language leaves a kind of space in which the Medical Review Committee and the physician and other people can tug around to try to figure out what kind of documents are acceptable and what kind are not. By stipulating, as this language does so clearly, a kind of aggressive way the Medical Review Committee can go after this, I think there is a danger that recourse to examining patient records will come much earlier in an investigation than it needs to come.

Ms. Wasylycia-Leis: Just a couple more questions, the first one tying into your comments about practitioners who may not fit the norm, who may not have run the average practice or the standard practice. It is a concern of mine throughout this bill, because throughout the bill reference is made to reviewing those whose practices depart from the average pattern of practice. In several places throughout the bill there is mention of departing or not departing unjustifiably from the average pattern of practice. I have concerns about that. I would imagine that based on your earlier comments, you may as well. Although it is not touched in your brief, I am wondering what your thoughts are in terms of that terminology and if we should be pursuing amendments in those areas.

Mr. Gabbert: Mr. Chairperson, I think the minister himself, of course, is preoccupied with the problem of outriders. I do not see that the problem with outriders is a nonproblem by any means. Obviously, if you find somebody who is doing wildly more procedures of this or that sort than somebody else, then there should be a reasonable explanation for it.

On the other hand, there are a couple of things here, first from the point of view of actual cost savings. You know, when you look at the curve of medical practice, obviously where you are spending the most money is in the hump of the curve. There is much more going on in the hump of the curve by way of total expenditures than with the outriders and, arguably, it is the people who are operating in the average who need to be looked at, as well.

The other thing, of course, is the current language in this proposed amendment in Bill 4 talks about an average of physicians operating in similar circumstances. That is a change of language from the old language which talks about a norm which the commission itself sees as reasonable. The average, of course, presumably is a much narrower standard than two or three standard deviations on either side of the curve. I know when you are dealing with gobs and gobs of practitioners you have to find some way to sort of trigger a concern about the way medical care is being delivered. It seems to me if you have a situation where an investigation leading to the examination of patient records begins to happen, that somebody is outside the average on one side or the other, then you have potentially got a problem.

That is why I think our proposed language to 77(4) is more satisfactory, because it requires the Medical Review Committee to look at more than just the average of a particular practitioner, given the circumstances under which he is practising. I think our particular language would avoid this kind of fetishism of statistics.

Ms. Wasylycia-Leis: A final question with respect to the part of the bill that allows for calling of witnesses. The wording of the bill is general so—

Mr. Gabbert: Can you draw my attention to that?

Ms. Wasylycia-Leis: Yes, 82(2) Witnesses and records.

The question is a general one. My concern is that there may be people for health reasons or because they are in ongoing therapy where it would be quite harmful and destructive to be suddenly required to be a witness at one of these hearings. I am wondering if we should be looking to put any provision in this bill that would allow, in such cases, those individuals to be excused from testifying.

Mr. Gabbert: Mr. Chairperson, I confess it did not strike me at the time that might be a problem. I can see that in certain kinds of psychiatric practice, in fact in any psychiatric practice, you could well find somebody who would not be fit to testify.

I am not a lawyer, and I do not know what the recourse would be for such a person if he or she were called to testify at such a hearing. Here again, I think mitigating language would help. That is for certain.

I might put it this way. At least if a person were to testify on his or her own behalf, the patient would at least know what had been said about himself, which would be better than the current situation where his records might wind up on somebody's table for endless hours of hearing. I agree with you that it is certainly possible, particularly in psychiatric cases, that this would be a problem.

* (2000)

Mr. Gulzar Cheema (The Maples): Mr. Gabbert, thank you for your presentation. I have a few comments, some observations and some practical experience I want to share.

First of all, I would go into the comments you have made regarding the pattern of practice. It is my understanding the pattern of practice is judged on the basis of the number of years practised. You are put in a special group where you are a graduate and which part of the city or the province you are practising medicine.

If somebody is doing more psychotherapy and some physician is doing more psychiatry or psychogeriatrics or assisting more surgery, it is my understanding, by way of writing to the Health Services Commission, that problem can be easily avoided. I know some people have done it. I do not think that is a major problem in terms of the pattern of practice.

I think the problem is going to come eventually when our population is going to age and we may, some physicians—as the Minister of Health (Mr. Orchard) will recall, we had one incident that was from Transcona. One of the physicians did not fall into the normal variation of practice, and he was asked to review his pattern of practice. I think there are few individual circumstances, but most of the time if you notify the Health Services Commission, I think the problem can be solved.

The other issue about the confidentiality information is a very important one, as you have pointed out. As you know, the Medical Review Committee has to have a member from the College of Physicians and Surgeons, from the Manitoba Medical Association and one member from the Health Services Commission. Under the present act even, under Section 38 as you have said, the College has the authority to go into any office if they find the practice is not—somebody is complaining—and if there is enough reason to believe that practice does not fit into the normal variation and not providing a quality of care.

As long as we have a member from the College of Physicians and Surgeons on the committee and a member from MMA—and MMA does give their own member. I do not think the minister and the ministry of Health is going to select any member. The member is given by the MMA. A member is given by the college and you have a third member. I think the approach can be taken in a very reasonable fashion.

What we have to, in this Assembly—and you know what happened last year. There was one or two labs who were abusing the taxpayers' dollars. That is the intent, to protect any person or a group of persons who is abusing tax dollars.

If physicians—as you said, the majority of them are going to do their best possible to provide quality care. In that way, I personally do not find any difficulty, as long as we have the College of Physicians involved in the whole process. The MMA is involved in the whole process and the Department of Health is involved as an equal partner. They can go, and basically their procedure is you have to just first let them know you do not fit in the normal variation. Then you go and have the other investigation done.

I would like to know, from your point of view, why, as a practising physician I would have no difficulty if I am falling in the normal variation. If I have a different pattern of practice, if I notify the Health Services Commission in advance, the problem can be solved. As I said earlier, it has been the case in many circumstances. I am aware of a few of them, personally, out of one of the hospitals and out of one of the groups.

I would like to know your comments, if we could have the College of Physicians and the MMA involved in the whole process, why would we, as professionals, be afraid of having to have our practices examined from a point of view to protect the quality of the care we provide in this province?

Mr. Gabbert: Mr. Chairperson, well, first of all, obviously a comment about Section 38 of the medical act, we are not here to revise the medical act. If somebody asked me how it should be revised, I would say that much of what we have suggested should probably be written into it with respect to protection for confidentiality.

I do not think it is very good on that score, frankly. I mean, it is one thing to have a consulting physician examining a patient's record for medical purposes; quite another to have the most well-known member

of the College of Physicians and Surgeons simply come and inspect your patient's records uninvited.

The other thing, I would say this though, it is not my place here to talk about how to define patterns of practice, or how the matter of patterns of practice should be dealt with by the Health Services Commission with respect to defining those patterns, and so on. My concern here is not with whether physicians are happy being scrutinized by a tripartite Medical Review Committee; my concern is under what circumstances, and at what point is an investigation of patient records triggered? That is what I am concerned about.

You may be quite right about this, nine times out of 10 these things may be worked out, but nevertheless the possibility is foreseen here of a situation where things will not work out that way and where further investigation has to be undertaken, and the language that we propose for 74(1) is designed to give the patient some protection from a kind of hasty resort, a hasty resort to the investigation of patient records when, in fact, the matter might be settled with other kinds of information being gathered.

So, once again, I know your experience as a medical practitioner is something I cannot share; I am not a medical practitioner myself. What I am concerned about though are the circumstances under which patient records can be accessed, and I think more protection needs to be built in here than exists now.

Mr. Cheema: Mr. Gabbert, the concern—as you know, with the HIV infection the confidentiality is protected, and if the coding as you have suggested and some kind of numbers could be used, I think that problem could be solved. But still it is a new process and I think we may come across certain difficulties, but as long as those lines are clear and as you have pointed out, I am sure the minister has taken notice of your comments.

The other issue that I want to point out here is the appointment of a committee to go into an office and look at the financial aspect and also the records and everything else and saying with a reasonable time. I want the minister to let us know what is a reasonable time and how do you inform a person that we are going to go to your office and examine you. What kind of time frame is going to be given to a particular physician, or a group of physicians to know that such an investigation is in progress? Because most of the physicians have a person working for them, or two or three are on the staff, I do not think the services commission should go into private matters, other than pertaining to the quality of medicine.

I think that is the issue, I think we should differentiate those two issues very well. If the service commission is worried about the burden of practice, that is fine, but to look into the other aspects of a physician's role in terms of how he runs his practice, how he has his payroll done, how his appointment book is being kept, in order or not, I think we are going too far in that respect and I would need some clarification. I would just like to know your comments from that point of view.

Mr. Gabbert: Well, I doubt if either the minister or I know what the convenient time for any physician to be investigated by the Health Services Commission is, probably never if you asked them. Our particular concern is with the sort of generality of the language in 75.2 and 77(2)(a). We want to be very certain that the materials that the inspectors are supposed to have access to, that material is administrative and financial and not patient records. Now I think it is partly implied the way it is now, but it could be very clearly stated, and anybody, as I say, who knows anything about legal wrangles knows that where there is a little bit of vagueness of language, there is always the possibility for a squabble.

In the meantime, you see, you might have a situation where inspectors came down from the Health Services Commission and boxed up everything in the office and took it away to be copied. Unless it is perfectly clear in 75.2 that what they are supposed to copy is financial and administrative records, there is always the possibility that patient records will be netted, and that is why we have tried to insist here that 77(2)(b) be the only part of the act in which the patient records are involved. Thank you.

* (2010)

Hon. Donald Orchard (Minister of Health): Mr. Gabbert, I want to thank you for your brief because you bring a number of valid concerns that individuals might have because we have always wanted and assumed that our medical records were inviolate, in terms of outside inspection.

I think though, sir, that most of the concerns you have raised are either in terms of confidentiality are protected in terms of Bill 4 and the amendments, or

in provisions of the existing Manitoba Health Services Commission legislation.

Now I would just like you to be aware, sir, that the Medical Review Committee is not a Manitoba Health Services Commission effort, it is tripartite—

Mr. Gabbert: I am aware of that.

Mr. Orchard: —between the MMA, the College of Physicians and Surgeons and the Manitoba Health Services Commission making appointments to the Medical Review Committee.

The history behind these amendments is that several years ago, I think possibly three to four years ago, the MMA made the legitimate case to government that the Medical Review Committee, as structured under the existing legislation prior to the amendments of Bill 4, acted as both judge and jury, and they suggested that that was inappropriate, and everyone agreed.

We have been operating the Medical Review Committee with only participation by the College and the physician appointees by the Manitoba Health Services Commission. It is only with these amendments which separate through the Medical Review Committee process and the Formal Inquiry Committee, that we have been able to separate the two functions. So the investigation is done by Medical Review Committee and then any potential requests for recovery, or any penalties are imposed by the Formal Inquiry Committee, so it is two-staged, and both the college and the MMA were partners, if you will, in drafting these amendments and signed them off, if you will, and appreciate that the college has a very, very important role in protecting confidentiality as does the MMA on behalf of their practitioners. That is why I have some confidence in saying that not only the amendments in Bill 4 but the existing provisions within the act provide for the kind of confidentiality that you wish to see.

On a second point that you made about possible nefarious requests for records, i.e. you see someone who is out of a practice pattern and some zealous individuals potentially at the commission could demand the records. That again, sir, is covered off from the process that has been in place.

The Medical Review Committee does on a routine matter call in an individual practitioner to have them justify why their practice pattern may appear to be out of the norm, if you will. If there are legitimate reasons why, that ends the matter. For instance, you might have a family practitioner, single physician in a rural community of 1,500, 2,000, 3,000 without a physician for a number of years that within a year builds a very, very large practice by working many, many hours. That might be outside of normal family practitioner billings but justifiable by the fact that he is a single practitioner in an area with no previous practitioner.

So that matter is settled. There is no request of records. It is only where the physician does not make a legitimate case to the Medical Review Committee, which is represented by MMA, college and commission by physicians, all physicians, that it then moves into the second stage of investigation. At that point, any records that are requested assure patient confidentiality in all circumstances.

It is only if the Medical Review Committee makes a decision that the practitioner should be required to pay back, or whatever the action, it is only then that the case is moved to the second step of the Formal Inquiry Committee, again made up by members of MMA, college and physicians appointed by the MHSC to then determine what might be the penalty or reparation required. Again, the same confidentiality is required.

As a matter of fact, the commission is under strict requirements in terms of release of information that it cannot be identified as to the individual, so I think—and my critic from the New Democratic Party pointed out a couple of the existing clauses in the bill which require the hearings to be in camera, in private, not public, which is sort of a deviation as to what we just dealt with with the pharmaceutical association, and also the requirement of confidentiality of records. So your points are valid, and I think that they are, in fact, covered by existing and the amendments that are proposed here tonight.

Mr. Gabbert: I appreciate those comments, of course. Just let me make a couple of responses. First of all, of course, I am aware that the MMA is very pleased about the way in which the Medical Review Committee is being revamped by this legislation, and it seems hard to disagree that it is an important reform.

With respect to your second set of comments, I would just say that I am not satisfied that patient confidentiality is adequately protected on the grounds that you have stated. I do not think, for example, that it is acceptable to draft legislation of the sort you drafted in 71(4) which deems patients to have given up the rights to their medical records

upon receipt of insured services. I do not think it is adequate to have a situation where patient documents can be presented to deliberative committees without first being free of all identifying material. That is not provided for in the current situation.

I think that if, indeed as you say—I know that the Formal Inquiry Committee has to take all identifying material out of its final report—fair enough. The Formal Inquiry has to have its hearing in private—fair enough—but, as I said before, in the course of those hearings, there is highly confidential patient information potentially on the table which, to my mind and as far as we are concerned, does not need to be there.

The second thing I would point out is that we did make quite a point here, quite a point of the importance of special provisions for confidentiality for psychiatric patients, and there is no question that this legislation does not address that at all. I would say also that our particular version of 71(4) requiring, as it does, reasonable and probable cause if there are difficulties and requiring that the committees in question show that the public interest will be served if an exception is made to patient rights.

If indeed what the minister says is correct about the clear evidence that arises at the end of the Medical Review Committee hearing, then there should be no problem writing in language which requires the Medical Review Committee to show that there is reasonable and probable cause to assume a violation, that the public interest is at stake and that, then, patient records should be accessed.

I think that is a very important difference from what is being proposed here. With all due respect, I would have to say I am a great believer in tripartite arbitrations about all kinds of things, but the reality of it is that there are arbitration committees and arbitration committees, and all kinds of difficulties can happen in the course of these procedures. There just has to be protection for the people who are basically innocent bystanders in all this.

* (2020)

As I tried to point out to earlier questioners, I do not think that the language that is here presently, even though obviously it does prohibit people from divulging confidential information to people who are not legally entitled to do so, I simply cannot agree that it solves the problem of the expanding number of individuals who have knowledge of patient records and will certainly have knowledge of patient records if they are not properly altered before the committees have a chance to look at them. I do not—that identifying material deleted, and I do not see how patient interests are protected by writing into this bill a Clause 71(4) of the sort that is being proposed here which simply gives the Medical Review Committee carte blanche at any point.

The language—it may be as you say, Mr. Orchard, that this is the way it happens, and probably nine times out of 10 maybe that is the way it happens, but the language in the law actually allows the Medical Review Committee to access patient documents when it sees fit. Frankly, I do not think that is an adequate protection for patient confidentiality. I simply have to disagree on that score, and I do not see why if you are convinced that there is reasonable grounds at the end of an MRC hearing, that it would be any problem for you to show it under the language that we have proposed here for 71(4).

Mr. Chairman: Thank you very much, Mr. Gabbert.

Bill 69—The Manitoba Medical Association Fees Repeal Act

Mr. Chairman: It has been brought to my attention that we have a presenter who is from out of town. Is it the will of the committee to hear this gentleman? It is on Bill 69; Dr. Jim Ross. Agreed?

An Honourable Member: Agreed.

Mr. Chairman: Agreed. Do you have a written presentation? Just wait and we will just get it distributed. You may proceed.

Dr. Jim Ross (Manitoba Medical Association): At the outset, the MMA wishes to make clear our opposition to Bill 69, the repeal the MMA fees act. The MMA fees act became law in 1986 in recognition of the role played by the MMA in representing all Manitoba physicians, members and nonmembers, in terms of fee-for-service negotiations. These negotiations greatly influence salary schedules and ultimately benefit all doctors across the board. However, the negotiation process is often very costly for the association. It is only fair that those who reap the rewards should pay their fair share of the costs involved.

The MMA is much more than a negotiator for Manitoba physicians. There are other key reasons why payment of MMA dues was made mandatory. MMA investigations into the issues of medical

manpower, medical care utilization, high technology medicine and fee income disparities involve extensive original research. Ultimately all physicians, not to mention the public, gain by having collective input into the development of health care policy in Manitoba.

The MMA Physicians At Risk program is for the benefit of the entire medical profession. Doctors who suffer from chemical dependency, emotional or other problems receive valuable assistance from their colleagues through this program. In many cases, problems are resolved before they become severe or precipitate major crises.

The MMA Council on Health Care co-ordinates the activities of standing committees active in health promotion and disease prevention. Committees include child health, public issues, sports medicine, emergency medical services, aboriginal health and an ethics committee. These committees have assumed a leadership role in tackling major health care issues to the benefit of physicians and patients alike.

Currently the MMA funds and directs, either in co-operation with other groups or entirely on its own, three major health public awareness programs. The first, the highly visible and effective antismoking lobby; the second, promotion and advocacy for the use of bicycle safety helmets, particularly for children; and third, a televised campaign to alert both the public and physicians to the dangers of alcohol consumption during pregnancy. The latter, Fetal Alcohol Syndrome campaign, has drawn the attention of the Surgeon General of the United States of America.

Recently the association has gone on public record supporting efforts to preserve and protect water quality in Manitoba, lobbied for a government-sponsored needle exchange program to reduce the spread of infectious diseases and suggested nonlegislative mechanisms to control solvent abuse. The Emergency Medical Services Committee has produced and distributed recommendations on emergency drugs and equipment for physicians' offices. The Sports Medicine Committee has issued guidelines on safe water activities for pre-school children. MMA funding for these types of programs for 1991-92 will be at its highest level ever, despite a projected drop in revenue for the association.

Claims that Manitoba physicians never supported compulsory dues is incorrect. A majority of Manitoba physicians supported compulsory dues in the November 1985 ballot. Of the 58 percent of those eligible to cast ballots, 53.6 percent voted yes, 46.4 percent voted no. Today, support for the association is overwhelming; over 88 percent of licensed physicians in Manitoba are voluntary members of the association. Compare this to the support garnered by the present Conservative government in the past provincial election. Sixty-nine percent of those eligible to vote cast ballots, 41.9 percent voted for the Conservatives, while the combined votes for the two opposition parties totalled 56.8 percent.

On April 9, 1991, the present government authorized the Manitoba Health Services Commission to conclude a formal agreement with the MMA on behalf of all the province's practising physicians. Article 2 of that agreement reads:

> For the purpose of negotiating and concluding an agreement contemplated by Section 74 of the Act, the Commission recognizes the Association as the sole and exclusive bargaining agency for all fee-for-service practitioners in the province of Manitoba.

Articles 13, Volume Review, and 14, Fee Schedule Reform, provide that the MMA and the Manitoba Health Services Commission jointly contract with consultants to undertake studies and make recommendations for discussion and implementation by the parties. Based on the estimates already received by interested consultants, these studies could cost the parties as much as $400,000.

Since then, the government, without consultation, has arbitrarily decided to repeal the MMA fees act, this despite the fact of their recognition of the association's pre-eminent role in bargaining and the knowledge that the jointly funded studies are very expensive. It appears to be a deliberate attempt to undermine MMA's financial stability and security and a means to take revenge on the association proposing the government's plans last year to further ration medical services.

In summation, the MMA strongly opposes repeal of the Manitoba Medical Association fees act. We believe the association, as the recognized exclusive bargaining agent for all fee-for-service medical practitioners in Manitoba, benefits all physicians equally, whether they choose to be members or not. In addition, all physicians benefit from the many MMA funded health programs. It is only fair that

those who benefit from the association pay their share of the costs.

Finally, to initiate reform and improvements in our health care system, the active participation of physicians is critical. The MMA is seen by Manitoba physicians as their primary spokesman in these matters, and the arbitrary action taken by the present government may seriously undermine the spirit of co-operation which is required between government and physicians in this province. Thank you.

Mr. Chairman: Thank you, Dr. Ross.

Mr. Gary Doer (Leader of the Opposition): Yes, thank you very much, Dr. Ross, on the presentation before us tonight. I would certainly like to congratulate the MMA. I have had the opportunity to see your latest television campaign alerting the public on the dangers of alcohol consumption during pregnancy, and I thought the ads were very, very helpful to the public interest. I have looked forward to the presentations from the MMA on other bills and other issues that we have worked together on. I know the smoking bill was something that the MMA worked on very carefully when we moved private members' bills and other issues of public health, the most recent of which is the banning on the Shoal Lake watershed.

The brief really does raise the issue of percentage votes. It is something I heard the last time when people were dealing with Ronald Reagan, saying only 27 percent really voted for him with a 50 percent turnout. One of the rationales the minister has used repeatedly is about the whole issue of percentage votes of less than 100 percent turnout.

Do you think that the arguments the minister has used to justify the repeal of the former bill are fair comparisons?—the rationale being used that only X percentage actually voted because of the turnout, something, of course, we do not use for ourselves in our democracy, as you have pointed out in your brief.

Mr. Ross: No, absolutely not. I would say there are many people probably sitting around that table right now who did not win by a whole lot of votes. Some won by a whole slew of them. If we could get 100 percent of the people voting every time, it would be a wonderful situation. I think we would all agree on that, but reality just does not take place. We do not accept that argument, no.

* (2030)

Mr. Doer: Yes, you mention in the brief quite clearly that you consider this to be a revenge act. I read your article in the Medical Post. You called it, again, vindictive and other words like that. Is it the perception of the MMA executive that this bill is motivated by a government's desire to even an old score, as they feel it, in terms of last year's campaign ads that were in the Premier's riding, as you mentioned in the Medical Post, advertising campaigns to articulate your position? Is that the feeling of the MMA executive, that that is the primary reason for introduction of this bill? Revenge is a very strong word.

Mr. Ross: We can see no other reason for it. It came out of the blue. Has there been any public outcry for this? Has there been any physician outcry for this? Certainly not to the knowledge of the MMA.

Mr. Doer: Well, I have had no constituents calling for the repeal of the bill before, I can assure you, and I have had no doctors or physicians saying the same thing.

Mr. Chairperson, what reason did the minister give your association? You mentioned, again in the Medical Post, that you were not consulted on the bill, but at the end of a meeting, the regular meeting you had with the minister, he did not consult you on it. He informed you of the government's intent, as I understand it.

Could you articulate for us what reason the minister gave the MMA for this move?

Mr. Ross: Well, you are precisely correct. It was stated to Dr. Cleghorn and myself, when we met with Mr. Orchard in our last meeting, at the very end of the meeting that this bill was coming into being and would be repealed. The reason he gave us at that particular time was he did not like the bill when he was in opposition; he does not like it now.

Point of Order

Mr. Gulzar Cheema (The Maples): Mr. Chairperson, I just wanted to declare that I am in a conflict of interest with this bill. I did not speak inside the House. I have to leave until the presentation is finished. Thank you.

* * *

Mr. Doer: I thank the doctor again for the very disturbing answer in terms of the rationale of the government.

The Rand Formula I think was granted in the late '40s, if I am not mistaken. It is a little bit after the Second World War. Sometimes we feel that is the presence of our dealings with the present government, my bias in saying that in dealing with these kinds of issues.

What is the status of other organizations with doctors in the country? I think the Ontario Medical Association has at least, as I understand it, the Rand Formula. The other provinces—where is this for the MMA relative to other provinces? I know we should have a made-in-Manitoba solution to this to begin with and we should deal with the principles on a Manitoba basis to start with, which I thought we had a few years ago. Where are we relative to other medical associations in the country?

Mr. Ross: As you stated, the OMA was just recently granted compulsory dues. Virtually every other medical association in this country either has it or wants it. It is that simple. If they do not have it they want it.

Mr. Doer: Will this mean that the MMA now, because it has been disenfranchised by legislation after having a vote, will have to spend considerable money that is presently being used for positive public health programs, like the fetal alcohol program—will this mean that the money now will have to go, the money you have, the resources you have in your organization, will be taken away ironically from health care and preventative public health programs and moved into organizational considerations?

Mr. Ross: The answer is no. We are going to have a very substantive increase in our dues this year, coming up August 1—or at the end of August, excuse me. The answer is no. As stated in the brief, we have allocated even more money this year to the council on health care than we have in the past. We are very committed to the public health care issue situation, so we will absorb that cost from our dues themselves. So we are not going to shift our public duties into the finance or fiscal line.

Mr. Doer: I thank you for that answer.

The minister, of course, reports to a Premier. I was wondering whether the MMA has asked for or secured a meeting with the Premier (Mr. Filmon) of the province to try to ascertain the rationale of the Minister of Health (Mr. Orchard) for this backward piece of legislation before us today.

Mr. Ross: We have not, no.

Mr. Doer: Have there been any attempts of the MMA to talk to other MLAs on this matter? I am just a little bit worried that we are going backward without any positive impact from the public of Manitoba. Have there been any other attempts, or just basically relying on the Minister of Health on this bill?

Mr. Ross: Basically relying on the Minister of Health. We realize this is an issue between ourselves and government that does not really have much potential public interest, so there has been absolutely no attempt to involve the public or anyone else on this issue. I think a number of individuals probably have spoken to their own MLAs, but we have been dealing just strictly with the Minister of Health.

Mr. Doer: Thank you very much.

Mr. Neil Gaudry (St. Boniface): Dr. Ross, firstly I would like to, on behalf of our party—

Mr. Chairman: If you could bring your mike a little closer.

Mr. Gaudry: —I would like to say thank you for your presentation.

How will this bill affect the ability to function to provide quality care to Manitobans?

Mr. Ross: I am sorry. Could you just repeat that?

Mr. Gaudry: How will this bill affect the ability to function to provide quality care for Manitobans?

Mr. Ross: I do not think it will affect it in any way whatsoever, sir. As I say, this is a means of garnering money for the MMA. Let us not kid ourselves. We are willing to increase our dues to make sure the organization functions as well as it has in the past or even better.

Mr. Gaudry: Mr. Chairman, did the minister consult with your association before presenting this bill?

Mr. Ross: No. Mr. Orchard informed Dr. Cleghorn and myself at the end of a meeting that we had with him that the government was planning on introducing this legislation, full stop.

Mr. Gaudry: Dr. Ross, do you think this is a punishment for this bill for binding arbitration?

Mr. Ross: Well, I do not know whether it is necessarily for the binding arbitration situation as we see it. We cannot see any real good rationale for introducing this particular piece of legislation at this point in time, when we have taken the very most contentious issue between ourselves and the

government—that is the negotiation for the fee package for fee for service physicians—we have taken that and we have put it on the back burner, if necessary, through an arbitration mechanism. When I became president in April, I was sincerely looking forward to better relationships with the government—I will be very honest—because we have taken this major issue for which we are always fighting. No matter which party is in control, we are always fighting with governments over this issue.

Here we have taken it and we have agreed that a third party can decide it if necessary. Here we come up with this particular piece of legislation, which we must confess we find somewhat aggravating.

Mr. Gaudry: Will this bill, Dr. Ross, affect your relationship with the government and the minister?

Mr. Ross: It has not improved it.

Ms. Judy Wasylycia-Leis (St. Johns): Mr. Chairperson, I would also like to thank Dr. Ross for taking the time to be with us this evening and make a presentation on what we consider to be a very important bill before us and a very harmful one in terms of progress that has been achieved over the years.

I appreciated particularly the reference in this brief to the percentage of doctors who supported this principle back in 1985 and your comparison to the 41.9 percent who voted for the Conservatives in the last election, which led the Premier of the province to say, a majority is a majority is a majority. It seems to me that your percentage is much higher than that: 53.6 percent. I hope the minister remembers the words of the Premier and the principles behind majority decisions.

I would like to ask if you feel that you have at least that percentage of doctors with you today when it comes to mandatory fee collection or in fact whether or not you think it would be lower or higher.

Mr. Ross: My guess is that it would be much higher today, but that is just a guesstimate.

* (2040)

Ms. Wasylycia-Leis: Did the minister ever suggest in—I was going to say consulting you on this matter, but you have indicated there was not much consultation—did he ever suggest that perhaps he would like to see another vote from the MMA before he moved on such a decision?

Mr. Ross: No.

Ms. Wasylycia-Leis: I would like to go back to 1985, when this agreement was reached in terms of the MMA and where it was part of an overall agreement between the MMA at that time and the then Minister of Health, the Honourable Larry Desjardin.

I have before me a copy of the Memorandum of Understanding between Larry Desjardins and Dr. Derek Fewer, President of the MMA at that time. I am quite amazed at the kind of overall co-operative, consultative approach that happened at the time. So many times people have suggested that we in the NDP have not been very good at co-operating with the doctors. I am quite amazed that there is a fairly solid history on this matter, in fact, I think probably a much better record than is presently the case with the present administration. That document refers to a number of agreements involving discussions about reduced health care costs, in terms of grappling with the remuneration system, in terms of the fee schedule, in terms of new technologies. The list goes on and on.

I am wondering first of all if that agreement back then did signify some new approaches and an indication that the MMA was prepared to sit down seriously with the government of the day, whatever government, and discuss health care reform. That is one part of the question. The other part is, what has the current decision on the part of this government to repeal this act done to overall discussions and the need to work collaboratively on some very serious health care issues?

Mr. Ross: We continue to work with the government on a number of issues. As part of our most recent contract, we are bound to study volume and we are bound to study the fee schedule reform. We still have not come up with a suitable consultant. Neither party has come up with that. We continue to work with government. There is no question about that, and we will continue to do so. I think that if one looks back historically, the MMA and the government have gotten along for brief periods of time. We are being very honest with you here. We are probably in a warlike stance more often than not. As I say, this is just one thing. As I said earlier on, when you take the major bone of contention out of the equation, why do we throw these little aggravating things in here right at this point in time?

Ms. Wasylycia-Leis: How were you consulted on this bill? Were you asked for your opinion? When was it revealed to you?

Mr. Ross: I think I have stated this a couple of times. We were told about this bill at the end of a meeting that Dr. Cleghorn and I had with Mr. Orchard, I am guessing, what, six to eight weeks ago, in that range. It was simply a statement of fact that the government was going to introduce legislation to repeal the MMA fees act. That was the end of the consultative process.

Ms. Wasylycia-Leis: Was it at that same meeting that the minister revealed his list of items he intended to deinsure?

Mr. Ross: Yes, we discussed that earlier in the meeting, had a very long discussion with respect to that, and then this came just as we were literally walking out the door.

Ms. Wasylycia-Leis: Just on the issue of deinsurance, because I think all of these issues are related, have you ever been asked for detailed medical scientific analyses of these decisions on the part of the government to deinsure a number of services?

Mr. Ross: I have spoken with Mr. Orchard with respect to that during that meeting but, in terms of our detailed response, we have responded to him with respect to that saying we are not in agreement with the deinsurance. As I said, there has never been a sit-down meeting to discuss the absolutes of everyone. We have discussed it in broad detail I think when we met with Mr. Orchard.

Ms. Wasylycia-Leis: I know you probably have to leave because you are out of town, and it is unfortunate, because we are going to go back to Bill 4, The Health Services Insurance Amendment Act. While that bill does not directly deal with deinsurance, it certainly begs the question, where is the sound medical evidence backing up the minister's and this government's decision to deinsure so many medical services? I am wondering, have you any strategy or will you be attempting in any way to convince this government to reconsider its decisions around deinsurance?

Mr. Ross: Yes, we will.

Ms. Wasylycia-Leis: I just wanted to thank Dr. Ross for his presentation and for making the position of the MMA so clear tonight.

Hon. Bonnie Mitchelson (Minister of Culture, Heritage and Citizenship): Thank you, Dr. Ross, for your brief and your presentation. I just have one question. I want to ask you if the repeal of this legislation in any way prevents any doctor who wants to belong to the MMA from joining and belonging? Any doctor who does want to pay association fees to the MMA will still be able to do that?

Mr. Ross: Absolutely. All this bill does, of course, is take the compulsory component out of it. As we have said, 88 percent of doctors now belong to the association anyway, so you are looking at 10 percent to 12 percent who potentially may not join.

Hon. Donald Orchard (Minister of Health): Mr. Chairman, I just want to thank Dr. Ross for coming in and indicate to him that I guess there has been substantial questioning about the consultation process. Would it be fair to assume, Dr. Ross, given the opening paragraph, closing paragraph of your brief that you would have changed your position on Bill 69 had we consulted?

Mr. Ross: No, our position is we like the legislation that is in place right now. We would not like it if it was taken out, no matter how much consultation was undertaken, provided you did not change your mind, Don.

Mr. Orchard: Mr. Chairman, I want to thank Dr. Ross for that. Although we are temporarily agreeing to disagree on this, I think Dr. Ross has made the point that 88 percent of physicians now belong to the MMA and, as Dr. Cleghorn has indicated, probably the financial impact in terms of paid dues will be minimal.

I simply want to indicate to Dr. Ross that I look forward to his term as president so that we can work on some of the larger agendas that I think are mutually beneficial.

Mr. Doer: Well, the government is making some points, or trying to make points about compulsory versus noncompulsory. I would ask the doctor, the 12 percent who do not pay their dues and are not required to be part of the MMA, will they get the same fee schedule increase that is—

Mr. Orchard: No, no, they pay their dues. Do not be silly, they pay their dues Doer. You made sure of that in the legislation.

Mr. Ross: As it stands right now, everyone pays dues to the MMA—

Mr. Doer: Under the Rand Formula.

Mr. Ross: If Bill 69 is repealed, those who choose not to pay to the MMA will not have to pay the MMA. In response to Mr. Doer's question, absolutely. We cannot negotiate for only members, and those,

whatever percentage of individuals they are, who do not pay dues benefit the same amount as members do.

Mr. Doer: So the 12 percent that do not pay their dues to the MMA but pay dues to some other body will, in fact, be receiving the benefits of the MMA and its executive and its volunteers and its staff obtained on behalf of physicians and patients in Manitoba?

Mr. Ross: Absolutely.

Mr. Doer: Thank you very much.

Mr. Chairman: Thank you very much, Dr. Ross.

Mr. Ross: Thank you. Can I just say one last statement? The amount of money that the MMA—

Mr. Chairman: Order, please. Dr. Ross may continue.

Mr. Ross: Thank you very much. Mr. Orchard made the inference that the amount of money would not be substantial. It is fairly substantial when you look at 10 percent of the physicians and we are paying $600 a year now in dues, so the amount of money is fairly significant.

Thank you very much for the opportunity to present to you. Thank you for hearing me early and I apologize to everyone else who has waited very long, thank you.

Mr. Chairman: Thank you, Dr. Ross.

Bill 4—The Health Services Insurance Amendment Act (Cont'd)

Mr. Chairman: We will now turn back to public presentations on Bill 4. Mr. Anthony Dalmyn. Your brief is being distributed.

Mr. Anthony Dalmyn (Advocates' Society of Manitoba): I left copies with the clerk, Mr. Chairman, and it is being circulated at the present time.

Mr. Chairman: You may begin, Mr. Dalmyn.

Mr. Dalmyn: I will express my thanks to the committee in advance and my admiration for the committee's work. I have great respect for anyone who can wear a suit or a tie in this weather. When mosquitoes come out, I suppose we will see the truism of Winston Churchill saying about blood, sweat, toil and tears.

* (2050)

At the beginning I will outline my presentation. The purpose of my presentation is to introduce the Advocates' Society of Manitoba. I have to immediately apologize and explain that I cannot officially represent the position of the Advocates' Society of Manitoba. The Advocates' Society of Manitoba is a new organization formed only last winter. We do not yet have a legislation committee that monitors new bills. We only recently appreciated the implications of Bill 4 and we found that half of our executive committee were tied up in the hearings of the Hughes Inquiry so we have not been able to formally authorize a presentation. Nevertheless, I have been requested, and I have the support of certain members of the society, to bring this brief before you.

I am going to be directing your attention to certain sections of Bill 4 which deal with the concept of subrogated recovery. It is technical so I will try to make a brief explanation of the practice of subrogated recovery and then examine how Bill 4 impacts on that. I do not have strong recommendations for the committee. I can only point out some of the actual and possible implications of these new practices that are emerging if Bill 4 passes unchanged.

(Mr. Ben Sveinson, Acting Chairman, in the Chair)

The Advocates' Society was formed over the past spring and winter. Its membership is limited to lawyers practising in the civil courts with over five years experience. It presently has over 90 members which represents a substantial portion of the senior and intermediate civil litigators in Manitoba. The purpose of the society is to advance the interests of the bar, or the part of the legal profession that practises before the courts, and to try as far as possible to advance the public interest in that fashion.

Part of the purpose of the society is collegiality of the bar. We do not represent plaintiffs or victims, we do not represent defendants or insurance companies. Specifically, we try to represent the bar and the public interest at large.

The subrogated recovery provisions of The Health Service Insurance Act are not new. Subrogated recovery is an old concept developed in the courts. It is an insurance law concept; it says that someone cannot recover twice. If you carry an insurance policy and you are paid by your insurance policy and then you go after the person who caused your harm and you recover from that person, you cannot recover twice. You hold in trust for the insurance company and have to pay back the excess.

When the Health Services legislation was first introduced, it adopted the concept of subrogation. If someone is injured in an accident where there is an identified wrongdoer, a legal claim or cause of action, the commission will incur medical and hospital expenses. The legislation, Section 97, says that the injured person has the right to claim the medical and hospital expenses in a law suit on behalf of the commission and then to account for those to the commission. It also says the individual has the right to decline to represent the commission's interest, in which case the commission represents its own interest.

As the legislation is presently drafted, an injured party or the commission can present a claim for past or already incurred hospital and medical expenses and also future medical expenses. In practice, however, the commission has not been pursuing the recovery of future medical expenses or only in isolated cases. In practice, someone is injured, someone retains a lawyer, the lawyer contacts the commission, and the person and their lawyer either agree to represent the commission's interest or they do not and the commission protects its own.

Where you agree to protect the commission's interest, the commission provides you with reporting letters outlining the past or already incurred medical and hospital expenses. These letters are pretty well accepted by the courts. It is rare or almost unheard of for members of the commission to have to come and testify or for any extensive court time or testimony or costs to be associated with the proof of the commission's claim.

We have a system that operates very well. It operates well not only from the viewpoint of the convenience of the courts or the money out of pocket for the people who are paying lawyers, it operates well in the public interest in that a lot of commission expenses are recovered routinely, and the losses that are incurred through accidents are put on the people who are responsible for accidents and on their insurance companies.

One thing that has emerged as a problem is what happens when a case is settled. In some instances, cases are settled on the basis of a percentage recovery. We have a contributory negligence law in Manitoba. If the injured party is partly at fault for his own injuries, his recovery is reduced. The act says the commission's recovery is going to be reduced. In some instances, we enter into a somewhat different situation. You can see an injured party saying, my injuries are worth every penny of $500,000. The medical bills and hospital expenses come to a further $100,000, so you have a total loss of $600,000. The defendant, the insurance company says, I will not pay a nickel more than $500,000.

The injured party is not prepared to take the case to court. The injured party has concerns about losing and would rather take a bird in the hand than worry about $600,000 in the bush. Who loses? Does the injured party reduce his recovery or does the commission reduce its recovery? I am assuming for the moment there are infinite funds available and we are not dealing with limited funds. The commission's current policy is to prorate. I understand they have prorated in some very serious and important cases.

The second scenario—and it is unfortunately a fairly common scenario—you take the same $500,000 of injury, a devastating injury to a victim, and $100,000 in medical expenses, but it happens to be the result of a car accident where the defendant carried the Autopac minimum of only $200,000. The current practice, and I think it is a good practice, is that the commission generally waives its accounts. The injured party among his $500,000 will have a number of hard-core expenses, future care expenses, future loss of income, renovations to a house or building, and the commission is inclined to waive its account. I have made inquiries among a number of lawyers and, in that scenario, serious losses with limited insurance and the defendant being insolvent, so there is no money beyond the insurance, the commission does at present waive its account.

I come now to the sections of Bill 4 that begin to change the law. We see in Bill 4 a change in Section 97 of the act. Section 97 is the section that defines what is to be recovered. Section 97 as presently worded already covers future medical costs. What we see in Section 97 is a beefing up, a redefinition of future costs, which I assume means the commission is now beginning to take a serious interest in the recovery of future medical costs. For the convenience of anyone trying to follow, you can look at the bottom of page 15 and the top of page 16 in Bill 4 and looking at the words of Section 19 in the bill which repeal and re-enact Section 97 of the act.

As a practising lawyer and as a citizen, I cannot quarrel with the commission going after future

medical costs. I can point out some problems for the practising bar in the recovery of future medical costs. Future medical costs can come up in a number of different scenarios. You can take someone who at age 25 suffers a broken leg. They are off work for six months to a year. They have been in hospital for perhaps one to two months and get some rehabilitation. There is a medical report that says that there is a distinct possibility or a future probability that this person is going to develop osteoarthritis of the joint at age 45 to 55 and may need future surgery.

At present, under the legal principles that the courts supply, the courts have to try to assess the value of that chance, to first of all determine whether there is a real probability of future deterioration and, secondly, how much extra compensation that individual deserves in terms of possible future loss of income starting 20 years later or extra pain and suffering and loss of the enjoyment of life.

* (2100)

When we begin to translate this to future medical costs, you run into some immediate and obvious difficulties. We know what the current cost of that type of surgery is. We do not know the exact probability that that surgery is going to be needed. We do not have a clear pattern on the escalation of medical costs, although we do know that medical costs have tended to escalate well over the cost of inflation.

(Mr. Chairman in the Chair)

The court is going to be left with the task of evaluating this. The courts may be demanding actuarial evidence. You come back to the question. You have the injured party. He is paying a lawyer. The commission wants to recover its future medical costs. In the ordinary course, the plaintiff and his lawyer would not hire an actuary. To hire an actuary may cost you $1,000 to $2,000 for a consultant's report. It depends on what is covered. Sorry, Mr. Chairman.

Mr. Chairman: Mr. Dalmyn, we have a little recording difficulty behind you. If you would give us about two minutes, we have to change a reel-to-reel operation. Just a recess for about two minutes.

Mr. Dalmyn: Certainly, Mr. Chairman. Thank you.

Mr. Chairman: Thank you very much.

* * *

The House took recess at 9:01 p.m.

After Recess

The House resumed at 9:05 p.m.

Mr. Chairman: You may continue now, Mr. Dalmyn.

Mr. Dalmyn: I was at the point of discussing the hiring of expert witnesses and the front money to pay expert witnesses to start proving future costs. Depending on how the commission handles this, and I say it depends on how the commission handles this and it depends on the commission's budget, if the commission is ready to front the expenses, I expect the practising bar will not have a lot of difficulty living with this. If the commission is not budgeting for this or starts arguments with the lawyers who are presenting the main part of the injured victim's claim, we can end up with the lawyers saying to the commission, you will have to protect your own interests and prove your own past and future expenses which could possibly put some strain on the Legal Services branch, particularly if Legal Services branch is going to have to supply counsel to sit in through a joint trial in order to present the commission's part of the account.

Overall, my expectation is that the private bar, the commission and the bench of this province will resolve this matter. There may be a period of time after this legislation comes in where people feel their way through. There may be some test cases to elaborate on the principles to evaluate a claim for future services. This is, I would expect, going to work out, but it may have some unexpected ripples.

As well, of course, once the commission gets seriously into the business of recovering future medical expenses, we are looking at a possible very large increase in court awards. In some instances, there are serious long-term care needs that have to be funded by the commission. This is going to lead to larger awards, larger awards against the insurance companies and rate hikes. I think that is the natural consequence of pursuing the recovery of future benefits. It is the natural consequence of protecting MHSC's interest in advancing that component of the public interest. It would be desirable if there were a clear target or trigger date to avoid any uncertainty about retroactivity and to avoid any insurance rate shocks.

The second point in Bill 4 that I wish to address relates to the calculation of hospital costs. At the present time the act states that the commission may recover actual hospital costs. The calculation of actual hospital costs is somewhat of a mystery. As I understand it, there is an effort made to calculate average per-patient-bed-day costs. Lawyers get accounts from different hospitals. The Health Sciences and the St. Boniface, which are large hospitals with multifarious facilities, you get pretty high figures. You get something from Selkirk or Brandon that is somewhat lower. The hospital at Morris is somewhere very low.

There have not been a lot of questions asked about it, perhaps because the out of province insurance companies are used to dealing with American health claims. There have been some problems. One lawyer related to me a situation where a patient with significant injuries and brain damage was, on medical advice, in a hospital at Selkirk and the insurance company is raising serious questions as to why this person cannot be in a nursing home, why they have to pay the per diem for Selkirk, where does that per diem come from.

* (2110)

The principle of actual cost is legally sound. What Bill 4 is going to give us is a deemed cost figure. If the deemed cost figure is fair and reasonable and is determined in a rational manner, I would expect that sophisticated litigators, insurance companies and the practising bar and bench would be prepared to live with it. If there is a sense that the figure is fictitious or that it fluctuates so that it is not truly related to the cost of care of patients in Manitoba in the facilities where they were treated, we are going to start running into some problems.

The concept of a figure established by regulations, which is what is going to be introduced in the new subsection 3 of Section 97, is not unreasonable if you can establish a proper mechanism for realistic costs. This is not something that is spelled out in the act. What 97(3), as proposed, refers to is regulations under Section 59. At present, Section 59—there are a lot of regulations under Section 59 and under the act at large, but you cannot really identify those hospital regulations readily.

Again, not a major problem, in view of the fact that the current practice seems to be working out. I think I can say fairly that the commission and the government might live without 97(3) for a few months until you think out the mechanism for establishing the regulations, unless those are already thought out very clearly.

The third area that I wish to address is the enactment of the new Section 99.2, particularly 99.2(1). At the beginning of my presentation I talked about the problem of inadequate recovery. At the present time, if you have a victim with a $500,000 claim and only $200,000 of available insurance, the commission has certain rights in principle under the act. However, the Supreme Court of Canada has held that under the principle of subrogation the commission's claim is postponed and the victim should be paid.

What 99.2(1) appears to do is to take away, at the expense of the victim, in order to allow the commission to make a partial recovery. I notice as a member of the legal profession that it protects the costs of recovery, which I assume means legal fees. I suppose the legal profession, in that sense, is protected. The fees of lawyers will be paid one way or the other, but that is really not the point of my presentation.

When you see someone with a $500,000 or $1 million claim who is limited to $200,000 of insurance, that person is coming out very short already. To potentially reduce their recovery is to inflict a greater injustice on that individual, and that should not be done. The current practice is for the commission to waive its account.

What is difficult about 99.2 as proposed is that it sends conflicting messages. It says at 99.2(1), the general rule will be prorated recovery. It does also say in 99.2(2) that the commission shall waive on terms and conditions as it considers just, but it is left to discretion. There is no clear guidance. In the future the commission may consider on some legal opinion that 99.2(1) is more important or that it lays down a general rule or presumption and that the commission should try to prorate unless the contrary is shown.

Life would probably be simpler, the law would be clearer if we had 99.2(2) and we really did not bother with sub 1. I am not sure where the need for sub 1 arises. Most of the legal principles surrounding subrogation are clear. The existing legislation is clear and works well. I have not, through searching my mind and consulting with other lawyers, established why there is a need for 99.2(1). I would suggest the law stands well without it, in view of the

established legal principles and the ruling of the Supreme Court of Canada.

I think that concludes my remarks. I want to limit myself to the part of Bill 4 that affects the day to day business of practising lawyers before the courts and the interests of the practising bar in the courts to try to explain some of the impacts.

What I said about rate shock perhaps has an important message and will be consistent with what you will be hearing from the Advocate Society in the future. When people talk about no fault or they talk about court awards getting out of hand, we must put the court awards in the context of who is getting paid and what interests are being served. Court awards are high because medical care is expensive and because injuries to people are devastated.

When people try to say, well, we have to save money, we have to cut back the insurance premiums—insurance premiums brought down a government in 1986—and we have to save money, you are saving money at the expense, first of all, of the Health Services Commission, which is the public of Manitoba that is funding it and, secondly, at the expense of injured parties. Thank you.

Mr. Chairman: Thank you very much, Mr. Dalmyn.

Ms. Judy Wasylycia-Leis (St. Johns): First, again let me thank Mr. Dalmyn for his presentation on some clearly important issues in terms of Bill 4, some issues I think that would have passed by in terms of our attention had it not been for this presentation. It certainly had not been foremost in our minds in terms of the New Democratic Party that there was a major fundamental shift in policy around the whole issue of subrogation. In fact, I just checked again the minister's second reading speech on Bill 4 and I fail to find any reference to this whole issue which is clearly a very significant one and a major change in direction.

Am I overreacting to what you are saying? I sense that what you are saying is that there is quite a shift in terms of how subrogation has been handled in terms of health insurance legislation, but maybe generally in terms of the province of Manitoba. Is that the case?

Mr. Dalmyn: I do not see a fundamental shift except perhaps on the question of Section 99.2 and even there I do not know whether the wording outstrips what the commission asked for and what the minister intended and what the minister's government intended to do. That certainly represents a departure from established legal principles. The other things that I have touched on in my presentation—the recovery of future costs, the effort to crystallize or calculate hospital costs—are not fundamental or new things, although the commission's approach to it appears to be shifting to take greater advantage of the legal rights of the commission under the existing laws.

Ms. Wasylycia-Leis: Let me try to get a sense from you of exactly what 99.2(1) actually means. What I hear you saying is that if an award is handed down and the defendant is not able to come up with that total award, it had been the case that the needs and the costs associated with the needs of the victim would be covered first. What you seem to be saying is that this bill has changed that and now if the amount available is not sufficient to cover all outstanding matters, then there will be a sharing of that award between the victim and Manitoba Health Services Commission on a prorated basis.

Mr. Dalmyn: Not so much a sharing of the award. The award could be $500,000, $600,000, $1 million, which is broken down into different parts, the component allowed by the court for pain and suffering and loss of the enjoyment of life, a component for the nonmedical costs of future care, a component for past loss of income, a component for future loss of income, components for past medical care and future medical care. Regardless of what that award is, if your defendant is insolvent and he is carrying your basic $200,000 Autopac coverage, $200,000 is all that anybody is going to see. That is the total obligation of Autopac, the insurance company, in that case, unless the person had the foresight to take out under-insured motorist coverage or has other insurance.

Under the existing law as established by the Supreme Court of Canada, the $200,000 goes first to the victim. The MHSC components, which are subrogated claims, comes second. So the 200 or whatever it is, goes first to the victim and only if there is anything left after the victim has been totally indemnified for his losses and the costs of recovery, is there any payment to the commission and 99.2 shifts that. Instead of the victim taking the available money first, it says costs of recovery come first and what is left is prorated. Now that is subject to a waiver. What is not clear is whether the commission is bound to waive, must waive, should waive, or whether it is really left completely open and the commission may shift its practices in

accordance with the priorities of the day and its perception of the financial pressures that it is under.

Ms. Wasylycia-Leis: Okay, let me try to understand that in a more specific way in terms of how it would impact on an individual using, say, the basic Autopac limit of $200,000, which presumably would fall far short of the needs of someone who ends up a paraplegic as a result of a horrible accident wrongdoing to that individual and has enormous costs in terms of, as you have listed, some of the issues you have listed, lost wages, pain, suffering and so on. Costs to meet those needs and deal with those issues are going to be probably far greater than $200,000. So already the victim is left without many of his or her needs being addressed.

* (2120)

So what you are saying is with this provision and this change in Bill 4, there will even be a harsher reality possibly facing this victim because it may be that the waiver will not come into effect and the individual must see some of that already shortfall in terms of amount going to MHSC, thereby ending up in a more precarious, vulnerable position. Is that the case?

Mr. Dalmyn: Yes, that is correct. I do not want to overdramatize it, because if the commission is prepared to waive its account and does so consistently, there will not be a big change. I am expressing concern over why we need 99.2(1), what that is intended to accomplish and if there is an intent to preserve to the commission the right to change existing practice and to change what happens under the law as established by the Supreme Court of Canada.

Ms. Wasylycia-Leis: In your view, is there a need to rethink policy and legislation in this area? Why is there a need for both these provisions, 92.2(1) and 92.2(2), or could we not have continued to operate on the basis of this legislation without those new provisions?

Mr. Dalmyn: If there is no intent to change existing practice, I would expect that we could live without 99.2(1). Section 99.2(2), if you tinker with the wording, is fine and it establishes what the commission already does. It clarifies what we can find implicit in other sections where the commission consents to settlements or is involved in court awards. I do not see what 99.2(1) is for, unless to give the commission some discretion to start effecting prorated recoveries. I may have missed something but I do not know.

Ms. Wasylycia-Leis: We will certainly be pursuing that in our clause-by-clause analysis of the bill. I am sure the minister will be able to give us some explanation. I hear you saying that you have some questions about why this is here and what the impact will be, and that it may be useful to pause and to hear from groups who are concerned about these kinds of issues, and from professionals who might have some expertise to offer: from the Bar Association, the Law Society, your own organization, et cetera.

I think that is a very useful proposal on your part. It allows us—certainly I do not want to be overdramatizing your presentation. I think that given that this minister, our Minister of Health (Mr. Orchard), has to reopen this act in very short order to give some legal authority to the restructuring of his department: the integration of MHSC with the Department of Health—the minister has to bring this act back in short order anyway—I think perhaps your suggestion in that context is a very useful one. We might perhaps have that dialogue later on this evening, about perhaps agreeing at least to seek some input on this change in policy and legislation, and see what the community has to say, and then proceed from there.

I take it, from your comments, that there would be considerable interest on the part of your organization, as well as the Bar Association and the Law Society, to look into this matter and give their comments to the government.

Mr. Dalmyn: I think that is correct, and you might add to that list various advocacy groups that speak to the interests of the handicapped community. I see, for example, that a representative of the Canadian Paraplegic Association is here this evening. I expect that there are constituencies who might wish to address this important question of policy.

Mr. Chairman: Thank you very much for your presentation, Mr. Dalmyn.

I will now call on Mr. Keith Dublck with the Manitoba Association for Rights and Liberties. We will just circulate your brief before you start if you would not mind. You may proceed.

Mr. Keith Dublck (The Manitoba Association for Rights and Liberties): I would like to start by reading over the brief presented by The Manitoba

Association for Rights and Liberties regarding Bill 4, The Health Services Insurance Amendment Act.

The Manitoba Association for Rights and Liberties, or MARL, is a provincial, nonprofit, nongovernment volunteer organization established in 1978 as a human rights and civil liberties advocacy group. MARL seeks to promote respect for and observance of fundamental human rights and civil liberties and to defend, extend and foster the recognition of these rights and liberties in Manitoba. MARL welcomes the opportunity to participate in the legislative review process of Bill 4.

Regarding the amendments before this committee, MARL generally agrees with the contents of the bill. There are, however, strong concerns regarding the confidentiality of clinical records of insured persons. Specifically, the amendments fail to provide adequate protection or safeguards of such rights of an insured person from investigations conducted on behalf of the commission by employees, consultants and members of the review committees. Protections to ensure that the confidentiality of records are maintained become all the more important when under Section 77.1, which I believe is actually 77(4) of the proposed amendments, insured persons are deemed to have waived their rights to keep the contents of the clinical record private between themselves and their practitioner.

Section 63 of the current act, "Power to inspect and audit" and Section 75.2 of the proposed amendments "Inspection of records" permit any appointed inspector access to and the right to make copies of clinical records which include names, addresses, diagnoses and therapy without stipulating that such information shall be held in confidence. These concerns also arise from those sections of the bill pertaining to the investigative powers of the Medical Review and Formal Inquiry Committees.

Under the recent amendments to The Mental Health Act, Bill 5, there are several clauses dealing with privacy and confidentiality of clinical records for a wide range of purposes. We urge this committee to incorporate similar provisions into this bill.

Although Section 81(5) states a hearing is to be held in private, we feel there is a need to incorporate a statement to ensure media is prevented from accessing confidential clinical information at any time.

Proposals for improvements to the bill: In light of these concerns, MARL urges this committee to amend the bill in the following areas:

One: regarding Section 63 of the current act "Power to inspect and audit" and Section 75.2 of the bill "Inspection of records," we recommend that the person conducting the inspection or audit of books and records be required not to disclose the name or other identifying information of the accessed clinical record and not to use any information gained from such an inspection for any unrelated purposes. A similar provision is contained in Section 26.9(3) of The Mental Health Act. Rationale: There must be safeguards relating to the disclosure of information contained in any clinical record of the insured person.

Two: regarding Section 77(1), Investigation, and 77.1 or sub 4 dealing with Confidential Information, we urge this committee to review Sections 26.9(3) and 26.9(3.1) of the amended Mental Health Act and to incorporate the rationale, purpose and intent of these sections of The Mental Health Act into the proposed bill.

These sections of The Mental Health Act provide necessary safeguards for the confidentiality of clinical records. Surely all clinical records covered by various acts should be afforded the same protections.

* (2130)

MARL recommends to the committee that this bill be passed incorporating these suggestions.

Although I do not feel that I have considerable or extensive background knowledge and experience in this area, I am prepared to attempt to answer any questions you might have at this time.

Mr. Chairman: Thank you very much for your presentation, Mr. Dubick.

Ms. Wasylycia-Leis: Thank you very much, Mr. Dubick, for your presentation on behalf of the Manitoba Association for Rights and Liberties.

You, as a previous presenter did this evening, have raised a very serious concern about whether or not this bill respects and protects confidentiality of patient information and clinical records. It is certainly an issue we want to pursue on a clause-by-clause basis and seek some information from the minister.

I would like to begin by asking if you feel Section 77.1 has to be changed entirely or if that is not possible, if amendments to that clause, such as I

suggested earlier, by including some reference to informing the patient, would be helpful in terms of giving some protection to patients in this area?

Mr. Dubick: Mr. Chairperson, our position is, if this section is to be retained, certainly additional sections should be brought in, particularly those dealing with The Mental Health Act amendments. If this section is to be changed so as to provide greater rights of confidentiality, then certainly that would be welcomed by MARL.

Ms. Wasylycia-Leis: Let me also ask—I have a feeling that the minister may argue that some of your concerns are already addressed in various parts of this bill. This is an issue I raised earlier. I think he may in fact refer to sections such as 85.1, which puts limits on information being disclosed.

I would like to know if you feel where the weaknesses in that section are and if we could perhaps find ways to ensure confidentiality is guaranteed with a different wording.

Mr. Dubick: Perhaps I can proceed by reading the relevant provisions of The Mental Health Act amendments.

Section 26.9(3) states: "The medical officer in charge of a psychiatric facility in which a clinical record is prepared and maintained may disclose or transmit the record to, or permit the examination thereof by (g) any person for the purpose of research, academic pursuit or the compilation of statistical data where the person agrees in writing not to disclose the name or other means of identification of the patient and not to use or communicate the information for any other purpose; or (j) the standards committee of the psychiatric facility appointed under subsection 3(1) or, if the psychiatric facility is located in a hospital, the standards committee of the hospital; or (k) any body with statutory responsibility for the discipline of members of a health profession or for the quality of standards of professional services provided by members of a health profession."

Section 26.9(3.1) further states: "Notwithstanding anything in this Act or any other law, (a) a clinical record . . . disclosed under clause (3)(j) or (k) shall be treated as private and confidential information by the committee or body who receives it and shall not be released or disclosed in any manner that would be detrimental to the personal interest, reputation or privacy of the patient; and (b) if a clinical record is used as evidence in an investigatory or disciplinary proceeding by a body referred to in clause (3)(k), (i) neither the clinical record nor information from the record shall, except by order of the court, be disclosed or made available to any person other than the parties to the proceeding, the members of the tribunal conducting the proceeding and their legal advisors and assistants, (ii) the proceeding or that part of the proceeding that concerns the clinical record shall be held in private, and (iii) on completion of the proceeding, the clinical record shall be sealed in a separate file and stored in a safe place."

Certainly if such safeguards could be provided under The Mental Health Act, we saw no reason why they cannot also be incorporated in this act that we are discussing now. Our position is that these certainly go a lot further than what is presently contained in Bill 4.

Ms. Wasylycia-Leis: You raise a very important issue. Again, one will have to pursue with the minister, why are such provisions provided for in a legislation that was very recently amended, and therefore indicating that this wording you have just read is very recent. Why are not some of those same protections offered in terms of Bill 4? I think that is something we will have to pursue and ask the minister whether or not it will be possible to incorporate some of those very progressive elements of Bill 5 into Bill 4.

That is all I have to say for now, unless you have any further comment on that issue.

Mr. Dubick: No, thank you.

Mr. Chairman: Thank you very much for your presentation, Mr. Dubick.

Mr. Dubick: Thank you.

Mr. Chairman: Oh, excuse me.

Hon. Donald Orchard (Minister of Health): Mr. Dubick, thank you very much for your presentation. I have a couple of points I would like to make regarding your concern around the confidentiality. I appreciate the concern. We have that every time we open any act where we have patient record involvement. It is always an extremely sensitive area.

In terms of 77.1 which you and another speaker have alluded to, that is there, as I understand it, in part to assist individual physicians, because they in fact run sort of double jeopardy, if you will, because on one hand they are mandated to protect confidentiality of records, but if there is deemed to

be inappropriate billings and their professional practice is investigated, those records may become part of the practice. On the one hand, the law that pays them, in other words this act, requires the production of those records, and on the other hand, the patient can say well, you have broken my confidentiality by using them. The issue is not to determine anything about the patient, because that confidentiality is maintained and has—like we have had these provisions probably for 20 years now, and there has been, to my knowledge, no incidents of breach of confidence where the individual's medical records have been in any way divulged to anyone or inappropriately accessed by the public.

But that 77.1 was in there so that in the case of a medical review, and that is a very narrowed circumstance—you probably were here when I explained to the first presenter on this bill that there is the prescreening process, if you will, where physicians are asked to explain their outlying practice pattern. If they have reasonable explanation, that ends the issue. It is only when no reasonable explanation is required that you move to the phase where there is any requirement of patient records to come before the Medical Review Committee. This protects the physician from being sued by the patient and sued by the commission, the payer, and was very much part of the wishes of the MMA and the College, and to deal in a larger term with the confidentiality issue.

Both the College of Physicians and the MMA representing medical practitioners, albeit in different roles, but nevertheless very concerned about doctors maintaining confidentiality of records, agreed to these amendments; and secondly, are not even here tonight to present to this bill indicating any concerns, because in their opinion—and they are the ones that have the most at risk because they can be court actioned, I would presume, for breach of confidentiality. They were partners in crafting this and have confidence that the processes in place will protect patient confidentiality, the concern you have raised, sir.

Mr. Dubick: I can only respond by saying that although MARL recognizes that there may be a legitimate interest in investigating clinical records when a person can be identified, or whether information is dealt with that identifies a person, or an insured person within the definition of the act.

Mr. Orchard: Our commission records are not identifiable, right?

Mr. Dubick: We see no reason why the provisions cannot be more specific and comprehensive when dealing with how to deal with the confidential material.

* (2140)

Mr. Orchard: I appreciate that concern, sir.

Mr. Chairman: Thank you very much for your presentation, Mr. Dubick. I now call on Mr. Randy Komishon. We will just hand out your brief before you begin. You may begin.

Mr. Randy Komishon (Canadian Paraplegic Association): I am here on behalf of the Canadian Paraplegic Association of Manitoba, Inc. I am a board member at the CPA, and we have some concerns about Bill 4. I think Mr. Dalmyn's presentation adequately framed the issues, but specifically I am here to try to strike home the type of effect that it would have on some of our membership.

Briefly, for those who are not familiar with the Canadian Paraplegic Association, we are a private association that is involved in looking after a number of concerns for the adult spinal cord injured. It would be in areas of educational training, vocational training, financial planning and assistance, equipment and supplies, counselling with the Rehab Hospital, family counselling and some advocacy work on their behalf.

Our concerns with the proposed amendments—we are specifically concerned with the amendment set out in Section 21, whereby 99.2(1) would be incorporated. As Mr. Dalmyn pointed out, it would allow, in situations where there was not a complete recovery by the insured, for the Health Services Commission to take a portion, on a prorated basis, of that recovery. Now it is a common occurrence among our membership, for unfortunately, due to the nature of the limits of insurance policies in this province, the $200,000 minimum limit is all too common on Manitoba Public Insurance claims, and up until recently homeowners' policies provided for basic limits of $50,000 in some cases; presently they are $300,000; some of them are $500,000, but in most cases these amounts are nowhere near adequate to meet the needs of people who suffer spinal cord injuries.

Spinal cord injury is something that is unfortunately a very catastrophic injury. In 1990, for example, there were 34 new spinal cord injury

patients in Manitoba and will be subsequently members of the Canadian Paraplegic Association, so our membership is growing, and it is with those interests in mind that we are here today.

I have not prepared a written submission, but what I have distributed is what limited information we have on immediate costs, initial outlays, to someone who suffers a spinal cord injury. These costs are all encompassing, as set out in the memo that I distributed, and they would have to be apportioned, based on the injury. If you start to look at the figures, you quickly realize that the figures can add up to a sizable sum quite quickly.

Our concern is that if there is a poor recovery, somewhat less than the injuries of the insured, and the Health Services Commission is going to take a portion of that recovery, our concern is that these costs that I have distributed to you cannot be prorated also. They are costs that are incurred by the insured whether he recovers fully or not. He cannot approach the person who is going to change some of the walls in his house, to make way for a wheelchair, and ask him, because of his recovery, to prorate his fee on that basis also. So there are some real and substantial costs just in the initial outlay portion which cannot be prorated. I think it works a disservice on the community, for people who have effected less than full recovery, to suffer at the hands of the commission while they attempt to recover their costs.

Mr. Dalmyn also referred to Section 97(2) and it seems to, in sub (b), set out the future costs of insured services more specifically. Again, if the Health Services Commission had the intention of effecting a policy whereby they intended to recover, even on a pro rata scale, the future care costs, that again would reduce the amount that the insured, the injured person, would have available to provide for his future care costs. In the end, it comes down, like most things, to a policy decision.

Health Services Commission certainly has a right, as an insurance company, to request that they receive any amount under common law if there is full indemnification. I think it is clear in the Supreme Court of Canada decision that Mr. Dalmyn referred to, of Ledingham. Then unless that is statutorily changed, the common law is very clear, that if there is somewhat less than full recovery, it is in the best interests of society to ensure that the injured party receives all the benefits before the insurance company is able to recover any.

Now, the Ledingham decision did acknowledge that it was within the jurisdiction of the Legislature to change the common law, but I question whether or not that is advisable, given the costs that are incurred by people with any injury, never mind the catastrophic injuries of the people the Canadian Paraplegic Association represent.

Just a few comments about the right of subrogation. It appears that the original legislation was drafted to ensure that the commission could bring a claim, even if there was not full indemnification. That is unclear. Mr. Dalmyn has indicated it, and I have to defer to his expertise in the legal community, that it is the Health Services Commission's practice to waive any entitlement they have to their fee if there is somewhat less than full recovery.

My understanding of the process is that if, for example, in a situation where there are policy limits and full recovery is not effected, then a letter is written by the attorney to the Health Services Commission requesting that they waive full recovery. In situations where there is not full indemnification to the injured party, it seems that the Health Services Commission, as a matter of policy, waives their entitlement to their costs as a matter of course. Now, this could be for a couple of reasons.

* (2150)

It could be because, as set out in 99.2(2)—"The commission may waive its right to recovery under subsection (1) on such terms and conditions as it considers appropriate." It could be that under present legislation they just deem it appropriate to do so in a case where there has been underindemnification. It could also be that the Health Services Commission is not willing to press the issue as it was pressed in Ontario and face an appellate decision that would require the Health Services Commission to forgo its fee.

So, in effect, there seems to be a quiet understanding where the Health Services Commission, if they are presented with adequate documentation which would reflect that the insured has been underindemnified, in that situation they are not pushing the issue of whether there is an entitlement. Now, if the situation and Bill 4 is to be changed, and it is to be made clear that the Health Services Commission is to have an entitlement regardless of the common law and the equities involved in that common law position, then I think it should be clear that that is what is being effected.

Certainly, I would not advocate for that change on behalf of our membership, but if that is to be the case, then I think it should be clear in the legislation that that is the case, because certainly our membership struggles under the difficulties it experiences in paying legal bills. They come right off the top of any settlement that would be prorated between the Health Services Commission and the insured, in this instance. So, certainly, we would not want to add to the litigation that our membership might be forced to incur as a result.

Just one other comment. In listening to Mr. Dalmyn's submission, while it is acknowledged that even in the amendment 99.2(1), that the legal fees would be subtracted initially, and he indicated that the legal community was looked after to that extent, it has been my experience that the legal community, faced with a situation where there is underindemnification, while it does not strictly prorate its fee based upon the recovery of the insured, certainly they are not billing out on the basis of full recovery. So subject to any questions that the committee or the chairman might have, that is my submission on behalf of the association.

Mr. Chairman: Thank you very much, Mr. Komishon.

Ms. Wasylycia-Leis: I would like to, on behalf of members of this committee, thank you, Mr. Komishon, for your presentation on behalf of the Canadian Paraplegic Association and for taking the time to give us your views on this bill. My first question is, were you at all consulted by the province in terms of this bill? Did you know it was coming? Were you forewarned? Was your input and advice sought in any way?

Mr. Komishon: No, the simple answer to that is we just recently became aware of the amendments and were not consulted at all.

Ms. Wasylycia-Leis: Have you had time to consult and bring this to the attention of all the members of the Canadian Paraplegic Association, Manitoba branch?

Mr. Komishon: We have not had a chance to have a board meeting to discuss the implications of this but a number of the members of the board had expressed their concerns about the implications of the changes to the act and had requested that I make a submission on their behalf today.

Ms. Wasylycia-Leis: I gather from your brief that you would be interested in having a longer dialogue and consultation around what appears to be a significant shift in direction. I am wondering how you would feel about us trying to encourage, perhaps, a pause on this whole issue and trying to convince the government to perhaps put it on hold for a period of time and bring it back after consulting with your organization and others concerned about this whole area of subrogation.

Mr. Komishon: I think this whole area of subrogation has not been addressed properly, and certainly we would welcome the opportunity to contribute in any discussion. I would note though, as Mr. Dalmyn noted, that he indicated that the present system appears to be operating quite well. I would put a rider on that based on my comments coming out of the Supreme Court of Canada and possibly the reluctance of the Manitoba Health Services Commission to press their position as the present legislation exists and try to enforce their right to a pro rata share in an underindemnified situation.

I am not comfortable with the legislation as it exists now. I would certainly like to see an amendment to the legislation that clears this issue up, and preferably I would like to see that there be no pro rata share to the Manitoba Health Services Commission where there is underindemnification, as has been the situation in common law. The Supreme Court of Canada was faced in the Ledingham decision with a regulation under the Ontario health insurance act which came very close to imposing—granting—a right to the Ontario health insurance plan association to effect a recovery where there was underindemnification.

If you read the decision closely, the Supreme Court of Canada, in what I would call a well-reasoned decision, made every attempt to read down the legislative attempt to provide for the insurer's recovery where there is underindemnification. I think if an attempt is going to made, I think it is going to have to be made clearly or it will lead to further litigation which our membership is not interested in because it reduces the amount that is ultimately recoverable. I think the Supreme Court of Canada has correctly addressed the issue and reminded the Legislature in Ontario that it is the insurance recovery of full damages which should prevail under public policy.

That is the public policy issue that needs to be addressed. I understand the needs of the Health Services Commission to effect recovery and to pay

for fees. I certainly can understand their attempt to obtain more money in that area, but it is coming on the backs of people who are underinsured. That being the case, I would suggest that the legislation be amended to ensure that people who are underindemnified are protected.

Ms. Wasylycia-Leis: This may be an unfair question, but I am wondering if you have any idea what would be the average award today in terms of a paraplegic?

Mr. Komishon: It is very difficult to answer that question because while we try to maintain some statistics on what awards are affected, often it is a requirement of any settlement, and 85 percent of cases are settled, that there be no disclosure as to the terms of the settlement. So it is often very difficult for us to maintain any statistics. I can tell you, just based on a rough figure after discussing with some members of the board, that perhaps 10 percent to 15 percent of our membership has received full compensation for their injuries. There is obviously the concern that possibly 85 percent of our membership is underindemnified and then with this legislation, if there was not the discretion which is not clearly set out in 99.2(2)—exercise to relieve in situations and waive their fee—then the amount of recovery would be even less.

I have some difficulty with 99.2(2), in any event. The language is very unclear as to what the considerations are. My comment would simply be that there should be no discretion in the commission to enforce a right to recover its Health Services Commission fee if there is underindemnification.

* (2200)

Ms. Wasylycia-Leis: That really relates to a question I was going to ask you and that is, if we are going to try to persuade the government to put on hold 92.2(1), why would we not also include 92.2(2) until this whole issue has been discussed and brought back?

Mr. Komishon: I think as the statute reads now, certainly it is within the commission's jurisdiction to waive its entitlement. Though it is not clear, it has certainly been their policy to do it. I am a little suspicious of that policy, given the Ledingham decision out of the Supreme Court of Canada. Certainly I would like a clarification of that. If the policy is to remain unchanged at the Health Services Commission, I have no difficulty with 99.2(2) even being admitted at this point. Preferably it should be amended to reflect exactly the intention of the Legislature.

Ms. Wasylycia-Leis: Any idea what this list you have presented us with on initial outlay adds up to?

Mr. Komishon: It has not been added up because it is just used as a reference and it has to be adjusted in accordance to the injuries sustained, but you can see by looking at a number of them, structural changes to a house, $4,000; additional house area, which is quite common, $12,000. There are a number of changes here and these changes—some of them may appear to be excessive and asking for something more than what has been had by the insured in the past but all this tries to do is place the insured in the position he was before the injury. It is not an enhancement of any sort, so while the figures are not added up, this is just one small component of what an insured, who is underindemnified, faces.

Given an insured who is underindemnified, for example, he can often rely on the pharmacare program to provide him with his medications, but there are a number of articles that are required by members of our association that are not covered by the pharmacare program. Some glaring examples are things like leg bags which a paraplegic who has incontinence or no bowel or bladder control requires, just cannot be without. That is not something that is covered by Pharmacare and unless he is able to receive some recovery through The Income Tax Act as his medical expenses exceed a certain percent of his income for the year, then he is without funds to provide those or he is giving up funds in other areas to obtain those resources. There are other things that are necessary to his daily survival which are not covered by other social networks that should be providing support for him.

Ms. Wasylycia-Leis: Just a final question, I think I hear you saying that 85 percent roughly of your members or of paraplegics in Manitoba or Canada do not recover full damages, that the costs to compensate for lost wages, for payment suffering, for the disability to fit a house, to get the necessary equipment are probably far greater than the less than full damages awarded, which I would think would impose considerable hardship on the victim. Now you are saying that hardship may even be greater as a result of 92.2(1) because it allows for part of the award to be allocated to the commission. I am just wondering if that is making an overall

correct assessment of what you are saying and not overstating the hardship that might be incurred in terms of, say, a paraplegic.

Mr. Komishon: I would just like to reiterate that my comments concerning 85 percent are merely speculative. That is based on our best-guess estimate on our collective experience. We have no hard statistics to back that up. I just want to make sure that the committee understands that.

I would also like to just reiterate the point that I made earlier about the hardship being in the collection of the fee that has beem disbursed by the Manitoba Health Services Commission, the actual account. We see that as a hardship, but we also see this amendment as possibly being or pointing to a policy whereby the Health Services Commission will now possibly aggressively look to obtaining even on a prorated scale the future care cost, which they have not been pursuing to date. The way it is delineated and the way it is set out, and you can see in the proposed amendment, 99.1, where a judge is to divide the award; it seems it is to be divided by the judge and it is not indicated for what purpose. it seems to me that would be providing the Health Services Commission with a figure of which they could again take money from a person who is underindemnified.

I also share Mr. Dalmyn's concern as to the costs of who is to bear the costs of proving the future care costs on behalf of the Health Services Commission.

Mr. Orchard: Mr. Komishon, thank you for your presentation. Let me attempt to give you some explanation. There was no consultation with your association because, sir, the past policy has been that, where in doubt, the commission has awarded in favour and absorbed our costs. As you have indicated and as previous presenters have indicated, that is still the intention of the commission. I do not presume that would change with a change in government because that has been past practice, although I cannot say that for sure because no one can predict the future.

Mr. Komishon, there are circumstances, and having the distinct disadvantage of not being a lawyer I am going to have explained to committee by legal counsel when we get to this section clause by clause where we have had—

Mr. Komishon: If the minister could speak up a bit, I am having difficulty hearing.

Mr. Orchard: There have been circumstances in past dealings with third party insurers where they have been—I am looking for the right kind of terminology—difficult to deal with on the issue of recovery of cost for the commission. It is to try and provide that provision as it applies to third party insurers that 99.2(1) is in there. Section 99.2(2) really formalizes what we have done, where the award has been insufficient, the commission on behalf of the taxpayers has backed away and allowed the full award to flow to the injured party. That will continue to be the policy.

Mr. Komishon: Am I to take the minister's comments to mean that 99.2(1) is to be read, that the commission, if there is not full indemnity, will not be seeking a pro rata share.

Mr. Orchard: Notto impact on 92.2(2) would be the clause we would invoke so that it did not impact on the injured party.

Mr. Komishon: If the intention of the Legislature is to ensure that there is no pro rata share given to the Manitoba Health Services Commission in the first place, why is 99.2(1) necessary at all?

Mr. Orchard: As I understand it from legal counsel, to deal with third party insurers who have not recognized that the commission would have costs of pursuing the action. They have not recognized any of our costs.

Mr. Komishon: Right, but whether or not there is a third party insurer involved, if the insured is underindemnified, then you still intend to take a pro rata share.

Mr. Orchard: No, that is what I have told you is the policy today of practice, not written anyplace, and will continue to be so. Without the provision—and you can be here when legal counsel has the opportunity to explain it. When the provision is before a third party insurer who says the commission does not have any costs, you are a public funded body, what are your costs?—they do not allow us to even move. This provision allows us to make the attempt to collect those kinds of additional awards from third-party insurers who, to date, have not recognized them in some narrowed instances.

This is not to take anything away from you in an underinsured award, this is to attempt to receive greater recovery on behalf of the taxpayers and injured parties.

Mr. Komishon: If that is the intention, then I think it should be made expressly that in that situation then, that is the intention of the Legislature. I can only see from my reading of 99.2(1) that it could have application to the situation that I have been discussing.

* (2210)

Mr. Orchard: I do not argue with you, except I am telling you, as Minister of Health (Mr. Orchard) in this current government—I cannot speak for a future government—but that is not the past policy, nor will it be the future policy, but in terms of dealing with third party insurers, i.e., not ones who are even resident in Manitoba in some cases, 99.2(1) is deemed necessary so we can make more complete recovery from that third party insurer.

Mr. Komishon: I take your point, but my reading in 99.2(1) still provides for it.

Mr. Orchard: Thank you.

Mr. Chairman: Any further questions? Thank you very much, Mr. Komishon.

Bill 50—The Liquor Control Amendment Act

Mr. Chairman: We will now proceed with the presentations on Bill 50, The Liquor Control Amendment Act. I will ask the minister responsible to come to the head table.

I will call on Mr. John Read, President of the Manitoba Hotel Association, please.

Mr. John Read (Manitoba Hotel Association): Thank you, Mr. Chairman. When the announcements to The Liquor Control Act were announced it was suggested that these amendments were designed to stimulate the hospitality and tourism industry. If the hotel industry can sum up these amendments in a word it would be "disappointment" as there is very little to stimulate the hotel industry and nothing at all to assist the smaller rural hotels which continue to operate in dire financial straits.

We would respectfully request that the amendment allowing cocktail lounges to operate on Sundays be expanded to include the beverage room licence, that one amendment be eliminated, that being the amendment allowing a cabaret licence to open prior to 5 p.m.

We would ask that the reference to Remembrance Day be removed from The Liquor Control Act, that an additional amendment be permitted for a family-use beverage room licence if applied for by an individual hotel and approved by the Liquor Control Commission.

To comment on each one of these items individually I would like to talk about the beverage room licence operating on a Sunday. It was suggested this significant change, that being allowing cocktail lounges to open on Sunday, would allow tourists and business people the opportunity to consume alcohol on a Sunday without having a meal in a cocktail lounge.

We applaud the government's initiative in this regard; however, it will only affect a small segment of the hotel industry that is equipped with cocktail lounges. If we are to stimulate the hospitality industry throughout Manitoba we should extend the privilege of operating on a Sunday to include all licences. This will provide consistency in service throughout Manitoba.

In addition, it will allow licensees to compete on an equitable basis which does not exist within the proposed amendments. It has become the practice of the public and the media to refer to cocktail lounges and beverage rooms as bars. Only the industry acknowledges the differences.

When the amendments were first announced and it appeared in the media, there was very little, or any, criticism regarding the amendment to allow bars to open on Sunday, and the distinction between cocktail lounges and beverage rooms were just that in the licences that were granted.

There are approximately 300 cocktail lounges in Manitoba, less than 25 percent of these are located in hotels, and more than half of that number are located in the city of Winnipeg hotels. The unfairness of the amendment is further emphasized using the following examples: During the Morris Stampede, for instance, one hotel with a cocktail lounge would be able to serve alcohol on Sunday without meals, the other hotel with a beverage room licence would not; during the St. Pierre Frog Follies a cocktail lounge, not associated with the hotel, would be serving liquor without meals, and the hotel in town with a beverage room would not; during the Swan River Rodeo one hotel with a cocktail lounge would be allowed to serve, the two other hotels in town would not, and that would not only exist at those periods of time when a function was happening in town, but that would go on the other 51 Sundays of the year.

Effective July 1, 1991, all licences in both Alberta and Saskatchewan were permitted to serve alcoholic beverages on Sundays without food. The minister responsible for the Saskatchewan Liquor Board in Saskatchewan stated in his news release, and I quote: The change will put licensees in all parts of the province on a level playing field and give Saskatchewan a competitive edge over our neighbouring provinces in attracting convention business and tourists. The provinces of Quebec, Ontario, Saskatchewan, Alberta, British Columbia, as well as the Yukon, all permit the service of alcoholic beverages in all of their licences on Sunday without the food requirement. In Manitoba, you can consume alcoholic beverage on Sunday at sporting events, golf courses, beer gardens associated with events, occasional permits and now cocktail lounges. Only those establishments holding a beverage room licence are prohibited from operating in a normal fashion.

We believe the privilege to consume alcoholic beverage on Sunday without the food requirement should be extended to all Manitobans not just those residing in centres with cocktail lounges. Most rural areas are serviced by hotels and not cocktail lounges. We must have a consistency in service throughout Manitoba. As I say, when these amendments were announced, very little public criticism. As we see tonight in the people making presentations, there is certainly not a ground swell of opposition to what was reported in the paper to be full Sunday opening of bars.

The next item is the elimination of the amendment which would allow cabarets to open between 11 a.m. and 3 p.m. For years, our association has been opposing the harmonizing of the cabaret licence with the beverage room licence. The proposed amendment allowing cabarets to open between 11 a.m. and 3 p.m. draws the two licences closer together than ever before. We do not object to the cabaret licence which is described in part by the Liquor Control Commission and I quote out of their regulations: an operation that will introduce a satisfactory high-level quality standard of environment, decor, entertainment, food and service, over and above that required for the issuance of dining room cocktail lounge licences.

Some examples of cabarets that the committee members may recall are the Stage Door, the Hollow Mug, the Town & Country and, of course, the old Club Morocco, all featuring a full menu and live quality entertainment. These establishments were unique and filled a void at that particular time. We vehemently object to cabarets which want to operate as if they hold a beverage room licence without any of the financial obligations such as guest rooms, dining rooms, parking and ownership. For the most part, they operate in rented store fronts or office buildings without any real parking obligation or ownership responsibility.

To obtain a 300-seat beverage room licence in the city of Winnipeg, a hotel must provide 40 fully modern guest rooms with a minimum of 200 square feet per room, separate dining facilities and on-site parking to accommodate all of the services including banquet rooms. To gain 300 seats, the cabaret operator has to provide some parking, but the parking does not have to be located on the same property or owned by the cabaret operator. Arrangements with an existing parking lot or shopping centre in the area will suffice.

* (2220)

It is our view that if someone wants to obtain a beverage room licence, they should be required to purchase a hotel and take on all of the other financial obligations that go along with it. If harmonizing of these two licences continues, it will spell the death knoll for many of the rural hotels. Hotels are an integrated business and require revenues from food, beverage rooms, banquets to survive. If one of these revenue centres is reduced or eliminated, the already precarious financial position would be further diminished. If these two licences become undistinguishable, we could see the U.S. corner bar scenario throughout Manitoba, resulting in further closing of hotels.

Please do not permit the cabaret licence to become anything other than what it was intended to be. The Manitoba Hotel Association views the obtaining of a liquor licence as a privilege, and we respect the distinct nature of each. Licences were applied for and issued with an understanding of their distinctions. While liberalizations of all licences will evolve, we do not believe it is fair to blend licences without imposing the same requirements.

I would like to read to this committee a letter addressed to me dated June 28, 1991, from the Manitoba and Northwestern Ontario Command of The Royal Canadian Legion. The last paragraph of their letter to me says: A resolution on the subject of Remembrance Day had been presented and approved at our recent provincial convention. A

copy of the resolution is attached, and you may use it in your presentation to the minister.

The resolution from the Manitoba and Northwestern Ontario Command states that:

WHEREAS recent changes in the Manitoba Liquor Control Act allows liquor to be sold in veterans' clubs between the hours of 12 noon and 2 a.m. on Remembrance Day, and

WHEREAS many Manitoba branches of The Royal Canadian Legion are now opening for normal business on Remembrance Day, and

WHEREAS changes could be made to The Manitoba Liquor Control Act to allow the sale of liquor by hotel cocktail lounges and beverage rooms without requiring an amendment of The Remembrance Day Act, and

WHEREAS the organized tributes to the memory of those who have died or suffered grievous injury in defence of their country are normally completed prior to 1 p.m. on Remembrance Day.

THEREFORE BE IT RESOLVED that the Manitoba and Northwestern Ontario Command of The Royal Canadian Legion would not oppose an amendment to The Liquor Control Act permitting the sale of alcoholic beverage in hotel cocktail lounges and beverage rooms after 1 p.m. on Remembrance Day.

This means now that all of the four veterans' groups in the province of Manitoba support the opening of beverage rooms on Remembrance Day, and we ask that you act on their request and remove the Remembrance Day from the definition of a holiday in Section 1 of The Liquor Control Act.

Finally, the family use of cocktail room licences. Perhaps the greatest disappointment was the failure to include an amendment to the act which would allow for a family-use beverage room if requested by the hotel and approved by the Liquor Control Commission. This amendment would permit a minor to enter premises with a parent, spouse, guardian for the purpose of consuming a meal. This has been permitted in cocktail lounges for some time with no difficulties experienced.

Because of the decline in liquor sales, hotels are placing more emphasis on food sales and family style operations. We felt the change to allow a family-use beverage room licence was a step to accomplish this and would enhance the hotel's operation. In all likelihood only a small number of rural hotels would make application for this type of licence. We thought we had received general agreement that this was a good idea.

As a matter of fact, the Liquor Control Commission had pledged their support in recommending this change to government. In fact, the association had admitted a draft amendment to the commission to accommodate that change and it would read as a subsection 72(6.2), that notwithstanding any other provisions of the act the commission may, in writing and subject to such terms and conditions as it may prescribe, authorize the licensee of a beverage room to admit a person under the age of 18 when accompanied by his/her parent, spouse or guardian who is at least 18 years of age. No such person shall consume liquor therein unless it is purchased or provided by his/her parent, spouse or guardian and it is consumed with a meal.

This is similar or almost exact to the wording that is contained in a cocktail lounge licence.

In conclusion, we would respectfully recommend that Bill 50 be amended to allow all licensees to operate on Sundays, that we remove the proposed amendment to allow cabarets to operate between 11 a.m. and 3 a.m., that we remove the reference to Remembrance Day in The Liquor Control Act and that we allow for the establishment of a family-use beverage room licence by admitting minors when accompanied by a parent, spouse or guardian.

That is my submission, Mr. Chairman.

Hon. Linda McIntosh (Minister charged with the administration of The Liquor Control Act): Mr. Chairman, I will reserve my comments for during the debate. I did want to thank you very much, Mr. Read, for making such a concise and clear presentation. Thank you very much.

Mr. Gary Doer (Leader of the Opposition): You mentioned in your brief you are disappointed—

Mr. Chairman: Mr. Doer, could you bring your mike a little closer, please.

Mr. Doer: That is one thing I have never been accused of.

First of all, I would like to thank you for your brief, Mr. Read, on behalf of the Hotel Association. You mentioned in your brief that the hotel industry is disappointed with the amendments. On balance though, if there were no changes as you suggested, would the Hotel Association prefer this bill to pass or fail?

Mr. Read: We would prefer the bill to pass with or without any further changes. We do not want to see the bill set aside.

Mr. Doer: The issue of cabarets, as you have outlined in the brief, you have pointed out the obligations of a hotel and therefore the responsibilities of a hotel for the right of a licence or privilege of a licence and you have pointed out the obligations of cabarets. There is quite a bit of difference between the two sets of licences.

Do you think this obviously gives cabarets an unfair advantage in dealing with your membership and your operators of hotels?

Mr. Read: Well, it certainly gives them an unfair advantage, and that is mostly in their style of operation and the costs of operation. To obtain the same number of seats for a hotel it would be some millions of dollars as opposed to perhaps renovations of $250,000 or $500,000 or less to operate the same kind of operation in a rented space.

Mr. Doer: In other words, Mr. Read, the capital costs of having to provide rooms pursuant to a licence for a hotel would make your overall costs higher. Therefore a cabaret would not have those same capital costs and therefore would not flow into their operating requirements in their operation, giving them an advantage, so to speak, if the hours were changed to harmonize the hours between the two sets of licences.

Mr. Read: Clearly that would be the case. It would really be in exact opposition to the reason the cabaret licence was designed and first introduced.

Mr. Doer: The cabaret provisions—you mentioned some of the cabarets, reminiscing about the Club Morocco and others I see in the presentation. There were people nodding their heads knowingly around the table, I might add—not me, of course, -(interjection)- No, I am not too young.

It seems to me there has been a change in policy in terms of cabaret in terms of entertainment. I recall the original cabarets were kind of "stage show" kinds of operations. I hear now they have that new type of music -(interjection)- I beg your pardon?

Mr. Read: Karaoke.

Mr. Doer: Yes, that is it. They have that in those cabarets as well, and sometimes other magazines—I mention magazines because I am getting harassed as usual from the member for Arthur-Virden (Mr. Downey).

The other forms of entertainment that are mechanical as opposed to live, would that be correct?

Mr. Read: Yes, a cabaret licence must provide a minimum of four hours of live professional entertainment an evening. The other times they can do what they want. Of course, the live professional entertainment is really loosely, I suppose, a requirement, since anybody who earns money entertaining can be a professional entertainer and therefore qualify.

Mr. Doer: Saskatchewan and Alberta have now permitted alcoholic beverages to be sold in beverage rooms on Sundays without food, effective July 1. Has there been any decline in business in a community like Flin Flon relative to Creighton since the provisions have been introduced in Saskatchewan?

Mr. Read: We are just a few weeks in since that time and change. Certainly there would be a decrease if the same number of dollars were being expended in a seven-day period as opposed to a six-day period. I would think Sunday would be a popular day in Creighton, Saskatchewan and not much in Flin Flon.

I guess we thought that this bill, frankly, would have very little chance of moving ahead with full operation of beverage rooms on Sunday, but we are surprised that it is not moving ahead now, since we are surrounded by every other province in Canada, with the exception of two, I believe, who do not permit that. I mean, it just does not seem to make any sense when the other two moved, it was something to be argued when our other prairie provinces had the same restrictions we did.

* (2230)

Mr. Doer: I was interested in the reference to the Legion. On Remembrance Day you mention in the brief all four Legion jurisdictions now in Manitoba and Northwestern Ontario are supporting now the opening of facilities on Remembrance Day. Can you outline to the committee what the response of the government has been to that suggestion?

Mr. Read: We brought the letter and the amendments to the government's attention. They advised that they would take the letter and our recommendations under consideration, and we

have not been informed if they are going to bring forth an amendment or not.

Mr. Doer: Dealing with the family-use beverage rooms, you mentioned earlier in the brief the government has set that item aside subject to the War on Drugs, is it?

Mr. Read: I think I may have the wrong name, maybe the right one, I do not know.

Mrs. McIntosh: Yes, it is the task force, it is called War on Drugs, and you have it correct.

Mr. Doer: Given that war is one of the drug-inducing reasons, I always find these terms contradictory, but that is just my own personal opinion.

So the government is setting that aside for the task force report. Have you been advised of what the task force report is saying on that issue? Have you presented briefs to the task force committee at those public presentations before that? That is two questions. I am sorry.

Mr. Read: No, we have not made a presentation to that committee, and I guess up until our recent meetings, as a result of this amendment, we are not aware of the task force that would be studying such things as family-use beverage rooms. So at this point in time we have not had an opportunity, and I presume the committee is still in operation.

Mr. Doer: Just a general question, we are noticing, of course, that total revenues of the Liquor Commission are down. Obviously that means that with prices going up that consumption is going down in the Province of Manitoba. I think you can fairly well deduce those two trends. Would that also be consistent with your experience in your hotels, that consumption overall is down in all the hotels in Manitoba at this point?

Mr. Read: There is no question that the on-premise consumption of alcoholic beverages in this province and I guess in most provinces has declined substantially, and certainly that is one of the reasons we have seen so many closures of rural hotels, who in 1984 and '85 focused nearly 100 percent of their attention to the sale of alcoholic beverages, ignoring the other facets of the hotel industry, and now in the late '80s they realize that was a mistake and they have to refocus on the food and the family use and those kinds of things rather than what we perceive to be the old beer parlour type of operation.

Mr. Doer: Since 1984-85, you mentioned that date, can you tell us how many hotels have closed that had been part of your association? The population has gone up in Manitoba. How many hotels have we lost in the industry over the last number of years? Have they been replaced just by urban hotels, or are we getting a net decline in hotels, period, in the province?

Mr. Read: First of all, the reason I use the '84-85 dates, we recently, as you know, completed a viability study of the Manitoba hotel industry and it was clearly demonstrated in that report that those were the peak years of the industry. The numbers of hotels that have closed, I would say, '88, '89, '90, '91, would probably number 50 in total, but that is not hotels that would be lost to the industry. That would be hotels that would go into receivership or people walking away from it and the mortgagees then either closing it up for some period of time or the mortgagee taking the property back over.

So at all times we would probably have a half a dozen to a dozen hotels close, half of those being permanently. So maybe eight or nine permanent closures of hotels, and I do not know that figure exactly.

Mr. Doer: Just one last question, has the GST had any dramatic effect on the hospitality industry, the hotel industry of this province, in your opinion.

Mr. Read: I guess I am like everybody else. I really do not know because the introduction of the GST seemed to coincide with the downturn in the economy, so how much the GST has contributed to the lack of business, both retail and in the hospitality industry, it would be hard to determine. If everything had stayed normal, it would be easy to pinpoint.

Mr. Neil Gaudry (St. Boniface): Firstly, I would say thank you for the presentation—well presented. I think you have expressed a lot of concerns with the bill. My first question: Were you consulted by the government when this bill was being prepared to be presented in the Legislature?

Mr. Read: I guess we are a little different than the other presenters that I heard here this evening. We meet on a fairly frequent basis with the Liquor Control Commission and the officers of that body and discuss changes that we would like to see happen and at the same time we have always met with the minister responsible for The Liquor Control Act on a couple of occasions during the year to express the various items that we want to see

changes, and the minister responsible for the Liquor Control Commission for the last number of years has appeared at our annual convention and heard those directly from our members. We did not see the bill, of course, before it was submitted to the Legislature, but we did certainly have our kick at the cat as we always have with whatever government that has been power.

Mr. Gaudry: In regard to your membership for the hotel association, what percentage support the opening on Sundays?

Mr. Read: We passed a resolution some four or five years ago on the Sunday opening of beverage rooms. We then took that resolution and asked the question verbally from the floor at every one of our eight zone meetings in 1989. Without exception, it was unanimously supported at every one of those zone meetings, and we wanted to reaffirm that position. I am sure there are hoteliers who would prefer they do not open on Sunday and they would have that option of not opening but, as an industry, it would be overwhelming support for the right to open on Sunday.

Mr. Gaudry: Thank you very much, Mr. Read, and we look forward to supporting this bill.

Mr. Doug Martindale (Burrows): Mr. Chairperson, I can verify what the presenter has said about hotels closing. I happen to have two sisters-in-law who are both bartenders. One of them recently lost her job because a hotel closed that she was employed by, basically went bankrupt. You said that sales were down. I assume then that is because consumption is going down. Is that correct?

Mr. Read: I think, statistically—and certainly those figures are available through the Manitoba Liquor Commission, both retail and on-premise sales—I would believe there is a decline in all beverage with perhaps the exception of wine.

Mr. Martindale: Why do you think consumption is going down?

Mr. Read: I think there are a number of reasons. Certainly the health styles, aging population, the cost of beverage—the drinking and driving initiatives have certainly played a very real part in on-premise consumption. There is no question now. I think most people, young people particularly, are going out for the evening, there is always someone who is a designated driver for that particular group and I think probably in your own families if you have teenagers or people in their early '20s, you are seeing that in the responsible kind of drinking. It is not very popular to get sloshed anymore and fall over like it used to be and put a lamp shade on your head.

* (2240)

Mr. Martindale: Do you think the per capita consumption is going down or are fewer people going to hotels?

Mr. Read: I think the per capita consumption is certainly going down. I think people are having fewer drinks and I think fewer people clearly are going out to any kind of beverage rooms, cabarets. On-premise consumption has been tremendously decreased.

Mr. Martindale: My final question is, are you aware of any studies which show a correlation between increased hours of sale of alcoholic beverages and an increase in fatal traffic accidents?

Mr. Read: I am trying to think because I do know of one and I am trying to remember the statistics that came out of that, and actually has supported an extension in the lateness of drinking hours. It was done in Ontario and there was some reason for that but I think what has basically happened, if you talk to the people who were in the hotel industry for some period of time, when the hours were extended to 2 a.m., people who would normally arrive at the hotel at 10 or 11, would now arrive at 11 or 12, so it really just brought them to the place later, rather than extended the period or the time that they were consuming.

Mr. Chairman: Thank you very much, Mr. Read. I will call upon Mr. Dennis Smith for the Manitoba Restaurant and Foodservices Association. Would you just distribute your brief before you start, if you would not mind? You may proceed.

Mr. Dennis Smith (Manitoba Restaurant and Foodservices Association): Thank you very much, Mr. Chairman. Good evening to yourself and members of the committee. I would like to address

Bill 50 and I will keep my comments very brief as we are generally supportive of the intent of this bill, with the exception of one item which I will comment on.

There are three areas that I would like to comment on, the amendments for Thanksgiving Day, the cabaret lunch hours and the lounges open on Sunday.

First of all, we do fully support the amendment to permit all classes of licences to operate on Thanksgiving Day. We believe that this restriction is an anomaly that was based more on the fact that it was a status of its being a general holiday, than a religious holiday, and we do support that amendment.

With respect to the cabaret lunch hours, our association is opposed to that proposed recommendation for several reasons. Each type of liquor licence has evolved into having the perception of distinct advantages and limitations. For instance, cabarets do not have to provide significant food service, as restaurants do, nor are they linked specifically to a dining facility as a lounge is, nor do they have to provide accommodations as a beverage room does. In fact, a cabaret only has one key requirement and that is to provide live entertainment and even that requirement is fairly loosely interpreted.

The public's expectations of a facility also has a direct bearing on its ability to meet certain requirements. It is difficult to rationalize dining patrons going to a cabaret for lunch unless the establishment was simply offering lunch as a loss leader for the purpose of simply attracting patrons to consume liquor.

We understand that there are only a few cabaret operations actually, in fact, interested in this amendment, and we believe that this amendment is too significant a change in the perceived balance between types of licences to simply accommodate a few operations today. Further, if this amendment is implemented, we would anticipate a likely re-evaluation by existing licencees of the current licences and a possible shift in the types of licences being issued or renewed.

With respect to lounges open on Sunday, our association has sought this amendment for the past four years and we are fully supportive of this significant step. The role of our industry today and over the last few decades has grown dramatically and more people are using our industry as a lifestyle choice and are utilizing our facilities seven days a week. In addition, the availability of liquor service on Sunday already exists in a very wide range of areas, such as socials and festivals, beer gardens, and a number of others that we have identified in our brief.

The economic benefit of this expansion can be realized throughout the entire province and would provide a stimulus for an industry experiencing financial difficulties because the restaurant industry is experiencing the same difficulties. It would create the ability to expand employment or, at a minimum, provide additional hours for those areas of staff that have been cut back. By our nature, our industry is not a Monday to Friday, 9 to 5 industry. We are there to serve the public in a fashion that they expect to be served.

Equally important, this expansion provides the opportunity to offer visitors an international standard of service. Travellers and convention delegates will receive services that they are accustomed to in competing jurisdictions. Tourism is a $1 billion industry today in Manitoba. It will become the No. 1 industry here, and internationally, and it is imperative that we do provide an international standard of service.

In conclusion, our association respectfully requests your consideration of our recommendation and asks that the bill be moved to final reading and Royal Assent at the earliest possible implementation as we are in the peak tourism season now. Thank you.

Mrs. McIntosh: Once again, Mr. Smith, I would like to thank you for a very clear and concise brief, and I will reserve my comments for during the debate but I thank you very much for the points that you have brought to our attention.

Mr. Doer: Yes, thank you very much, Mr. Smith, for the brief. You mentioned, again, cabarets. Do you think this would hurt some of your members in terms of restaurant operations and potentially put some of them in greater financial difficulty with the change in licences?

Mr. Smith: At this time there are a number of cabarets, obviously those that are in the immediate proximity of dining facilities, be it a freestanding restaurant or in accommodations, would likely be impacted on a direct basis. I think the greater concern is what will this evolve to. As I indicated, it really comes down to a balance between what the licences are for and what their prime objectives are. We feel the cabaret is an evening entertainment facility and should remain in that realm.

Mr. Doer: The hotel association mentioned this could be a greater problem in rural Manitoba, as well as this thing, if the thing was opened up, the cabaret licence was opened up. What would be your feeling

on that point raised in their brief that was just presented previously on this?

Mr. Smith: I do not know the ratio, the number of cabarets currently in Winnipeg or Brandon or outside those areas, but I think that if there was a significant change like this, it would present a particular licence that would have significant advantages over other licences, and I think you would see a number of operations moving toward it simply because it provided the maximum flexibility for liquor service without any of the other limitations or restrictions or requirements that other licences carry.

Mr. Doer: The opening of lounges on Sundays, right now you can, of course, drink in restaurants with a meal, as I understand it. Do you think this would make it a more honest set of serving? I think there are occasions where people order a minor amount of food and just order a minimal amount of food to order a beer. I am not sure whether that—I know that happened a number of years ago. I do not know whether it is still continuing, but do you think it would just be a much more honest way of providing those beverages in the hospitality industry?

Mr. Smith: I think it is a more realistic approach to service of alcoholic beverages in the '90s, yes.

Mr. Doer: Okay, thank you very much.

Mr. Gaudry: I would just like to say thank you to Mr. Smith for a well-presented brief and we look forward to supporting the bill.

Mr. Smith: Thank you very much.

Mr. Chairman: Thank you very much, Mr. Smith. I would like to call on Mr. Leo Ledohowski with the Hospitality Corporation of Manitoba. Will you just circulate your brief before you start, if you would not mind? You may begin.

Mr. Leo Ledohowski (Hospitality Corporation of Manitoba): As you can see, my brief and my comments—I will try to keep them to a minimum. My name is Leo Ledohowski. I am present chief executive officer of the Hospitality Corporation of Manitoba. I am also a member of both the Manitoba Hotel Association and the Manitoba Restaurant and Food Service Association.

I appreciate the opportunity to be able to appear before the committee to voice my opposition to any fundamental change to The Liquor Control Act which would alter the current terms and conditions of cabaret licences for premises commonly known as night clubs. I am specifically referring to the proposed opening of cabarets between 11 a.m. and 3 p.m.

Hospitality Corporation is the largest cabaret operator in the province, by far. In addition, our other licences include four beverage rooms, four cocktail lounges, four licensed dining rooms. You can therefore see that Hospitality Corporation has made very large investments in the four primary commercial categories of licences that dispense food and beverages to the public.

* (2250)

When Hospitality applied for and received the licences, we did so with full knowledge and understanding of the terms and the conditions that were to be fulfilled and maintained in order to operate within the parameters of The Liquor Control Act and still make a reasonable return on our investment. These conditions and our understanding of the same led us to recently build the Garden City Inn on McPhillips Street, for example, at a cost well in excess of $10 million. This is but one of many, many investments we have made in the hospitality industry based upon the regulatory environment as the licensing is now representing.

Whether by design or by accident or both, the evolution over the years of these four categories of licences along with the rights, privileges and responsibilities therein have created in Manitoba a unique and effective licensing system that I believe is second to none in the country. This provides guidance for investment but, more importantly, results in the public being well served, with the possible exception of Sundays. There are no gaps in the system which would cry out for changes so as to better serve the public. There is no cry or demand for cabarets to be open between 11 a.m. and 3 p.m.

The proposal to open cabarets from 11 a.m. to 3 p.m. is an attempt to create a transference from the other three categories of the four categories of licences. In other words, the market is tough, so if we can get the legislation, or the cabarets can get the legislation changed or amended, then we will have a transference of business by changing the rules of the game and having it transferred from lounges, dining rooms and beverage rooms to cabarets. This concept, I believe, has been put forth by marginal operators who, instead of living up

the spirit and requirements of the liquor act, would rather that the act were changed to make up for the investment, design and/or managerial shortfalls, or even market changes.

As stated previously, Hospitality is the largest cabaret operator in the province. We have lived up to the spirit and the letter of the act at great expense and effort. The cabaret licence has many requirements. It costs a lot of money and a lot of effort to meet the requirements, and we have spent great expense and effort in providing superior facilities and entertainment that exceeds that of dining rooms, cocktail lounges and beverage rooms. As a result, our cabarets are profitable and serve the public as intended. No changes are required.

There are approximately 18 cabarets in Manitoba—and this changes, so if I am out by one or two, I do not think so—and I have never been approached by any individual cabaret operator or by any association of cabarets, if in fact such an association exists. I checked through the provincial registries, and I can find no registrations for independent cabaret associations. I have never seen any charter. I have never seen any membership lists, and it would seem that being the largest cabaret operator in province, I should be aware of it. So I have never been approached to lobby for amendments to allow cabarets to open at 11 a.m.

I can understand why possibly a few marginal operators may want to operate outside of the scope of what the licence is intended, but this would not be a just reason to bring an amendment to the act when it is not really required.

Again, I thank you very much for listening to me, and I would hope and respectfully recommend that the committee remove the proposed amendment from Bill 50, allowing cabarets to open between 11 a.m. and 3 p.m.

Mrs. McIntosh: Thank you, Mr. Ledohowski, and for the third time tonight, I compliment the presenter on the conciseness of the brief and brevity of the brief. I appreciate the points you have made and will be addressing them later in the evening. I thank you very much for having taken the time to come out and present your views to the committee tonight.

Mr. Ledohowski: Thank you.

Mr. Doer: Thank you very much again for the brief. It is very interesting to see and hear from someone who operates so many variances of the licences that are available in the province. I noted that you mention on page 2, whether design or by accident, and probably with the way liquor control bills are changed, we should all admit it is probably by accident and design as we move through these various stages. I include all government in that, of course.

I noted your comment—it is almost a suspicious one—about where did this amendment come from, and I cannot figure out where it came from. Would you like to hazard a guess, or as a vital member of the industry with capital investments in all types of licences, where do you think this amendment or the push for this amendment came from? As you say, there is no cabaret association, and I do not see any public cry for it as well.

Mr. Ledohowski: I would be guessing, and I would imagine that either one or two operators that maybe have seen a drop in their business or are having problems I think represented themselves to the powers to be, whether it is the commission or whatever, and suggested that this should be a change, that they represent an association and this would be a change that would be beneficial to their members. I think it is something like that, and I think it is a bit of sell job. I think—and I am guessing, and I have to qualify that.

Mr. Doer: I thank you for the answer. I asked you to guess, so in all fairness—and it is again your opinion as a person operating a number of licences in the system. You make the statement that you feel the changes in the act make up for investment, design and managerial shortfalls. In other words, good management, sound investment, sound design, if I take the alternate of that statement, in your opinion would mean successful operations in cabarets under the existing licensing provisions under The Liquor Control Act of the province of Manitoba.

Mr. Ledohowski: Yes. There is a market for properly designed and operated cabarets, but they have to be in accordance to what the act says, and they have to be a superior facility with superior entertainment. The cabarets I operate, I do not like them. I mean they do not suit me because maybe I am a little too old for them, but we do have vastly superior facilities, major capital investment. I mean there is a million dollars in light and sound invested in the cabarets, a lot of money in entertainment, and it works.

My feeling is that the cabarets—you know there are other cabarets in town that are successful, and I think they are the ones that are designed well and run well. The ones that are in trouble possibly did not have the capital to go into it, and now they are really trying to run sort of a beverage room with cabaret rules, and it does not quite fit. There is a market, not a vast market, but there is market for a superior facility.

Mr. Gaudry: Thank you very much, Mr. Ledohowski, for your presentation. Just one quick question. You mention that you are a member of both the hotel association and the restaurant association. Do you get their support in regards to leaving the cabaret as is as far as the regulation is right now?

Mr. Ledohowski: Yes, my understanding is both the associations would rather leave cabarets as they are.

Mr. Gaudry: Okay, thank you very much.

Mr. Chairman: Thank you very much for your presentation, Mr. Ledohowski.

Mr. Ledohowski: Thank you for hearing me.

Mr. Chairman: I would like to call on Mr. Art Roy. Are there any other presenters on Bill 50?

Mr. Doer: I would just ask the Chair whether Mr. Roy was contacted. I knew that the other organizations would be able to present because they are fairly much on top of the bills, but I am just wondering whether there was an attempt to contact this citizen, given that the legislation was passed only yesterday.

Mr. Chairman: The Clerk has indicated there was a contact made with Mr. Roy.

Mr. Doer: Okay, thank you. I just wanted to make sure that we had made the effort. Again, just another question. The citizen who wanted to appear is not out of the city? Would he be unable to attend for geographic reasons on short notice?

Mr. Chairman: I really do not know whether he resided in the city or out of the city.

Mrs. McIntosh: Mr. Chairman, if I can confirm from my assistant, I believe he is a Winnipeg resident who was really calling to seek some information which he then received. Am I correct? Looking at my assistant for a nod—thank you—if that helps for clarification.

Mr. Doer: Well, that does help. I just want to make sure that because of the—just like the liquor laws, the way this Leg. works I just wanted to make sure that this individual was not disenfranchised from his from his opportunity to speak.

* (2300)

Mr. Chairman: No, he had been contacted. The Clerk has assured us that he has been contacted.

* * *

Mr. Chairman: We will now start public hearings on Bill 51, The Pharmaceutical -(interjection)- Oh, we have heard that. Pardon me.

Is there anybody wanting to make presentation on any of the bills that we have before us tonight who has not been called? There is nobody in the audience who has not been called who was wanting to speak on any of the bills that are being put forth tonight? Thank you very much.

Since all presenters have been heard now, did the committee wish to proceed with clause-by-clause consideration of the bills? In what order did the committee wish to deal with the bills?

Hon. Donald Orchard (Minister of Health): We could deal with them in order, Mr. Chairman. I have several amendments for Bill 4, no amendments for Bill 51 and no amendments for Bill 69.

Mr. Chairman: Is it the will to proceed with Bill 4, Bill 51, Bill 50, Bill 69, Bill 75? Agreed. Then proceed with Bill 4, The Health Service Insurance Amendment Act.

Did the minister responsible for Bill 4 have any opening statements?

Just before we start, we have to do some technical rearranging in the back. Maybe this is a good time to do it, if we can just have a two minute recess.

* * *

The committee took recess at 11:02 p.m.

After Recess

The committee resumed at 11:04 p.m.

Mr. Chairman: Call the meeting to order.

Bill 50—The Liquor Control Amendment Act (Cont'd)

Mr. Chairman: Instead of Bill 4, we are now going to consider Bill 50. Did the minister responsible for Bill 50 have an opening statement?

Hon. Linda McIntosh (Minister charged with the administration of The Liquor Control Act): Mr. Chairman, I will try not to take too long in my opening remarks. I really would just like to emphasize that this bill has two components. One of the components is to clarify and update the language. Another component is to make changes that will affect the hospitality industry.

We have amendments that are technical in nature, including things like removal of the references in the act to the position of chief inspector as this position has been incorporated with an existing position at the Liquor Control Commission. We have a series of numbers like that. We will go through them when we do the clause-by-clause, so I will not go through them now.

The amendments that have been mentioned tonight, I think the committee is prepared to deal with the suggestions for changes that have been made by the presenters. The indication that I had made in the initial proposal and in first and second reading to have the opening of cocktail lounges on Sundays was intended as a progressive measure to expand options for consumers, to appeal to those who come to Manitoba as tourists and business people, and we hear now tonight suggestions arising as a result of changes in other jurisdictions, concerns that in at least one area of the bill we may have gone further perhaps than the hospitality industry would like, not far enough in others. I think the committee members are prepared to listen and to discuss those suggestions that have the potential to enhance what I believe is a good piece of legislation.

Mr. Chairman: Did the NDP critic for Bill 50 have an opening statement?

Mr. Gary Doer (Leader of the Opposition): Yes, just briefly. We will be moving an amendment on the cabaret situation, and we think the existing provisions of The Liquor Control Act are sufficient. We agree with the presentations made here tonight on that. We support the initiatives in the bill. I recognize that July 1 there were other changes in other provinces and that there are other issues we have to deal with, and certainly we will maintain an open mind when the government deals with the recommendations from other provinces. We do not want to see Manitoba operators in a one-down position relative to other provinces and I want to say that very clearly tonight. We can certainly deal with the bill and any recommendations the government is going to make.

Mr. Chairman: Did the Liberal critic for Bill 50 have an opening statement?

Mr. Neil Gaudry (St. Boniface): Yes, Mr. Chairperson, we will also have an amendment to the bill, and I would like to say that we are pleased to see this piece of legislation. We will certainly support it. I think the facts were well detailed tonight by the presentations and the briefs that were made here by the association and hotel owners, and the fact that rural Manitoba, I think, is one that is mostly affected. When we see that Saskatchewan and Alberta, just as of July 1, have established Sunday opening, and like the member for Concordia (Mr. Doer) mentioned before, Flin Flon, for example—there is a good example. There are other towns across Manitoba, and being the centre of the provinces—north, south, east, west—we are the only one here that has not a Sunday opening. Therefore, I will not delay and we will be supporting the bill with an amendment.

Mrs. McIntosh: Mr. Chairman, thank you for coming back to me. I did wish to make a brief response to a couple of things that were said in the presentations that are not being addressed in the bill, and I wanted to just do some clarifying if I could.

We very much appreciated having received the letters recently from the Armed Forces veterans and the Legions. We do feel that we are not averse at all to the suggestions proposed by those groups, but feel that The Remembrance Day Act should be—those letters should be referred and in fact have been referred to the Minister responsible for The Remembrance Day Act (Mr. Praznik) who wishes to see anything affecting Remembrance Day treated in totality and in context rather than in isolation. It is not a negative response, by any means. It is just a desire to make sure that anything surrounding Remembrance Day is all dealt with in totality and not here and there in bits and pieces. So that will be looked after by them.

I did also make reference to the task force War on Drugs and that task force had a very strong sensitivity about age in their presentations and hearings around the province. We did receive many suggestions concerning age. The family-use beverage room was one, and again it is not necessarily a negative response. It is simply that since that task force is dealing with juveniles and so on, it was felt it was appropriate for them as well to see those in context of what they have been hearing

rather than dealt with outside of the work that they were doing. So that, again, will be looked at.

I very much appreciate, as well, the fact that other jurisdictions have now opened wide, and, you know, whether or not at the end of this evening that concern will be dealt with in totality is a question yet unanswered, but do rest assured that the concepts you have put before us, if not dealt with this evening, will indeed be examined very, very closely as we continue to study The Liquor Control Act and the changes that will be coming through the future years.

Mr. Chairman: The bill will be considered clause by clause. During the consideration of the bill the title and the preamble are postponed until all other clauses have been considered in their proper order by the committee.

* (2310)

Clauses 1 to 2—pass; Clauses 3 to 5(4)—pass; Clauses 6(1) to 8(1)—pass; Clauses 8(2) to 11(1)—pass; Clauses 11(2) to 16(1)—pass; Clauses 16(2) to 19.

Mr. Doer: Yes, dealing with Clause 19, if you could deal with just up to 18, please.

Mr. Chairman: Clauses 16(2) to 18—pass.

Mr. Doer: Yes, I would move an amendment that Section 19 of the bill be struck out.

Mr. Chairman: If you would just distribute the motion.

Mr. Doer: Yes, the purpose of the proposed amendment—

Mr. Chairman: Just one moment. Go ahead, Mr. Doer, and move your motion.

Mr. Doer: Yes, the purpose of the proposed amendment to Section 19 to delete it is to clearly replace the proposed new section dealing with cabarets with the existing section. By proposing to strike out this section of the bill we will, of course, therefore, revert to the existing bill, or if this amendment is ruled out of order, then the committee would have the option to be very sensitive to the presentations we heard here this evening about Section 19.

Mr. Chairman: I would ask Mr. Doer to read his motion into the record.

Mr. Doer: I move in English and French.

THAT section 19 of the Bill be struck out.

(French version)

Il est proposé que l'article 19 du projet de loi soit supprimé.

Motion presented.

Mr. Chairman: I must rule this amendment out of order according to Beauchesne's Citation 698(6) which reads: An amendment to delete a clause is not in order, as the proper course is to vote against the clause standing part of the bill.

Mr. Doer: Okay, lay down Section 19.

Mr. Chairman: It is the proper procedure just to vote against the clause.

Mr. Doer: I will not challenge the Chair. I will encourage, as I mentioned in my preamble on Section 19, I wanted to be very clear of our intent, so that in these late hours with our tired colleagues across the way, that we could all summon up our support to defeat this Section 19 and, therefore, that is why I moved the amendment that you ruled out of order.

I would recommend we will be voting against the proposed Section 19, and I think the presentations today, this evening, articulated the issue very, very well in terms of the classes of licences and the responsibilities of licensees. I think we should keep these existing situations, particularly with the pressure that all members of the hospitality industry are under in these times.

Hon. James Downey (Minister of Northern Affairs): Mr. Chairman, just to take a brief minute to indicate clearly that I think the minister, in her introductory comments, indicated that this would be struck out, voted against. In listening to the presentations here tonight, I have no difficulty, and my colleagues have no difficulty in voting against this section of the bill.

Mr. Chairman: Shall Clause 19 pass?

Some Honourable Members: No.

Mr. Chairman: All those in favour, say yea.

An Honourable Member: Yea.

Mr. Chairman: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: The clause is accordingly defeated.

Shall Clauses 20 to 21(2) pass?

Mr. Gaudry: Mr. Chairman, I have an amendment in regard to a special opening for beverage rooms on Sunday.

Mr. Chairman: Is that on clause—

Mr. Gaudry: 20.

THAT the Bill be amended by adding the following after subsection—

Mr. Chairman: No, I am sorry. Which clause was it?

Mr. Gaudry: 21(1).

Mr. Chairman: 21(1). Can we pass Clause 20? Clause 20—pass. Mr. Gaudry on Clause 21(1).

Mr. Gaudry: Yes, I am presenting this amendment in regard to opening of beverage rooms on Sundays, licensed premises on special occasions and special events in communities, municipal, provincial and in support of the rural areas, especially those who have requested that we do so.

Mr. Chairman: Would you read your motion into the record, please.

Mr. Gaudry: Yes.

I move in English and French

THAT the Bill be amended by adding the following after subsection 21(2):

Section 100 repealed and substituted

21.1 Section 100 is repealed and the following is substituted:

Special events

100 Where licensed premises are situated in an area where in the opinion of the commission an event of community, municipal, provincial or national significance is to take place, the commission may, for the purpose of the event, in writing and subject to such terms, conditions and hours of operation as it may prescribe, allow the sale, service or consumption of liquor, or extend the period during which liquor may be sold, served or consumed, in the premises.

(French version)

Motion de M. Gaudry

Il est proposé que le projet de loi soit amendé par adjonction, après le paragraphe 21(2), de ce qui suit:

Remplacement de l'article 100

21.1 L'article 100 est remplacé par ce qui suit:

Evénements spéciaux

100 Lorsque des locaux visés par une licence sont situés dans une zone où, à son avis, un événement important au niveau communautaire, municipal, provincial ou national doit avoir lieu, la Société peut, aux fins de l'événement, par écrit et sous réserve des modalités, des conditions et des heures d'ouverture qu'elle prescrit, permettre que des boissons alcoolisées soient vendues, servies ou consommées sur place, ou proroger la période durant laquelle elles peuvent l'être.

Mr. Doer: Yes, for the edification of the committee, can the minister or the presenter articulate the present section and the proposed section and what this will mean in practical terms to the consumers and operators of Manitoba—this clause?

Mrs. McIntosh: The current legislation allows for events of provincial and national significance, and this would expand it to communities, to the local area.

Mr. Gaudry: Mr. Chairperson, and I have also discussed it with the members that were here tonight making presentations, and I have more or less their support in making such an amendment to the bill.

Mr. Doer: This specifies where licensed premises are situated in an area. That obviously is a geographic area, so would this mean that there would be a different application for this type of event based on geography, not on the basis of licence types in the province?

* (2320)

Mrs. McIntosh: My understanding of this amendment, and I will keep checking with my chief executive officer here, is that this would apply, for example, in Assiniboia. Where I live, the Buffalo Barbecue would be a community event such that the hotels in Assiniboia would perhaps wish to ask to be open at that time.

It would also apply, say, for Folklorama which is a city of Winnipeg event where the hotels in the city of Winnipeg may wish to apply to be open. In certain communities, and I believe some of these were referenced in one of the briefs, I think from Mr. Reid, for example, in The Pas, where they have the Trappers Festival which would be a community event. That would allow beverage rooms in that area to be open or to apply for permission to be open. They would have to get permission from the Liquor Commission.

Mr. Gaudry: Mr. Chairperson, I think any community event that were also explained by the briefs tonight—they mentioned the Morris Stampede, the St. Pierre Frog Follies and Ukrainian Days in Dauphin, Gimli festival, and any festival, I

think, or the Festival du Voyageur in St. Boniface and all community events.

Mr. Doer: I am wondering whether the minister—it is just coincidence we have the minister of cultural affairs here. There are many of the organizations, the communities that run very, very volunteer-laden cultural events across the province. Some of them to some degree rely on liquor sales to try to break even.

I am wondering whether this will—I understand the need to be dealing with other provinces in terms of beverage rules, but I am wondering how this will affect those fund-raising events if this licence is intended to have a locus of a community event. I wonder whether this will affect the profitability of many cultural organizations right now that are struggling to survive. I just do not know; I just have not done my homework on this amendment right now and I wonder whether the minister has, whether they have discussed this or studied it or what this will mean for many of these organizations.

Mr. Downey: Mr. Chairman, not particularly trying to answer that question, but as I would perceive it and the member who has introduced the motion could be of some assistance, as I would see it, and if I am interpreting it incorrectly please correct me, as I would see it, the commission would have the ability to either refuse or grant a beverage room the ability to be open, for example, they now provide a community the opportunity to open or license a beer garden if a baseball or a major event were on in a community.

A hotelier sitting there operating all year round does not have the opportunity come that same day to take any advantage of the people who may want to use their services in the hotel, yet can walk outside and in fact consume alcoholic beverages under the permission of the liquor board. What this is doing, as I hear it, is that the liquor board would be able to allow, if it is in the interest of that particular hotelier, the opportunity to operate on that same day. They would have the decision. It would not be the government, it would be the commission that would have that ability. Am I interpreting correctly the—it does not automatically mean that every hotel on every request would in fact get a permit, that it would be in the interests of either the hotel or the community, under the auspices of the liquor commission.

Mrs. McIntosh: Mr. Downey is correct in his interpretation.

Mr. Gaudry: Yes, not bad for a Conservative to understand that amendment. Mr. Chairperson, I would like to make a comment. I understand also that some hoteliers in rural areas have been told that by organizations, they said that they would not bother with beer gardens, for example, if they have licences in the beverage rooms.

Mr. Chairman: There is a problem with the scope of the amendment as it is amending the original statute and not the bill before us, so I would have to rule it out of order. However, the committee is more than welcome to overturn my ruling to accommodate the concerns of the persons who presented briefs.

An Honourable Member: I challenge your ruling, Mr. Chair.

Mr. Chairman: The ruling of the Chair has been challenged. All those in favour—

Hon. Donald Orchard (Minister of Health): Before we get to burning you, Mr. Chairman, I have to admit I have a little problem coming up with an amendment that both opposition parties are in agreement with which introduces an amendment to the bill which is not part of the amendment package that we have. I never contemplated the feasibility of you, sir, ruling it out of order and my having to urge my colleagues to burn you as Chairman. I do not know how we get around this.

Mr. Gaudry: Mr. Chairperson, after we have passed the bill and the government supports us, we will congratulate them then.

Mr. Doer: The Chair has said that the scope of where this amendment is proposed is out of order. Is there another way that the Chair could be helped to propose where the scope of the amendment would be in order so the Conservative members would not have to rule against a Conservative Chair? We would welcome the precedent of overturning the Chair, I might add, we may use it in the next bills.

Mr. Chairman: I have been advised that this is the only way of approaching this problem. The ruling of the Chair has been challenged. All those sustaining the ruling of the Chair, please say yea. All those opposed, say nay. We will do this all over again.

Mr. Downey: Mr. Chairman, I am not clear as to the amendment that is being proposed is not really changing a lot. It is a part of the act which is being amended. It was ruled out of order the other day on a particular bill that was not referring specifically to

the part that was being amended. The question is, this is part of the bill that is being amended, and I am wondering why it would be ruled out of order. If it had not been referred to in this section of the act, then I can see the ruling to be out of order, but this is part of the portion of the act that is being proposed for amendment.

Mr. Chairman: I have been advised that this is the procedure that is being implemented is the way it should be proceeded with in handling this particular amendment.

* (2330)

Mrs. McIntosh: I understand that committee members can indicate their opinions on the ruling, and it seems to me that while this particular clause had not been addressed in the bill, certainly the principle that is contained in this clause has been discussed and now put forward, and that principle being the principle of being able to purchase liquor in a licenced premise without a meal on a Sunday. That has been addressed in another part of these amendments and it is the same principle that is being addressed here, so I would argue that there is some consistency. The Chair has ruled and we are challenging.

Mr. Doer: The Chair has ruled. I mean, we can go around this all day long. We have just got to either uphold the Chair or not uphold the Chair.

Mr. Chairman: Exactly. All those in favour of sustaining the ruling of the Chair, say yea. All those opposed, say nay.

The ruling of the Chair has been overturned. Now the committee can vote on the proposed amendment that has been put forth by Mr. Gaudry in both English and French

THAT the Bill be amended by adding the following after subsection 21(2):

Section 100 repealed and substituted
21.1 Section 100 is repealed and the following is substituted:

Special events
100 Where licenced premises are situated in an area where in the opinion of the commission an event of community, municipal, provincial or national significance is to take place, the commission may, for the purpose of the event, in writing and subject to such terms, conditions and hours of operation as it may prescribe, allow the sale, service or consumption of liquor, or extend the period during which liquor may be sold, served or consumed, in the premises.

(French version)

Is est proposé que le projet de loi soit amendé par adjonction, après le paragraphe 21(2), de ce qui suit:

Remplacement de l'article 100
21.1 L'article 100 est remplacé par ce qui suit:

Evénements spéciaux
100 Lorsque des locaux visés par une licence sont situés dans une zone où, à son avis, un événement important au niveau communautaire, municipal, provincial ou national doit avoir lieu, la Société peut, aux fins de l'événement, par écrit et sous réserve des modalités, des conditions et des heures d'ouverture qu'elle prescrit, permettre que des boissons alcoolisées soient vendues, servies ou consommées sur place, ou proroger la période durant laquelle elles peuvent l'être.

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

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it. The amendment is carried.

Clause 21.1—pass; Clause 21.2 as amended—pass; Clauses 22 to 27—pass.

Mrs. McIntosh: Mr. Chairman, I move that Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

Mr. Chairman: On the proposed motion moved by the Honourable Mrs. McIntosh, in English and French, that the Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee, all in favour, say yea. In my opinion the motion is carried.

Preamble—pass; Title—pass. Bill be reported, as amended.

Mrs. McIntosh: Mr. Chairman, I would just like to thank the committee members for their very conscious efforts to improve and enhance a piece of legislation. Thank you very much.

Bill 4—The Health Services Insurance Amendment Act (Cont'd)

Mr. Chairman: We will now deal with Bill 4. Does the minister responsible for Bill 4 have an opening statement?

Hon. Donald Orchard (Minister of Health): Yes, Mr. Chairman. I have distributed four amendments to both opposition critics earlier today which deal with specifics. Two of them, I believe, introduce principles that are not part of Bill 4, so we will have to go through the routine twice, one of them because of the unfortunate passage of our chairman of the Manitoba Health Services Commission Board, and the other one a circumstance that I have described and will elaborate on in terms of raising the fine for misuse of the Manitoba Health Services Commission card.

Following presentations tonight, I have shared with both my honourable critics an amendment which clarifies the splitting of awards in Section 99.2(1), and we are adding a new section there which really enshrines in legislation the process which has gone on in the past and will continue in the future, and it simply assures that via legislation. With those amendments, Mr. Chairman, I would ask that we go clause by clause if you would.

Mr. Chairman: Did the critic for the NDP have an opening statement?

Ms. Judy Wasylycia-Leis (St. Johns): Yes, thank you, Mr. Chairperson. Very briefly, first let me thank the minister for providing us with advanced notice of the amendments he is proposing this evening as well as for the specific amendment dealing with some of the concerns raised tonight pertaining to subrogation.

I want to indicate to the committee that we have some serious concerns with Bill 4. As the process was conducted and as we heard more from individuals and organizations and studied this bill in more detail, it became clear to us that this was more than a housekeeping bill, that there are, in fact, some significant changes in direction, that there are some unsatisfactory responses to some changing circumstances in our society, and we will be proposing some amendments in those areas.

In very general terms, let me indicate that we would like to discuss with the minister and pursue some of the concerns raised tonight around confidentiality. It is clear from many of those in the community, those who are actively involved in terms of protecting the rights of patients that this bill does not address all of their concerns and does not ensure adequate protection for patients and their records.

It may be argued by the minister that this bill does not substantially change the previous arrangements around confidentiality and patients' records. It is our view that there are some significant changes in this direction. It is also our view that the feelings and opinions in the community are changing and evolving as people become more aware about their rights or the lack of protection thereof. Mr. Chairperson, some amendments will be proposed in that area with respect to confidentiality and patients' records.

Secondly, our concerns around Section 99.2 of this bill are still present. The minister has indicated he is prepared to partially address this issue; however, we remain concerned that there remains a violation of a general legal principle that has guided us and this province over the years, and we will be raising an amendment with respect to concerns in that area.

Finally, let me say that some of the issues are complex and not adequately dealt with in a late-night sitting such as this. It is clear that the minister must bring forward legislation opening up The Health Services Insurance Act in the near future to deal with outstanding matters pertaining to the amalgamation of the Department of Health and the Manitoba Health Services Commission, as they are now operating without the benefit of legislated protection or a legal framework, and I am sure the minister is anxious to correct that situation.

It therefore strikes us that some of the issues that could use some more dialogue, that are complex and perhaps would benefit from the advice of community activists and members of the legal profession as well as the medical profession, could be accommodated in a pause, in the brief period that we will be waiting for new legislation, for new amendments to The Health Services Insurance Act.

* (2340)

I would make the proposal in a general way that when we run into such difficult areas, we would perhaps think seriously, and I urge the minister to think seriously about perhaps withdrawing amendments in those areas and considering a more thorough consultation process.

With that, I look forward to the clause-by-clause analysis.

Mr. Chairman: Did the Liberal critic for Bill 4 have an opening statement?

Mr. Gulzar Cheema (The Maples): Yes, Mr. Chairperson. I just want to reemphasize that one of the major portions of this bill is the financial aspect. I think it was during the 1990 campaign we made our promise that we should have a bill which should give to the Health Services Commission power to make sure tax dollars are not abused, and I think this bill will be very helpful.

In fact, the member for River Heights (Mrs. Carstairs) has brought forward a private members' bill dealing with a similar issue, and I think our concern has been addressed in this bill to a large extent. Certainly another concern which has been brought by one of the presenters was Section 99.2, and the minister has given us the information in advance, and we are going to support that. The other amendments the member for St. Johns (Ms. Wasylycia-Leis) has said the minister has shared with us, and we are going to support three or four of them.

One area which is very important that the members of this committee should know, in Ontario and possibly other provinces there has been a problem in terms of the insurance card being sold in the United States.

The other abuse which I am quite concerned about is that visitors to this country sometimes abuse the cards of either their relatives or friends. This has never been checked, but I think we should be very cautious in that area. Having a fine up to about $5,000 I think will be very helpful. We should make sure that people who abuse the system should also pay for the services which have been rendered on their behalf.

Right now when you would go to any health facility, you just have to show your Health Services Commission card. Nobody questions you whether you need some identification. I think eventually in the long run, the driver's licence with the photo picture could be used very well, but it may not be possible for the younger children. I just want the minister to know that. I think we should be very careful in that aspect and make sure that tax dollars are not abused.

When individuals or facilities are given an open blank cheque to bill to the Health Services Commission, I think it would be unfair to the taxpayers if we are not careful in that respect. We are very pleased with that part of the section.

Certainly I think combining the departments, Manitoba Health and Health Services Commission, certainly this bill is—really, in essence, to have any legal obligation to the new department, we should have received this bill at an earlier stage. It takes time to bring the bill in a detailed form forward, but we should proceed as soon as possible so that there is no problem in terms of the combining of those two departments. We look forward to go clause by clause.

Mr. Chairman: The bill will be considered clause by clause. During the consideration of the bill, the title and the preamble are postponed until all other clauses have been considered in their proper order by the committee.

Shall Clauses 1 to 2.2 pass—pass; Clauses 2.3 to 4—pass.

Mr. Orchard: Mr. Chairman, I would propose an amendment to Section 5 of the bill. I would move in both French and English

THAT section 5 of the Bill be struck out and the following substituted:

Section 17 repealed and substituted
5 Section 17 is repealed and the following is substituted:

Duties of chairman
17(1) The chairman shall preside at meetings of the commission, but if the chairman is unable to act or the office of chairman is vacant, the vice-chairman, or if he or she is unable to act or the office of vice-chairman is vacant, a member of the commission elected by the members, shall act as and have the powers of the chairman.

Chief executive officer
17(2) The Lieutenant Governor in Council may appoint an executive director who shall be the chief executive officer of the commission.

(French version)

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

Remplacement de l'article 17
5 L'article 17 est remplacé par ce qui suit:

Fonctions du président
17(1) Le président assume la présidence des réunions de la Commission. Tourefois, en cas d'empêchement du président ou de vacance de son

poste, le vice-président ou, s'il est lui-même absent ou empêché ou que son poste soit vacant, un membre de la Commission élu par les membres agit à titre de président.

Premier dirigeant
17(2) Le lieutenant-gouverneur en conseil peut nommer un directeur général qui est le premier dirigeant de la Commission.

Mr. Orchard: That latter amendment, Mr. Chairman, is as in the act. The addition is 17(1), which deals with the unfortunate passage of the chairman of the Health Services Commission Board.

Motion presented.

Mr. Chairman: There is a problem with the scope of this amendment as it is amending the original statute and not the bill before us, so I would have to rule it out of order. However, the committee is more than welcome to overturn my ruling to accommodate the concerns of presented briefs.

Mr. Orchard: I challenge the ruling of the Chair.

Mr. Chairman: The ruling of the Chair has been challenged.

All those in favor of sustaining the ruling of the Chair, say yea.

All those opposed, say nay.

An Honourable Member: Nay.

Mr. Chairman: The ruling of the Chair has been overturned.

Ms. Wasylycia-Leis: Just first of all to indicate that we have no hesitation in supporting this amendment. I am just wondering where the general guidelines are in terms of gender neutral language. I had thought by now that this guideline had been circulated and applied in all cases, and I am wondering if this was an inadvertent error, or if it could yet be changed from chairman to chairperson.

Mr. Orchard: That will be considered as we approach this bill for next session.

Mr. Chairman: All those in favor of the amendment, please signify by saying yea.

An Honourable Member: Yea.

Mr. Chairman: All those opposed, say nay.

In my opinion, the Yeas have it. The amendment is carried.

Shall Clause 5 as amended be passed—pass.

Mr. Orchard: Mr. Chairman, I have an amendment to Section 6. I would move in both English and French that the following be added after Section 6—why do we not pass Section 6 first? Is that what we should do? No, I am right—

THAT the following be added after section 6 of the Bill:

Sections 42 and 43 amended
6.1 Sections 42 and 43 are amended by striking out "$200." wherever it appears and substituting "$5,000."

(French version)

Il est proposé d'ajouter, après l'article 6 du projet de loi, ce qui suit:

Modification des articles 42 et 43
6.1 Les articles 42 et 43 sont amendés par substitution, à "200$", de "5 000$".

I will explain briefly to committee, Mr. Chairman, if that is in order.

* (2350)

I have had discussions with both of my honourable opposition critics. There is some indication that there may be a market for Canadian health care service insurance cards in the U.S. This was drawn to our attention by finance officials in Ontario a week ago Friday, and with concurrence, and I appreciate the concurrence offered by both opposition parties, I propose to introduce an increase in the fine, so that we have a greater deterrence for anyone who may for profit attempt to abuse the privileges of our Manitoba Health Services Commission card.

There are two aspects to this. One of them was addressed by my honourable friend the critic for the Liberal Party wherein he indicated recovery of any improperly billed services should be part of the act. It is my understanding that other sections of the act allowing for recovery of improperly billed services would apply in that case, so that aspect of it is covered off.

The $200 fine, I believe, existed from Day One of drafting of the act. Five thousand dollars is the level of fine that Ontario has recently brought in, and we thought that it would be appropriate today to raise it to that level, so with the concurrence of my opposition critics and members of both opposition parties, I would appreciate support on this amendment.

Motion presented.

Mr. Cheema: Mr. Chairperson, I have just one point for clarification. Does that fine in Sections 42 and 43 also include somebody who is abusing the Health Services Commission card locally as well, because it has been brought to our attention that sometimes relatives or friends who are visiting may be abusing the Health Services Commission card, and I think we should include that in the section if it is not covered already. There should be a fine.

Mr. Orchard: This fine applies to all types of abuse of the card, so it would apply in both cases.

Mr. Chairman: There is a problem with the scope of this amendment as it is amending the original statute and not the bill before us, so I would have to rule it out of order. However, the committee is more than welcome to overturn my ruling to accommodate the concerns.

Mr. Orchard: I would have to challenge your ruling.

Mr. Chairman: The ruling of the Chair has been challenged.

All those in favor of sustaining the ruling of the Chair, say yea. All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Orchard: With respect, sir, nay.

Mr. Chairman: The ruling is overturned.

Is the amendment passed—pass.

Shall Clause 6, as amended, be passed—pass; Clauses 7 through 10—pass; Clauses 11 to 16—pass. Shall Clause 17 pass?

Ms. Wasylycia-Leis: I just want to make sure. Can I ask a question and make sure I am on the right page. Section 17 covers page 5 right through to—for quite a ways. Okay, then first I have a question on 77(1) on page 6.

I do not have an amendment at this point because it is, in my view, incumbent upon the minister and the government to address this concern, and any resolution of the matter is complex and needs some thorough study and analysis.

My concern is with respect to the wording, not only in 77(1), but throughout this bill, where it is stated that the Medical Review Committee investigates when a " . . . medical practitioner departs from the average pattern of practice of medical practitioners." In other occasions throughout the bill, the words used are departing unjustifiably from the average pattern of practice.

My question is, what is the wording in the present legislation? Why was this wording chosen? Does it not create some problems in terms of practitioners who may be practising innovative holistic forms of medicine that will certainly depart from the average pattern of practice, but which should not be discounted and cause practitioners to be subjected to an investigation by the Medical Review Committee?

Mr. Orchard: To the best of my knowledge, no. I will have Ms. Mildren explain, but first, I would like to indicate to my honourable friend that this amendment was not crafted in isolation by government.

The MMA and the College of Physicians and Surgeons agreed to the wording here. This is wording they find appropriate for the investigative purposes of the Medical Review Committee.

Bear in mind, the MMA withdrew in 1987 from participation in the Medical Review Committee because they believed it was both judge and jury and from that standpoint worked for several years to achieve these amendments.

If your concern is that the physicians will be disadvantaged by this phraseology in 77(1), I think that unlikely, or else they would not have agreed to the wording, and I will let Ms. Mildren maybe explain the genesis of the change, if that is the will of the committee.

Mr. Chairman: Is there leave for the committee to have Ms. Mildren explain? Leave.

Ms. Gail Mildren (General Counsel, Department of Justice): Yes, with respect to the language in the bill, Mr. Chairman, the language is the same as in the present statute. It does refer to pattern of practice and comparing physicians to a pattern of practice.

That provision in the legislation was actually the subject of a court challenge about six or seven years ago now by a physician. The process at the time in the act, plus the language of the statute, was reviewed by the Manitoba Court of Appeal and was found to establish an appropriate peer review system with respect to the medical practitioners. For that reason, because the terminology has been in a sense accepted by the courts, it is considered probably wise to continue to use terminology that has had that kind of an approval. As the honourable minister has indicated, the negotiations with the MMA and with the college around these provisions, at no point was that particular issue, pattern of

practice, raised as being an inappropriate terminology.

The point made with respect to practitioners who may practise in very specialized areas is, I believe, covered in the legislation as well because the Medical Review Committee and the Formal Inquiry Committee are to compare the pattern of practice of a doctor to his or her peers practising in a similar specialty, in a similar locality in similar circumstances, in other words. That was not as clearly set out in the former legislation as it is in this legislation and had caused some concerns, although the practice of the Medical Review Committee was to apply those standards when looking at patterns of practice.

Mr. Cheema: I just have a comment on the issue. I think as the individual from the Health Services Commission has said, even under the present circumstances, if somebody's practice does not fall under normal variation, then he or she can write to the Services Commission and explain. I think that would solve the whole purpose. That has been the practice for the last few years as far as my understanding is concerned over the whole issue. As long as that understanding is there, there is going to be a pattern of practice which may vary because of the location or because of aging population or a certain group of physicians may be doing more work in psychiatry or geriatrics or they are working more in a hospital as compared to other private practitioners.

I think that variable is going to always exist as long as there is the understanding, and has been in the past, that can be explained by a letter. If you tell them in advance and that is taken into consideration—I had the experience with a few individuals because we did bring one of the incidents to the minister's attention. It was last year, but I was told by a few other physicians they were able to solve the problem by simply stating in a letter of their intention and what area they would be practising medicine.

Mr. Chairman: Did you want to elaborate any further, Ms. Mildren?

Ms. Mildren: No, other then to simply confirm that comment and indicate that in the legislation the Medical Review Committee, the investigative body, does not take any step in terms of referring a matter further unless they have determined there has been an unjustifiable departure from the pattern of practice. At present, and as we contemplate the matters continuing, the investigative body would be contacting the doctor to determine whether or not there is justification. In most situations there is ample justification for what appears on a computer printout to be somewhat of an aberration. My understanding is certainly that is the process that is going to be continuing.

* (0000)

Ms. Wasylycia-Leis: I do not want to belabour this point since I do not have an amendment to propose for this section, but I just want to raise a few more concerns. I appreciate the explanation and understand the endorsation or the acceptability of this through our legal system, but I still raise the general concern of that kind of a statement or a barometer being used in this day and age when we are trying to perhaps move into new areas of health care that may not be judged as standard or average pattern of practice by a peer group of medical practitioners.

The minister has often been wont to tell us about how he dealt with the tonsillectomies and brought down the rate of numbers of tonsillectomies. Here we had a situation where 90 percent or whatever the figure was of children with throat problems were getting tonsillectomies, and this was judged to be unacceptable and action was taken contrary to the pattern of practice.

A similar situation exists right now with caesarean sections, where in some jurisdictions the rate of caesarean sections are very, very high, and it is the average pattern of practice. It may be that we do not want to always apply the average pattern of practice as the acceptable standard.

The final point I would make is that with the whole determination on the part of the minister right now to deinsure certain services, particularly to try to separate out psychoanalysis from psychotherapy, which is pretty well impossible unless he starts looking at number of visits which ties in directly to this kind of framework since a high number of billings pertaining to psychoanalysis will—perhaps this may be one way of catching that kind of situation and achieving the minister's agenda.

I am raising a number of scenarios. I have concern about the acceptability and usefulness of this kind of definition in this day and age, and my final concern has to do with how one ever tries to define the word "unjustifiably." Perhaps the minister or his advisors have a comment on that, but I think there are some difficulties.

Mr. Orchard: I think my honourable friend wanted her concerns addressed. First of all, this language is completely agreeable to both the MMA and the College of Physicians and Surgeons. My honourable friend might have recalled earlier on tonight where the president of the MMA was here and said the relationship from time to time is strained. If this was not to their satisfaction, it would not be here. So, if my honourable friend believes that she expresses concerns as the New Democratic Party Health critic better than physicians in the MMA about pattern of practice and the language around her, then I invite her to sit down with both the college and the MMA and tell them where they are wrong, because they have signed off this legislation. Hence, I think the definition has to be acceptable. It is acceptable to government; it is acceptable to the MMA, acceptable to the College of Physicians and Surgeons.

Just one small point, the tonsillectomy was statistically verified via the Rooses, the information provided to the College of Physicians and Surgeons who by newsletter informed the practitioners who thereby miraculously did not find as many unhealthy children.

Mr. Chairman: Shall Clause 17 pass?

Ms. Wasylycia-Leis: Just one point, Mr. Chairman, if the minister would apply his logic, he would make a commitment today to both drop Bill 69 and reverse his decision on deinsuring medically required services.

Mr. Chairman: Shall Clause 17 pass?

Some Honourable Members: Pass.

Mr. Chairman: It is accordingly passed.

Ms. Wasylycia-Leis: Wait. No.

Mr. Chairman: I am sorry, shall Clause 17 pass?

An Honourable Member: Yes.

Ms. Wasylycia-Leis: No. I have an amendment on 77.1 which I think is still under 17.

Mr. Chairman: Yes, it is. You may proceed, Ms. Wasylycia-Leis.

Ms. Wasylycia-Leis: I move, in both English and French,

THAT the proposed section 77.1, as set out in section 17 of the Bill, be struck out and the following substituted:

Confidential information

77.1 If a medical practitioner who has performed services to which an insured person is entitled as a benefit under the Act gives notice to the insured person, the insured person is deemed to have authorized that practitioner to provide the Medical Review Committee, or the Formal Inquiry Committee established under subsection 79(1), with such information as it reasonably requires, and no action lies against the medical practitioner because the information is provided.

(French version)

Il est proposé que l'article 77.1, énoncé à l'article 17 du projet de loi, soit remplacé par ce qui suit:

Renseignements confidentiels

77.1 Le médecin qui a fourni des soins auxquels l'assuré a droit à titre de prestations en vertu de la présente loi et qui avise l'assuré est réputé avoir été autorisé par celui-ci à communiquer au comité de révision médicale ou au comité chargé des enquêtes officielles constitué en vertu du paragraphe 79(1) les renseignements que l'un ou l'autre de comités exige valablement. En outre, le médecin bénéficie de l'immunité en ce qui a trait à la communication de ces renseignements.

Motion presented.

Ms. Wasylycia-Leis: Yes, if I could just briefly make a case for this amendment, we have heard tonight from several individuals and organizations who have expressed concern about confidentiality and protection of patient records. This is not a perfect solution to the problems presented to us this evening. I think the concerns raised are real. They are legitimate. They reflect growing concern about the whole area of patient rights and the need to work harder than ever in terms of confidentiality.

I am proposing an amendment that deals with the situation in a small way by giving the—ensuring that there is notification to a patient that his or her records are being provided to the Medical Review Committee. It is my understanding that this is a standard provision in terms of health services in this province. This is not out of line with other legislation and does protect the doctor.

The minister has just expressed concern about the doctors of the province. Then I think they would probably be interested in this amendment and in supporting the amendment because it ensures some protection from being sued for having provided confidential information. It also makes an attempt to ensure that only information that is reasonably required is asked for. I think that

tightens up this provision, and I hope that the minister would consider accepting this amendment.

Mr. Cheema: Mr. Chairperson, I would like some clarification. The member for St. Johns (Ms. Wasylycia-Leis) has good intentions, but when she is saying that the insured person must be informed, I think she should realize that in any given practice, there may be 2,000 to 3,000 patients. Some patients may have moved. Some patients may be deceased and some patients may not be available for many reasons.

It is going to be extremely impossible. I think we should have the best intentions to make sure confidential information is kept as much as possible, but is it a practical approach? I certainly have some difficulty in a practical sense. It may not be possible. The intentions are right, but—

Mr. Orchard: Mr. Chairman, with all due respect to my honourable friend, whom I really work closely with so I accept her advice on some occasions; for instance, that we ought not in the late hours of the night accept amendments that have not been well thought through, and that is the case with this one.

Mr. Chairman: On the proposed motion by Ms. Wasylycia-Leis, all those in favour of the motion, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the amendment is defeated.

Shall Clause 17 pass?

Ms. Wasylycia-Leis: I move, in both English and French,

THAT the proposed section 82, as set out in section 17 of the Bill, be amended

(a) by adding the following after subsection 82(3):

Exception for patients
82(4) A patient who is given a notice under subsection (3) is excused from testifying before the Formal Inquiry Committee if he or she provides a certificate of a medical practitioner certifying that testifying would likely jeopardize the patient's health.

(b) by renumbering subsection 82(4) as subsection 82(5).

(French version)

Il est proposé que l'article 82, énoncé à l'article 17 du projet de loi, soit amendé:

a) par adjonction, après le paragraphe 82(3), de ce qui suit:

"Exception concernant les malades
82(4) Le malade à qui l'avis visé au paragraphe (3) est donné est dispensé de témoigner devant le comité chargé des enquêtes officielles s'il fournit un certificat médical attestant qu'il mettrait vraisemblablement sa santé en danger s'il témoignait.";

b) par substitution, au numéro de paragraphe 82(4), du numéro 82(5).

Motion presented.

* (0010)

Mr. Orchard: Mr. Chairman, I am informed that at the Medical Review Committee, the requirement to appear and give testimony has only been evoked for practitioners. Patients have never, to the knowledge of all here, ever been called forward to the medical review commission for a statement, so therefore this amendment is not needed, but knowing that will not satisfy my honourable friend, I am willing to accept this amendment so that she can be -(interjection)- Well, I mean, I am willing.

Mr. Chairman: On the proposed motion, all those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

An Honourable Member: Nay.

Mr. Chairman: In my opinion, the Yeas have it. The amendment is carried.

Ms. Wasylycia-Leis: I move in both English and French

THAT the proposed subsection 85.1(1), as set out in section 17 of the Bill, be amended by adding "is confidential and" before "shall not be communicated".

(French version)

Il est proposé que le paragraphe 85.1(1), énoncé à l'article 17 du projet de loi, soit amendé par adjonction, avant "ne peuvent être communiqués", de "sont confidentiels et".

Motion presented.

Mr. Chairman: All in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

An Honourable Member: Nay.

Mr. Chairman: In my opinion, the motion is carried. Are there any other amendments for Clause 17?

Shall Clause 17, as amended, be passed—pass; Clause 18 to 19—pass; Clause 20—pass.

Mr. Orchard: On Section 21 of the bill, I would propose an amendment in both French and English

THAT section 21 of the Bill be amended by adding the following after subsection 99.2(1):

Exception for undue hardship
99.2(1.1) Subsection (1) does not apply where a division between the commission and the insured person of money recovered would result in undue hardship to the insured person.

(French version)

Il est proposé que l'article 21 du projet de loi soit amendé par adjonction, après le paragraphe 99.2(1), de ce qui suit:

Exception en cas de préjudice
99.2(1.1) Le paragraphe (1) ne s'applique pas dans le cas ou la division du montant d'argent recouvré entre l'assuré et la Commission causerait un préjudice indu à l'assuré.

Motion presented.

Mr. Orchard: There was some concern that the inconclusion of 99.2(1) would give the commission the ability to make a division in terms of an inadequate settlement. That was never the intention, as I indicated to the presenter from the Canadian Paraplegic Association, and to assure the individual that this is the case, this amendment clarifies that.

Mr. Chairman: On the proposed amendment—

Ms. Wasylycia-Leis: Mr. Chairperson, I appreciate the amendment that the minister has brought forward. He has responded to some of the concerns raised and taken a step in the right direction, I believe.

My concern, as I said in my opening remarks, still remains, that this minister is still entrenching in law a fundamental change in a legal principle. As was stated in the presentation by Tony Dalmyn, the legal principle that we have been operating under is that an insurer advancing a subrogated claim is subordinated to the rights of the insured victim. The insurer does not collect until the victim has recovered his full advantages. In law, the insurer assumes the primary obligation to pay the insured amounts to the victim. If the victim or the insurer can affect a complete recovery of the total loss from the party who caused the loss, the victim and the insurer are both paid in full, et cetera.

While the minister has attempted to clarify the apportionment allowed under 99.2 subsection (1), he is still entrenching in law a change in terms of the principles that have applied in this whole area and is still leaving, creating a situation where it is possible for a new minister, new governments, to actually on the basis of this wording apportion the amount, prorate it between the victim and the commission.

So it still remains a concern and the minister has indicated there are some issues that need to be dealt with in terms of individuals who perhaps do not live as long as expected or cases where individuals may change their living arrangements, in which case there is a need for recovery of amounts in those circumstances. However, it would seem to me that if that is the case and there were no other intentions involved on this issue that the minister could perhaps bring forward a more specific wording around that kind of situation.

The final point I would make is that it would seem that this is a very complex issue, and it would do us well to delete Section 99.2, all of it, and have a dialogue and a consultation over the next several months and look forward to this whole issue being included in the amendments the minister must bring forward in the near future.

So we will not oppose this amendment of the minister, but if it is in order, Mr. Chairperson, we will be proposing an amendment to delete Section 99.2.

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

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay. In my opinion, the Yeas have it.

Ms. Wasylycia-Leis: I move, in both English and French,

THAT the proposed Section 99.2, as set out in Section 21 of the Bill, be struck out and the following is substituted:

Waiver of right of recovery
99.2 The commission may waive its right to recovery under this Act, subject to such terms and conditions as it considers appropriate.

(French version)

Il les proposé que l'article 99.2, énoncé à l'article 21 du project de loi, solt remplacé par ce qui suit:

Renonclation au recouvrement
99.2 La Commission peut, aux conditions qu'elle estime indequée, renoncer au droit de recouvrement préscrit par la présente loi.

Motion presented.

Ms. Wasylycia-Leis: Very, very briefly, since I have already made my concerns known, it is my feeling that the minister needs to consult with some of the members of the community, the Bar Association, the Law Society, around this whole issue and come back with a wording—it may be the same, it may not—and I think it would be useful to have that kind of dialogue and discussion. This amendment moves to delete Section 99.2 but still leaves, as written in Bill 4, but ensures that there still is a provision that has been indicated has been necessary for the commission to waive its right to recovery.

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

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the motion is defeated.

Clause 21, as amended—pass; Clause 22 to 23—pass; Clause 24 to 25(2)—pass; Clause 26 to 29—pass; Clause 30—pass.

* (0020)

Mr. Orchard: Clause 31(1), I would propose the following amendment, moved in both French and English,

THAT subsection 31(1) be amended by striking out "on royal assent" and substituting "on September 30, 1991".

(French version)

Il est proposé que le paragraphe 31(1) du projet de loi solt amendé par substitution, à "le jour de sa sanction", de "le 30 septembre 1991".

Motion presented.

Mr. Orchard: Mr. Chairman, this is to accommodate—pass, thank you.

Mr. Chairman: All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: The amendment is carried.

Clause 31, as amended—pass; Clause 31(1)—pass; Clause 31(2)—pass.

Mr. Orchard: Mr. Chairman, I move, both in French and in English,

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

Motion agreed to.

Mr. Chairman: Preamble—pass.

Ms. Wasylycia-Leis: Just before we conclude this bill, I would again like to thank the minister for sharing his amendments in advance of this evening's sitting, and I would also like to thank Legislative Counsel for being so helpful at the last minute in terms of drafting amendments and working under such high-pressured, last-minute, hot, mosquito-ridden, awful conditions.

Mr. Chairman: Title—pass. Bill be reported, as amended.

Bill 51—The Pharmaceutical Act (Cont'd)

Mr. Chairman: We now move to Bill 51, The Pharmaceutical Act, Loi sur les pharmacies. Does the minister have an opening statement on Bill 51?

Hon. Donald Orchard (Minister of Health): Mr. Chairman, this is a wonderful piece of legislation. Let us pass it.

Some Honourable Members: Pass.

Mr. Chairman: Does the critic for NDP have an opening statement? Does the Liberal have an opening statement?

The bill will be considered clause by clause. During the consideration of the bill, the title and the preamble will be postponed until all the clauses have been considered in their proper order.

Clauses 1 through 88—pass; Table of Contents—pass; Preamble—pass; Title—pass. Bill be reported.

Bill 69—The Manitoba Medical Association Fees Repeal Act (Cont'd)

Mr. Chairman: Now we will move to Bill 69, The Manitoba Medical Association Fees Repeal Act; Loi abrogeant la Loi sur les droits de l'Association

Médical du Manitoba. Does the minister have an opening statement?

Hon. Donald Orchard (Minister of Health): Mr. Chairman, this is a noncontroversial piece of legislation that I know all members will support, and I would urge instant passage.

Mr. Chairman: Mr. Cheema. Mr. Cheema is leaving the room because of a conflict of interest.

Does the NDP critic have an opening statement?

Ms. Judy Wasylycia-Leis (St. Johns): Yes, just let me reiterate what we have said in the past and we will continue to say, we find this is bad legislation. It is destructive in terms of the necessary co-operation that is required on the part of government and the medical professional community. In terms of the difficult decisions that we have ahead of us, we see nothing in this legislation but an attempt on the part of this minister and this government to be vindictive and revengeful in terms of the activity and outspoken positions taken by doctors in the past.

It is reflective of the blinkered ideological approach of this minister and this government, and is contrary to long-established traditions involving good labour practices, good professional practices as established under the Rand formula as clearly stated in 1985 when the bill granted the MMA the right to collect mandatory fees was passed. It is a revengeful as I said earlier and the minister should consider putting aside his vindictiveness for once in the interests of the future of health care in this province and get on with a true partnership between government and doctors.

Mr. Chairman: The bill will be considered clause by clause. During the consideration of the bill, the title and the preamble are postponed until all of the clauses have been considered in the proper order of the committee.

Shall Clause 1 pass? All those in favour of Clause 1 to pass, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it.

Mr. Gary Doer (Leader of the Opposition): Recorded vote.

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the Yeas have it.

Shall Clause 2 pass? All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it.

Mr. Doer: Recorded vote.

Mr. Chairman: The same division?

Mr. Doer: Recorded vote.

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the Yeas have it.

Shall the preamble be passed? All those in favour of the preamble being passed, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairman: In my opinion, the Yeas have it.

Mr. Doer: Recorded vote.

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the Yeas have it.

Shall the title be passed?

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the Yeas have it.

Shall the bill be reported?

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the Yeas have it.

Is it the will of the committee that I report the bill?

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

Yeas 6, Nays 3.

Mr. Chairman: In my opinion, the bill will be reported.

Bill 75—The Manitoba Employee Ownership Fund Corporation and Consequential Amendments Act

Mr. Chairman: We will now consider Bill 75. Does the minister responsible for Bill 75 have an opening statement?

Hon. James Downey (Acting Minister of Industry, Trade and Tourism): Yes. Mr. Chairman, let me make a brief opening comment on behalf of the government and my colleague, the honourable Minister of I, T and T (Mr. Stefanson) who is at a ministerial intergovernmental meeting out of province today. I just want to say that I have had an opportunity to be part of some of the discussions with the development of the bill, as we have developed the community bonds program along the same time.

I am fully aware that the building of this act took place with consultation with the Manitoba Federation of Labour, and they have very much had the agreement, I am pretty sure, of the labour movement in the province.

I think it is a progressive act. There will be some minor amendments to it, but I do believe that this is a major initiative on behalf of the government to work with labour to try and make sure that where there are possible plant closures, it does provide the ability for employees to take ownership, to invest and to maintain job opportunity with the support of the government. I would hope that all members of the bill would give it their full endorsement and support at this sitting of the Legislature.

Mr. Chairman: Does the NDP critic for Bill 75 have an opening statement?

Mr. Gary Doer (Leader of the Opposition): Yes, I am pleased that the bill is before us. I would note that the initiative contained within the bill arises out of a proposal in the 1988 budget, the failed budget, but it is interesting that it has taken three years and some months for the government to finally come forward with this bill.

* (0030)

Mr. Chairman, I would also note that a good idea is one thing to endorse in a piece of legislation, enabling legislation, but I would note in the press conference held about a week ago, the two government ministers had considerable difficulty answering many questions of application from the media, and it does not surprise me. I think it is enabling legislation that has not been thought out by the government, but we think the concept and principle is sound, and that is why we proposed it initially.

We will have to evaluate the bill with the implementation of the programs contained within the clauses in the bill. It is something that has worked well in the province of Quebec, and that is why, of course, three years ago, we proposed introducing it in our province. I just regret that some plants have gone down in the interim period of time, and many people have lost their jobs where alternatives could have been looked at.

For example, the Paulins operation in the city of Winnipeg, where hundreds of workers lost their jobs, good people that worked for years and years and years, and this is not even a unionized plant. There was very little opportunity or no effort at all for a profitable plant to be kept open in the city of Winnipeg that was producing on three shifts successful products in the food processing industry.

Not only did that plant fail, Mr. Chairman, but that plant failed when many products in western Canada and in Manitoba were utilized for the processed food products. For example, 10 percent of the sugar from Manitoba Sugar, from sugar beet producers went to Paulin's; flour, of course, produced in western Canada; other products that were produced on the prairies in our back yards now are going to central Canada. If they are coming from here at all, they are going to London, Ontario and Quebec for production of food processing products. It is too bad we lost three years, but it is better late than never, I guess is what the old saying is.

Mr. Chairman: Does the Liberal critic have an opening statement?

Mr. Neil Gaudry (St. Boniface): Yes, it is a good piece of legislation, and we will be supporting it. We will be looking forward to see what happens in the next three years that the government will be in power—

Point of Order

Mr. Doer: Never assume with all our votes that they will be in power for the next three years.

Mr. Chairman: The member did not have a point of order there.

* * *

Mr. Chairman: The bill will be considered clause by clause. During the consideration of the bill, the title and the preamble are postponed until all of the

clauses have been considered In their proper order by the committee.

Shall Clause 1 pass?

Mr. Downey: I have an amendment.

Mr. Chairman: Would you just pass it out here, please.

Mr. Downey: I move, in English and French,

THAT clause (c) of the definition of "entity" in subsection 1(1) be amended by adding "that is resident in Canada" after "trust".

(French version)

Il est proposé que l'alinéa c) de la définition de "entité" figurant au paragraphe 1(1) du projet de loi soit amendé par adjonction, après "fiducie", de "qui réside au Canada".

Motion presented.

Mr. Doer: Yes, what would this mean, for example, dealing with Abitibi-Price and the situation in Pine Falls as presently owned by Canadian operations, Canadian owners, what if you had American management in a Canadian firm located in a Manitoba community, would that mean that there could not be any co-operative arrangement because of the residency? I just want a clarification. I am not opposed to it. I just want to understand this.

Mr. Downey: If there is the leave of the committee, I will have legal counsel respond.

Mr. Chairman: Is there leave to let Mr. Carnegie address the committee? Leave.

Mr. Gordon Carnegie (Crown Counsel (Legislation), Department of Justice): As I understand the purpose of this, this relates to the residency of trusts, not businesses, the purpose of which is to qualify those trusts for income tax purposes. The Interposition of trusts in the rather complex tax planning arrangements that are contemplated by this bill is essential, but Canadian trusts alone will qualify. This amendment was proposed by the MFL for tabling tonight.

Mr. Chairman: On the proposed amendment, all those in favour please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay. In my opinion, the Yeas have it.

Clause 1, as amended—pass. Shall Clauses 2 through 14 pass—pass.

Mr. Downey: Mr. Chairman, this is a clerical amendment. I move that subsection 15—

Mr. Chairman: If we can get it circulated here first, please.

Mr. Downey: I move

THAT subsection 15(5) be amended by striking out "subsection (3)" and substituting "subsection (4)".

(French version)

Il est proposé que le paragraphe 15(5) de la version anglaise soit amendé par substitution à "(3)", de "(4)".

Motion presented.

Mr. Chairman: All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay. In my opinion, the Yeas have it.

Clause 15, as amended—(pass). Shall Clauses 16 though 26 pass?

Mr. Downey: No.

Mr. Chairman: Shall Clauses 16 to 17—pass.

Mr. Downey: I have an amendment, Mr. Chairman.

Mr. Chairman: Can we just pass it out here first.

Mr. Downey: I move

THAT subsection 18(2) be amended

(a) by striking out "or" at the end of clause (a),

(b) by adding ",or" at the end of clause (b); and

(c) by adding the following after clause (b):

(c) that arises by reason only of a director or officer or a dependent of a director or officer having a deposit in, or a consumer loan or residential mortgage with, a bank or credit union in which the Fund has a direct or indirect pecuniary interest.

(French version)

Il est proposé que le paragraphe 18(2) soit amendé par substitution, au point qui se trouve à la fin de l'alinéa b), d'un point-virgule, et par adjonction après cet alinéa, de ce qui suit:

"c) si l'intérêt de l'administrateur, du dirigeant ou de la personne à charge prend naissance du seul fait qu'il possède un dépôt dans une banque ou une caisse populaire dans laquelle le Fonds a un intérêt financier direct ou indirect ou a un prêt personnel ou une hypothèque

résidentielle auprès d'une telle banque ou d'une telle caisse populaire.".

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

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay. In my opinion, the Yeas have it.

Clause 18, as amended—pass. Clauses 19 through to 26—pass. Shall the schedule pass? No?

Mr. Downey: Mr. Chairman, this is a clerical amendment.

I move

THAT subsection 1(3) of the Schedule is amended by striking out "Class "G" Special Shares" and substituting "Class "I" Special Shares".

(French version)

Il est proposé que le paragraphe 1(3) de l'annexe soit amendé par substitution, à ""G"", de ""I"".

Mr. Chairman: All those in favour, say yea.

Some Honourable Members: Yea.

Mr. Chairman: All those opposed, say nay. In my opinion, the Yeas have it.

Mr. Downey: Mr. Chairman, I move

THAT subsection 2(1) of the Schedule be amended

(a) by striking out "the holders of Class "A" Common Shares" after "Fund", and

(b) by striking out "of the stated capital of the Class "A" Common Shares", and by substituting "paid by them for the".

(French version)

Il est proposé que le paragraphe 2(1) de l'annexe soit amendé:

a) par suppression, après "Sous réserve des droits des titulaires d'actions spéciales de catégorie "I",", de "les titulaires d'actions ordinaires de catégorie "A",";

b) par substitution, à "capital déclaré de la catégorie d'actions", de "montant qu'ils ont payé pour les actions".

Motion presented.

* (0040)

Mr. Doer: Yes, can the minister explain the amendment, please, to the committee.

Mr. Downey: It is strictly clerical.

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

Some Honourable Members: Yea.

Mr. Chairman: All opposed, say nay. In my opinion, the yeas have it.

Schedule, as amended—pass; Table of Contents—pass; Preamble—pass; Title—pass. Bill be reported.

Committee rise.

COMMITTEE ROSE AT: 12:41 a.m.