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Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

PRIVATE BILLS

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVATE BILLS
Thursday, 17 July, 1980

Time — 8:00 p.m.

CHAIRMAN — Mr. Jim Galbraith (Dauphin)

MR. CHAIRMAN: I call the committee to order. I have been advised by our recording staff at the back of the hall that they are having a little bit of a problem with our pickup system here. I have been advised to ask everyone who is speaking to speak as directly as possible straight into a mike. So if everyone will follow that it will help our recording staff at the back immensely.

I would like to call the meeting to order now. Dealing with a preliminary go-through of Bills 65, 66, and 87, may I have our next concern.

Mr. Cherniack.

MR. SAUL CHERNIACK: It is my recollection that we were about to leave the section dealing with by-laws and go on beyond there. On that basis, I am just wondering if the Minister would care to comment as to a provision for minimum percentage of lay persons on the board and the manner of appointment. I had raised that today and he himself had discussed it with the RN representatives yesterday, and I'm wondering if he has reached a conclusion yet, or wants to discuss it, or wants to delay discussing the minimum percentage and the manner of appointment.

MR. CHAIRMAN: Mr. Sherman.

HON. L.R. (Bud) SHERMAN: I would want to discuss with the MARN the minimum representation on the board that would reflect appointment either of lay members or of appointees by the Lieutenant-Governor-in-Council, but I think the committee has already been assured by the RNs that the way the section is presently written, which calls for four of whom to be other than members of the association, that at least two of those would be appointments by Lieutenant-Governor-in-Council.

Now, I think that there is some merit, certainly, in establishing a maximum size of the board, because obviously four of 17 is a different kind of representation than four of 40 would be and I am prepared, certainly, to discuss that with the RNs, but I couldn't give the Honourable Member for St. Johns any definite figure on that tonight.

MR. CHAIRMAN: The next topic? Mr. Cherniack.

MR. CHERNIACK: A minor question, Mr. Chairman. The RPNs have in their Section 5(1)(k), as compared with the RN 4(1)(k), a phrase which is omitted in the RN, and those words are, "economic welfare"; and not having been privy to the standard form that was given to the various associations, I don't know whether this phrase, "economic welfare" was inserted by the RPNs, or deleted by the RNs. I am just interested to know.

MR. CHAIRMAN: Mr. Cherniack, I am informed by Legislative Counsel here that it is supposed to be deleted in the RPN Act.

MR. CHERNIACK: I don't know what he means by supposed to be deleted, it's in there.

MR. CHAIRMAN: It will be deleted then, okay.

MR. CHERNIACK: I didn't know somebody had made such a decision. Who made that decision, Mr. Chairman?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I'm sorry, I shouldn't have been, but I was trying to listen to two conversations at once. I wonder if Mr. Cherniack would re-identify his problem.

MR. CHERNIACK: Not knowing what was in the standard pro forma bill that was suggested by the department to the various associations, I do not know whether the RPNs, in dealing with 5(1)(k) of their Act, added the phrase "economic welfare," or whether the RNs, in 4(1)(k) of their bill, deleted that phrase from the proposed form.

MR. CHAIRMAN: Dr. Johnson.

DR. JOHNSON: Mr. Chairman, if I may. In the guidelines presented, Mr. Cherniack, to the professional associations, it was suggested that the economic aims be separated from the licensing and registration in the Acts. I notice two of the groups have removed certain . . .

MR. CHAIRMAN: Dr. Johnson, may I interfere. I am asked that you repeat again.

DR. JOHNSTON: In developing some guidelines for the professional associations in drawing up their legislation, the guidelines did suggest that the economic aims of the associations be separated from the licensing and regulatory and governing powers of these boards in setting up the groups. I believe that the MARN, as I understood it, had intended to drop the reference to the promotion of the economic welfare of their members in that section. I stand to be corrected.

MR. SINCLAIR: They have, in fact. It's the RPNs, apparently, who have not deleted that word.

MR. CHAIRMAN: Mr. Sinclair, could I have you repeat again, please.

MR. SINCLAIR: I'm sorry, Mr. Chairman. The MARN doesn't have the reference to economic welfare in its Act. It was there at one time and it was deleted. It was in the existing Act, which has been passed around tonight, and it was deleted in this bill after several drafts.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just to follow up on the point made by Dr. Johnson, the Acting Deputy Minister of the Department of Health, the guidelines that were developed for the legislation that we were looking at in this whole field spell out, in guideline (d), that there shall be a separation of economic aims from licensing and quality of professional conduct, so that when this original legislation, in all three cases, was proposed earlier in the year and we were working through it clause-by-clause, it was addressed and met, with respect to the RN's bill, at that time. It has not yet been deleted from the RPN's bill, but there will be an amendment on 66 that will delete reference to promotion of economic welfare.

MR. CHERNIACK: Mr. Chairman, I suppose it would have been helpful to us in preparation, had we had copies of those guidelines, but I guess it is too late now.

I agree with the import of what the Minister said because I think that the licensing body should not be involved in any effort to negotiate or to assert the economic welfare of their members. I think that there can be unions and there can be self-interest lobby groups of all professional bodies, but I believe they should be clearly separated from the licensing body.

So I agree with this and I interpret this deletion in the RN's to make it clear that the MARN has no intent to protect the economic welfare of its members, but leaves that to the members to exercise in another way. On that assumption, I agree with that intent and I hope I interpret correctly how the licensing body looks on its functions.

Another question, Mr. Chairman, is it now the practice or the commitment of MARN to make its by-laws available to the public, and is there any commitment in the legislation to ensure that the by-laws are available to the public in the event the public has any interest in them.

MR. CHAIRMAN: Miss Tod.

MISS TOD: We would make by-laws available to whomever wished to see them; yes, to the public. We have no provision in the Act specifically making it available to the public, in the proposed Act, Bill 65.

MR. CHAIRMAN: The next question of concern? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I am looking at Section 4(2): "The board shall submit a by-law or an amendment . . ." We discussed that already. Is there any objection to inserting there, "after due notice," my idea being that the membership should be fully apprised of the content or the agenda in relation to the by-law, with copies of the by-law being sent. So I think the words, "after due notice shall . . ."

I leave it up to Mr. Balkaran, but I would suggest: "The board shall, after due notice, submit a by-law, etc." Is my intent clear? I am wondering, do I get my message across?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: The way in which the Act is drafted leaves those notice provisions in the by-laws themselves. I don't see any harm with that amendment.

MR. CHERNIACK: May we so direct Mr. Balkaran then?

MR. SHERMAN: Is that agreed? So that clause will read: "The board shall, after due notice, submit a by-law or an amendment, etc."

MR. CHERNIACK: Unless Mr. Balkaran wants better wording. I would defer to his experience.

MR. CHAIRMAN: Can we move on to the next matter that is of concern to the committee?

MR. CHERNIACK: Mr. Chairman, I am ready to move to 5 if the committee is, at the bottom of Page 4.

MR. CHAIRMAN: Agreed? (Agreed)

MR. CHERNIACK: The basic principle here, Mr. Chairman, is the extent to which the Lieutenant-Governor-in-Council asserts its opinion. The wording, as I understand it, and Mr. Balkaran will correct my understanding if he disagrees with me, is that the board must first pass a by-law and submit it to the Lieutenant-Governor-in-Council which may accept it or reject it. He is shaking his head at me already.

MR. BALKARAN: Not the by-law, the regulation.

MR. CHERNIACK: I'm sorry, you're quite right, a regulation. And the Lieutenant-Governor-in-Council may then approve or refuse to approve it. That's the law as proposed.

The practice, of course, is that the Lieutenant-Governor-in-Council can, through its various means, media, communicate to the board its reluctance to approve of a regulation unless it is changed in some way. Now, that's the practical way and the Lieutenant-Governor-in-Council could say, we don't quite agree with that but if you change it in accord with what we think it should be and you agree, then that's the way it will be.

I would like to carry it one step further and ask whether the Lieutenant-Governor-in-Council should not have the right, at some stage, and after due notice and ample discussion with MARN, to say to them, "We now believe there should be an amendment, a variation or a change to your resolution, and we want it done." Now the law does not, as I see it, give the Lieutenant-Governor-in-Council that right, and I am wondering whether they shouldn't have that right.

Suppose it were a question of approval of an educational institution and suppose a shortage of nurses occurs, the government, as it has in the past, sets out to recruit nurses and they find that the MARN is reluctant to accept a certain educational institution, be it in Manitoba or elsewhere, should not the government have the right to call MARN in and say, "Look, we have got to deal with the problem and your standards may have become somewhat higher than we can accept at this time and we really

must discuss with you the need to deal with this emergency situation." Short of calling a legislative session to change the Act, which it seems to me would have to be done, should the Lieutenant-Governor-in-Council have the right to call in MARN, discuss it with them, give them ample notice, and eventually assert its decision over the MARNs about something or other in the regulations.

Does the Minister have any thought about that?

MR. SHERMAN: Mr. Chairman, I would think that that is implicit in the relationship between the government and the executive of the MARN. Certainly, if we had concerns, we would call the MARN executive in and discuss it with them. It would be my very strong suggestion and feeling, based on some limited experienced, limited to be sure, but some experience, that the necessary co-operation would be forthcoming and, if it weren't, then surely what the government does it can undo and the bill could always be amended.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Thank you, Mr. Chairman. I think we have come again to a point of philosophical approach. Mr. Cherniack's approach is different than that proposed by this bill. The philosophy of this bill is that MARN is a self-governing association which is best qualified to determined what is in the public interest in the area for which they have responsibility. If they got so far out of line that the Legislature decided that they would change the bill then, of course, that can be done, as the Minister indicates. But short of that, the association should have the right to initiate the regulations. There is a check on that, that what they initiate can't be put into effect unless the Lieutenant-Governor-in-Council approves it, but we are very very much opposed to a situation where regulations could be imposed, when the purpose of the bill is to set aside this area of authority for the association.

MR. CHERNIACK: Yes, Mr. Chairman, I do understand that, and I do believe, and I stand to be corrected, that the regulations will be designed, when we see them, to describe certain standards of practice and of education, but that the regulations will not name educational institutions, will they? It seems to me that under the section, as I read it, the regulations that will be submitted to the Minister, and through him to the Lieutenant-Governor-in-Council, will describe the nature of the academic requirements but not say Red River College is or isn't, nor say the University of Manitoba is or isn't. I think that will not be in the regulations. I want to be corrected by Mr. Sinclair if I am wrong. I have the impression that that would be a resolution of the board, or of a committee of the board, which will name Red River and say it is or it isn't, and if that's the case, then the regulation itself really isn't sufficient.

Now, if I am right about how it will be done, I would like the opinion of the legal brains present, both Mr. Sinclair's and Mr. Balkaran's, as to whether the Court of Queen's Bench, on appeal, would have the power to say, this or the other institution named, does comply with your standards of qualification and if that's correct then, of course, I would, let it rest.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, the question that Mr. Cherniack poses relates to the approval of educational facilities which I believe is covered by Part 9 of the Act, rather than under the regulations under Section 5.

MR. CHAIRMAN: Mr. Filmon.

MR. GARY FILMON: The regulations, Mr. Chairman, cover continuing nursing education but not the nursing education as defined in the bill; and in Section 9, the references are to the courses such as Red River or the teaching hospitals, but the regulations only cover continuing nursing education, which would be upgrading courses . . .

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I think, in answer to the question I think Mr. Cherniack is putting to me, as to the detail that these regulations will contain, the regulations passed under Section 5 will be very detailed, as is the Regulation No. 1, which Mr. Cherniack has a copy of, and which I have other copies of here if some members of the committee have not received them. I believe that those regulations are so detailed as to allow a person to go to the Court of Queen's Bench and say, "Yes, I was qualified, I did meet those requirements." The requirements are specified and if a person meets the requirements, then they have a right.

MR. CHERNIACK: Mr. Chairman, I am groping for information. I don't have any fixed idea about this, but the regulation I am looking at says that "any person who furnishes such evidence to the board as it may require that she is a graduate of a nursing program within Manitoba that has been approved by the board upon the advice of the Council". That's not specific at all. That relates all the way back to Part 9.

MR. SINCLAIR: But the approval is under Part 9, the approval of the institutions, if that is what we are talking about.

MR. CHERNIACK: Yes. So, Mr. Chairman, apparently that means then that my concern about the regulations going before the Lieutenant-Governor-in-Council is not that serious, but my concern will come up under Part 9, where they might then say that Red River, and I use that only as an example, is not, or we have withdraw from it, and therefore I come back to asking Mr. Sinclair whether the Court of Appeal would have a right to say Red River should be acceptable and that MARN is arbitrary in refusing to accept a nurse who graduates from Red River.

I just want to know whether the appeal function would give the court that authority, on the basis that the member was refused admission.

MR. SINCLAIR: The powers given under Part 9 are powers to be exercised by MARN in its discretion

and, accordingly, it would be my opinion that there would be no review of the exercise of discretion under Part 9, as opposed to the review that is possible under some action taken pursuant to the regulations.

MR. CHERNIACK: Mr. Chairman, I agree with Mr. Sinclair. In other words, neither the Lieutenant-Governor-in-Council need ever be consulted, nor is the Court of Appeal, an appeal court, authorized to review the decision of the MARN as to whether any named institution is or is not acceptable.

I don't think I agree with that but as long as the Minister does, then it is clear that he endorses the MARN having exclusive and non-appealable right to discriminate, and I use that in the correct sense and not in any improper or suggestive sense, to discriminate as between various institutions and make its own decision, which is not subject to review by the Lieutenant-Governor-in-Council, nor by the Court of Appeal. And therefore a graduate coming from some university in some other country, which the MARN has not accepted, will not have the right to be admitted to the organization and has no appeal available to her.

I believe that is correct; that is consistent with what Mr. Sinclair said. I don't think it's right but I leave it at that for the moment, unless I am wrong.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I can't agree with the example. I do agree that action taken under Part 9 in approving curriculum or schools is not reviewable by the Lieutenant-Governor-in-Council or by the court. It is a power which the MARN has exercised for many years, their original Act being passed in 1913, and it is a power that this bill proposes would remain with the MARN.

MR. CHERNIACK: What don't you agree with?

MR. SINCLAIR: What I don't agree with is the example of a student coming from another country. That is covered specifically by regulation, but it's not under Part 9. It is under the regulation and there is an appeal right in the bill, in Section 7, subsection 4, given to an applicant refused registration or entry.

MR. CHERNIACK: Mr. Chairman, what is important to me is to understand. Will the court have the authority to say that the decision about that educational institution be wrong; or will the court have to say, well, that rejection of the applicant is not in accord with the resolution which would otherwise authorize that applicant to be in?

We have in this proposed Regulation No. 1, "Any person who furnishes such evidence to the board as it may require that she is a graduate of a nursing program outside of Manitoba, which the board considers substantially equivalent." Now, that's an absolute discretion to the board, as I understand it, and I don't think it is subject to review and appeal. So I don't see why Mr. Sinclair thinks that there would be a right to the Court of Appeal to reverse that decision, based on the standard of the educational institution. So how am I wrong?

MR. SINCLAIR: My difficulty, Mr. Chairman, is that, with respect, Mr. Cherniack is mixing apples and oranges. A school that is approved under Part 9 is a school in Manitoba. That's all that Part 9 deals with, and that is a power given to the board of MARN which it exercises exclusively.

Now, the question of a person coming from outside of the jurisdiction is a question that is dealt with under the regulations. The regulations do provide to the MARN the power which Mr. Cherniack indicates, and I agree with him that if a person was refused because the board didn't consider the school from which she or he graduated substantially equivalent, that that's not a reviewable decision.

MR. CHERNIACK: So, Mr. Chairman, I am right. I am right that there is no appeal from the decision of the board that may be rejecting an applicant because it does not approve of the educational institution. There is no appeal; there is no review.

MR. SINCLAIR: There is no appeal under Part 9, because that is the power of the board. So if, for example, there were some school in Manitoba which was not approved, that graduate would not be recognized.

Now, under the regulation, if there was some school which was outside of Manitoba, which the board did not consider to be substantially equivalent, again, the board has that same power. That's not a reviewable decision, that's correct.

MR. CHERNIACK: So, Mr. Chairman, we are not in disagreement at all; Mr. Sinclair agrees with me, there is no appeal or review of the decision of the board as to the educational standard of an institution. Why does Mr. Sinclair say he doesn't agree with me when I don't see that he doesn't?

MR. SINCLAIR: I didn't agree with you, Mr. Cherniack, when you originally framed your question. You have come to lump these two together. The way you have ended up, Mr. Cherniack, is you are in agreement with what I said.

MR. CHERNIACK: I am glad, Mr. Chairman, that I am now in agreement with what Mr. Sinclair said. I wonder if he could tell me where it says, in Part 9, that we are dealing only with Manitoba institutions.

Mr. Chairman, on a point of order, while Mr. Sinclair is looking for that response, I want to caution you and the Member for Minnedosa, I will not take from him what he has started to do this evening. I will not name what he did yet, Mr. Chairman, but I will not accept it and if he wants to embark on that kind of a program, I am ready to deal with him. —(Interjection)— You are warned.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just dealing with Mr. Cherniack's point, I am subject to correction, obviously, but it is my understanding that the appeal process that Mr. Cherniack is concerned about is provided for in the legislation, but I stand to be corrected. I think that 42(1), on Page 17, would meet the precise problem that Mr. Cherniack raises, but I offer it to him for his comment and his rebuttal.

MR. CHERNIACK: Mr. Chairman, I appreciate what Mr. Sherman said, and the reason it has come up in relation to 5, the regulations, is that I interpret, and apparently I now agree with Mr. Sinclair, that under the regulation, it says that, "the applicant is a graduate of a nursing program which the board considers substantially equivalent to programs which were accredited," and I think we came to an agreement that if the board, in its discretion, does not recognize a certain educational institution, then the Court of Queen's Bench, under 42, cannot substitute its opinion for that of the board. The appeal can come to the court, but I think the court could only say: Is that institution acceptable to the board or isn't it? And if it isn't acceptable to the board, then the court can't grant the appeal and force that applicant to be registered.

Now, that's the kind of discussion I had with Mr. Sinclair and I think we agreed that the court would not have that right.

MR. SHERMAN: Well, Mr. Chairman, I am not a lawyer, as Mr. Cherniack knows, and both he and Mr. Sinclair are. I have to defer to a legal opinion on it, but 42(1) states very clearly that "any person who has been refused admission to the association, or the entry of her name on a roster, may appeal from the decision of the discipline committee, or the board" — in this case it would be the board — "to a judge of the Court of Queen's Bench at any time within 30 days".

I would have to have it pointed out to me why the Court of Queen's Bench could not deal with that appeal, and at that point in time, perhaps the whole judgment of the board, with respect to that particular educational facility, or program, might also be called into question.

But if 42(1) does not say that, then I am wrong. But that's the way I read it.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: I wonder, if it's helpful, Mr. Chairman, if I can ask if the letter of last evening from Mr. Taylor was circulated to committee members, as it deals with that very point.

MR. CHERNIACK: No.

MR. FILMON: Is it possible that we can ask the Clerk to obtain copies?

MR. CHERNIACK: You mean Ray Taylor?

MR. FILMON: Yes.

MR. CHAIRMAN: It was received last night, copied and distributed, I think, in the House.

MR. FILMON: It wasn't on my desk.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I wonder, I haven't got a copy of that, but I read the letter. Mr. Taylor's concern was the removal of the section of the previous Act which would have allowed a person from another jurisdiction to apply for registration admission into the association in Manitoba.

MR. SHERMAN: 14(1) and (2) I think.

MR. BALKARAN: The substance of 14(1) is now contained in that regulation, a copy of which you have, Mr. Cherniack, and the question is to whether you agree or not that that takes care of the deletion of 14(1) and 14(2) of the existing Act.

I might add that on the question of an appeal under 42(1), as I read 42(1), I think the right of appeal is there. The question as to whether the court would disturb the discretion exercised by the board in not granting admission to a person from another jurisdiction is another matter.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I haven't read Mr. Taylor's letter. I would be very interested in reading it; there's no rush. I will come back to 42, of course. I don't want, at this stage, to press Mr. Sherman to express an opinion, but I would be inclined to say that if the court should have that authority of review, then I think it is better to spell it out than to leave it to doubt. But I think we can wait until we get there and, at that stage, maybe Mr. Sherman will have decided whether he thinks it ought to be as he interprets it and, if not, then we can ask Mr. Balkaran to make the necessary clarification, because I do believe that that would be important and, as I say then, Mr. Taylor's letter is not clear to me, and therefore I would be prepared to let this go at this stage, looking forward to reading his letter and waiting for Mr. Sherman to arrive at that decision as to how he feels it ought to be and, by all means, let's let it go. I don't want to push for a quick snap judgment.

MR. CHAIRMAN: The next point, please. Mr. Sherman.

MR. SHERMAN: We are dealing with Section 5, Mr. Chairman, and I have a point of concern that I want to raise in subsection (f). I don't know whether the committee agrees that we have reached subsection (f) yet. Is there anything else in (a) through (e) that concerns Mr. Cherniack?

MR. CHERNIACK: I have something on (d).

MR. SHERMAN: All right, I'll wait.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Thank you. Yesterday we were talking about upward mobility and career ladder and I would like an assurance that, I think it is (d), recognizes the advisability, the value of having that kind of career ladder. And I was intrigued by the phrase, "consistent with the changing needs of society," which clearly recognizes that from year to year attitudes can change and should be prepared to change to adapt to changing needs of society.

When I was going over it I scribbed some additional words. I don't know if they are acceptable or necessary, but I would like to offer them, and say, "consist with the changing needs of society and recognizing equivalence of other training and/or education," that being the idea of equivalence and career ladder and all that.

It is, again, an attempt to make it clear that things do change and that we are not stuck with old ideas. I wonder if there is any objection to the phrase or whether it is redundant, or whether it is acceptable.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think that question should properly be addressed to the association itself.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I wonder, Mr. Cherniack, I've got, "and recognizing . . ."

MR. CHERNIACK: ". . . and recognizing equivalence of other training and/or education."

MR. FILMON: And/or experience?

MR. CHERNIACK: Yes, by all means, experience, training, and/or education.

MR. CHAIRMAN: Miss Tod.

MISS TOD: The intent of this section, "Develop, establish and maintain standards for nursing education consistent with the changing needs of society," the changing needs of society would be in relation to the delivery of care. The care of individuals today is different, the demands, or the expectations or the needs are different today than they were 20 years ago. As an example, there is a greater emphasis on the care of the elderly because we have an increased population of the elderly. The needs of society today is that we have people prepared to care for them.

So we will develop and establish, maintain standards of nursing care to meet that specific need.

MR. CHAIRMAN: Mr. Blake.

MR. DAVID BLAKE: Mr. Chairman, I think the terminology, "changing needs of society," embodies all of the things that the Member for St. Johns has mentioned. It obviously covers experience and educational qualifications, because that is what is happening in society today.

I think if we start changing every clause just for editorial change we could be here for a long time with this particular bill. I think the Member for St. Johns has to accept some of the legalese or the grammar in the bills as embodying the things that he is concerned about.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Miss Tod's explanation is much more sensible and acceptable to me. I certainly understand now that the words I had suggested don't belong with the phrase, "changing needs of society," and are not at all included in that phrase or in that meaning. I quite understand what she was saying, something I didn't grasp before. I don't know where else I would like to see it, but I certainly recognize now that it doesn't belong where I thought it should.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Are we finished with (d), and is (e) acceptable, Mr. Chairman?

On (f), Mr. Chairman, I must record, for the committee's benefit, that the government has some difficulty with that as it is currently worded. It imposes, in effect, mandatory continuing education and much as that is a desirable goal in the abstract, it is not one that I think is practical or realistic in this, or indeed in many other professional fields at the moment. That same requirement appears in all three of these bills, 65, 66 and 87, so I want to assure the MARN that this is not a position that is directed in a discriminatory fashion against their association.

It will be my suggestion that the committee consider, between now and the time that we are finally passing these bills clause-by-clause, that that be altered so that there is no requirement of a mandatory nature for continuing nursing education.

The objective is highly desirable and I think we want to make, in all our health professions, every effort that we can to support and reinforce the initiative of continuing education, but we have great difficulty with anything of a compulsory nature in that sphere, not only for registered nurses, as I have said, but for all health professionals. We have difficulty in terms of distribution in this province of our health professionals; in terms of inequitable supply across the province; in terms not only of recruitment but of retention of professional personnel; we have difficulty in terms of financing, and Mr. Cherniack has already referred earlier today to the costs of health services which face us all. I have to suggest that the government was prepared to consider this,m in the initial drafting and preparation of these bills, but on further consideration we would find it very difficult to approve mandatory continuing education.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Minister, I think I can say for the MARN that there is no present intention of preparing and submitting regulations under this power. The intention of including this power in the Act is to allow, in the future, at an appropriate time, the development of these types of regulations. The MARN recognizes that today is not the time for that and I would point out that this does not, in its present form, constitute a mandatory continuing education program because even if the MARN were presenting to Lieutenant-Governor-in-Council regulations providing for mandatory continuing education, the Lieutenant-Governor-in-Council could, of course, refuse to approve them and they wouldn't go forward.

So it's for the Minister to decide whether it is a better course to leave this power in the Act at this time and use the Lieutenant-Governor-in-Council to control the use of the power, as opposed to taking it out at this time, when it is recognized as a desirable objective, and leaving it out until such time as the Act would have to be amended in the future to provide for it. But that is a decision that the Minister will make.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I want to express my agreement with the Minister on what he said. As far as I know, only the dental and pharmaceutical associations in Manitoba have mandatory continuing education and, as far as I can understand, neither has proven to be of any particular value, in that a person who wishes to learn will, and a person who is compelled to attend need only have certification that he or she did attention. I don't want necessarily to quote the authority that I rely on, but I do rely on the authority of a health education expert who has supplied me with some material — I don't know where it is right now — to indicate that studies in the States have put considerable doubt as to the advantages to mandatory continuing education. I think that unless there is going to be a set of examinations and a whole series of requisite periodic attendance at schools or other institutions, it is going to be difficult; it will not show to great advantage.

The lawyers have received, I think, Mr. Filmon may recall, the authority to require continuing education in those cases where there is evidence of a lack of competence, but I don't think that they got, although they may have wanted the authority, to impose mandatory continuing education on the general practitioner, and I think that there is good reason for that. Now, I believe that the medical people are going to be asking for it and I think we are going to have the same kind of discussion.

But I agree with Mr. Sherman, and I don't believe in putting into legislation a power which nobody intends to use, because once it is there, a few years from now, it may be forgotten, that there is no intention to use it and it may suddenly come in and slip through, and I use that expression advisedly because many times things happen that aren't noticed.

So I endorse Mr. Sherman's approach to the deletion of this. If, at a future date, it is proven to be advisable, then I think it should be proven to be advisable and then inserted into the legislation, because mandatory legislation should have particular review and consideration.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I appreciate Mr. Cherniack's comments and Mr. Sinclair's comments and I certainly will take both under advisement.

I might just say that I am not, at this juncture, suggesting that there be no reference to continuing nursing education in this clause, but I think the clause could be reworded so that the concern that Mr. Cherniack and I have expressed, that the present wording, in fact, enshrines the concept, or has the potential for enshrining the concept of mandatory continuing education, can be removed. I think it can be worded in such a way as to pay necessary recognition to the concept f continuing education without going so far as to create the potential that has been cited here for some difficulty in the future. So I would like to think about what has been said.

MR. CHAIRMAN: May we go onto the next topic? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I hope it's an oversight, but in the RPN legislation, an additional subsection in this section on regulation provides for the requirement that the regulation, before submission to the Lieutenant-Governor-in-Council should be passed by the membership or approved by the membership. I should think that just like by-laws of a serious nature must be approved by — well, all of them must be — I should have thought that regulations should also be approved by the membership before submission to the Lieutenant-Governor. I hope it's an omission and will be put back in.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I cannot offer an explanation on that. In the welter of considerations given in going through this process and reaching this point, there may have been a reason for not including it in the bill before us, Bill 65. Perhaps Mr. Sinclair or Miss Tod would be able to comment.

MR. CHAIRMAN: Miss Tod.

MISS TOD: Mr. Chairman, the practice of the boards of the MARN has been to take all major issues to the membership for approval before further action or implementation. Perhaps we are just acting on past experience and so did not include it.

If we wish to raise the fees of the membership, we take it to the general membership. If we wish to change the requirements of upgrading to re-enter the workforce, we take it to the membership. So it is traditional.

MR. CHERNIACK: Do I interpret correctly that there is no objection to including it in the legislation?

MISS TOD: I would say, no, there is no objection.

MR. CHERNIACK: Thank you.

MR. FILMON: Mr. Chairman, what provision was that or in what . . .

MR. CHERNIACK: Well, in the RPNs' — do you want me to read it?

MR. FILMON: 6(2) in the RPNs'.

MR. CHERNIACK: The heading is wrong. It says, "Submission to board," and it should be "to members."

MR. FILMON: Okay, so all regulations have to be submitted through the board.

MR. CHERNIACK: Yes, just like a by-law. Not to the board, to the membership.

MR. FILMON: To the membership.

Mr. Chairman, may I also just, for my own clarification, ask Miss Tod and Mr. Sinclair, under 5(d), by regulation, you are going to develop, establish and maintain standards for nursing education consistent with the changing needs of society, that would be a function of the board, making regulations which are submitted to the Lieutenant-Governor-in-Council, yet the entire Section 9 puts the matter of nursing education

standards under the aegis of The Advisory Council and The Advisory Council would advise the board, but my understanding would be that the board could accept or reject their advice on standards. I know we are having some difficulty with that with respect to the LPNs' Act and that it is going to be under discussion.

I am just wondering whether the same thing should be discussed here as to whether or not The Advisory Council should be ultimately responsible for decisions on nursing education programs and standards, as opposed to their just advising the board and then don't need to accept the recommendation.

MR. CHAIRMAN: Miss Tod.

MISS TOD: The MARN believe that the board of directors should have the final decision in regard to education standards of practice or any of these regulations that are listed under No. 5. The accrediting committee is described as a committee of the board and we believe it should report to the board and the board would have the final authority.

MR. FILMON: I don't think that there would be any quarrel with establishing standards for nursing practice, where you have given, as I see it, sort of the entire aspect of nursing education programs over to the advisory council and the advisory council has broad representation, including nominations from the Minister of Health, the Minister of Education, appointees from the board, a nominee of the Deans of the various faculties of education at the university, and then you have them give advice and the board turns down the advice . . . well, I think that's all tied in together with the consideration, I guess, of Chapter 9, but I am a little concerned about that aspect being clarified because the same aspect has been called to attention by you people with respect to the LPNs and I'm just wondering whether there is a parallelism there.

MR. CHAIRMAN: Miss Tod.

MISS TOD: As this section applies to the MARN, we have the expertise within our membership. Our argument in regard to the advisory council and the LPNs. Our argument was that the LPNs do not have the expertise within their membership to develop or design or evaluate curriculum. That requires somebody who has a university education and special preparation in the development of curriculum. I repeat, we do have that expertise.

MR. FILMON: But not all of your membership have university education.

MISS TOD: I didn't say that; I said we do have the expertise, those who have the necessary qualifications to do it.

MR. FILMON: But the composition of the advisory council, or the board, as I read it, is not guaranteed to be made up of only people with university education.

MISS TOD: You are right.

MR. FILMON: It is not only going to be those with university education who will be making the decisions. In fact, both in the composition of the advisory council and in the composition of your board, a majority may not have university education and be making those decisions. It is not something, I think that necessarily needs to be discussed here, but I think it's got to come out at some point.

MR. CHAIRMAN: Are we ready to go on to the next topic, Section 6?

MR. CHERNIACK: I am wondering why that is needed at all. Is this a statutory office that they have? Surely the board shall have the power to appoint such officers or servants as it deems necessary. I am wondering why they are required to have these two offices, whereas the LPNs must have one officer. I am just wondering why it isn't general; it seems to me a self-governing body should be allowed to appoint and hire at their expense, whatever officers they require. I am wondering why the need for this.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: I guess the registrar, Mr. Chairman, is the one that is required because it is defined under the Act as the . . .

MR. CHERNIACK: Yes, I see that.

MR. FILMON: I don't know, but the Executive Director, of course, is just one of a number of officers you may have, sir.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, it is for the same reason that the Executive Director is named, because in the discipline proceedings, the Executive Director is referred to and so it had to be defined.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, could we just make a note that I'm going to question why the Executive Director is mentioned in the discipline proceedings, so that maybe it will be not necessary.

But that's your reason for putting them in, because they both are referred to elsewhere in the Act?

MR. CHAIRMAN: 6 agreed, on this first run-through? (Agreed)

Okay, we go on to the next section. Memberships pass.

MR. CHERNIACK: 7(3) Mr. Chairman . . . nothing before that.

I want to suggest the safeguard, which should never be necessary, but which has become standard in many forms of legislation: No person shall be refused registration by reason of race, nationality, religion, colour, sex, age, marital status or ethnic or national origin or political beliefs or family status. I wonder if there is any objection to that.

The human rights legislation does not cover it, because human rights deals with accommodation and with employment and just seems to me that this

is a principle of human rights that belongs in such legislation. I wonder if there is any objection to it.

MR. FILMON: . . . be adding it this section then?

MR. CHERNIACK: No, I think it could be — well, that's a matter for wording. I thought it would come after 3, and maybe part of it. Maybe a separate one. That's up to Mr. Balkaran.

MR. CHAIRMAN: 7(3) pass; 7.4 pass.

MR. CHERNIACK: Mr. Chairman, could I get a reaction?

MR. CHAIRMAN: On 7(3)?

MR. CHERNIACK: No, on my suggested addition.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I have no objection to it but I don't think it is necessary. I don't know what MARN's point of view would be on it, but the regulations clearly spell out the requisites for entitlement to admission as a member of the association, and those requisites are based entirely upon the educational qualifications of that person, and nobody cares where they come from or who they are or what church they go to. I don't see why we have to clutter the Act with additional verbiage. But if Mr. Cherniack is concerned that there may be some unsavory kind of discrimination practiced, then I'm as opposed to that as he is and I will not oppose his proposal.

MR. CHERNIACK: Mr. Chairman, if Mr. Sherman is calling for a response, I would say that there is nothing in the Act which confirms that the regulations or the actions may not permit such forms of discrimination. You know, we are talking about regulations which aren't being enacted. The Act is being enacted. I think, as I said earlier, that it is a commendable principle of human rights that should belong in a self-regulating constitution, and I'm glad Mr. Sherman does not object to its inclusion.

MR. CHAIRMAN: 7(3) agreed?
Mr. Filmon.

MR. FILMON: Could we ask the MARN if they have any concerns about it?

MR. CHAIRMAN: Miss Tod.

MISS TOD: We would agree with Mr. Sherman. We don't believe it is necessary but we would not object.

MR. CHAIRMAN: 7(3) agreed; 7(4) agreed; 8(1) agreed; 8(2) agreed; 9 agreed; 10(1) agreed; 10(2) agreed; 11 agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I am just reading a note, in my handwriting, which I don't understand. I can read it; it says: How differs from 15, but I haven't looked at 15, so I don't know the answer, or even why my question is being posed. They both deal with conditional registration, I see.

Now I understand why I asked the question; I don't see the difference.

MR. CHAIRMAN: Mr. Sinclair.

MR. MICHAEL SINCLAIR: Mr. Chairman, Section 11 prohibits a person who has a conditional certificate from doing anything which is prohibited by that certificate. Section 15 merely sets up a roster where those conditions can be recorded so that there will be evidence of what the limitations imposed on that person are.

The whole intention of these sections is that where a person is found in a discipline proceeding, for example, to have some problem and that problem would otherwise disqualify them — I'm sorry — or where the choice was from disqualifying them entirely from practising or limiting them to something that they could safely carry out, that the association should have the power to allow the people to continue to practise but at the same time protect the public by limiting that practice.

Now Section 11 says that any person who is in that situation shall not do that which they're forbidden and Section 15 sets up the roster where the particulars of the conditions imposed are recorded.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't think it's important to me, but Section 11 does say that the limitations shall be entered in the roster against the name of the person, so to me they're redundant. But on the other hand I don't see any conflict between them, so although I don't see the sense to having both there, if Mr. Sinclair does and Mr. Balkaran agrees, then fine, go ahead. I still don't see it, but it doesn't really matter, does it?

MR. CHAIRMAN: Sections 11, 12, 13, 15 and 16 (Agreed); 17(a) — Mr. Cherniack.

MR. CHERNIACK: I think it's rather important that we consider the obligation of the third party of an employer who does not presume to have knowledge and access to the thinking or decisions of the board, and yet I recognize of course that we want that employer to make sure that if he employs an RN, that indeed that RN is registered. I inserted the words in (a) "shall ensure that at the time of employment the person is duly registered." It seems to me that that's the time when the employer can say, let's have your certificate of continuing registration, but if subsequently that person, for some reason or other, loses the qualification, I think the obligation then becomes that of MARN to inform the employer, otherwise how can the employer continue to know that the person is duly registered. So I thought for the protection of that employer — and we are dealing with what is a criminal offence — and you know I'm quite open to discussion of what it should be, I thought the words "shall ensure that at the time of employment the person is duly registered."

MR. CHAIRMAN: 17(a)?

MR. CHERNIACK: Yes, that's okay.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, the only reason I signalled at interruption was, I would like to have the comments of the MARN on that point, if they're concerned.

MR. SHERMAN: They approved it? Oh, I'm sorry, Mr. Chairman.

MR. CHERNIACK: That's better for the record anyway.

MR. CHAIRMAN: 17(a) agreed; 17(b) — Mr. Cherniack.

MR. CHERNIACK: I understand that, that where there is a termination because of misconduct, incompetence or incapacity, the board should know about it. However, I think that where the employer discharges an employee because the employer believes that there was misconduct, incompetence or incapacity and so informs the MARN, I think there should be a requirement that the member be notified by the employer who actually have a copy of what the employer told MARN, so the member can then go to MARN and say, hey, that cloud on my record is not properly there, and be entitled to some kind of a hearing, that it's only a natural justice that there shouldn't be something on a record which is not there with the knowledge of the person affected. Now I wonder if there is some way that we can ensure that the employer does this. I assume MARN might or might not take action depending on the nature of the accusation by the employer.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I think the point is well taken, and something in the order, "shall report the matter to the board forthwith and provide a copy of such report to the member."

MR. CHAIRMAN: All right. 17(b) agreed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I think I would assume that once the member is informed of that, then the member has her own recourse of going to the board and complaining, but I think it's sufficient that the member knows it. I'd just like to get concurrence that the procedures in the MARN would be such that there is a method whereby the member could come to the MARN and say, hey, do something about this.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Thank you, Mr. Chairman. Just for Mr. Balkaran to consider in that, I've referred to "and provide a copy of such report to the member," perhaps where subparagraph (b) commences it should read, "where a member's employment is terminated" so that it's consistent.

MR. CHERNIACK: Yes.

MR. CHAIRMAN: 17(b) (Agreed); 18 agreed — Mr. Cherniack.

MR. CHERNIACK: 18, Mr. Chairman, I think that's a tremendous imposition on a person, a compulsion on a member to be an informer. Am I right? Is that the section I'm concerned about? No, that's not right. We will come later to the informing section. But on this one my note was, why you must say that it's guilty of an offence. Somewhere or other it says "any infraction is an offence" or something like that. It seems to me that there may be cases where it would be considered a disciplinary matter by the board rather than a criminal matter which must be prosecuted, and I think the discretion should lie with the MARN to determine whether it should be disciplinary rather than criminal. But the way I see it the legislation says, "it is an offence" — and I honestly don't know why it's necessary to say that, or what is the effect of saying, "is guilty of an offence." I just thought that if it stops with the words, "as recorded in the roster" would be sufficient and then would leave the discretion with the board or the discipline committee to determine whether it's an unethical, unprofessional conduct or disciplinary or criminal.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I don't think, Mr. Cherniack, there is any provision except that provision which prevents a person from . . . When we get back to Section 11 and I'll certainly look at Section 11 and at Section 15 and at this section, again, Mr. Cherniack, and maybe we shouldn't take the time now. But Section 11 says that a person holding a conditional certificate may hold theirself out as a registered nurse and practise subject to the conditions and limitations. There is no express negative there.

MR. CHERNIACK: No, I understand. I don't quarrel with 18. I'm just wondering about why it wouldn't be better just to delete the words "is guilty of an offence". You can just say no person's name is entered, shall . . .

MR. SINCLAIR: We have to change that.

MR. CHERNIACK: I see. Yes, all right. Mr. Chairman, as long as Mr. Sinclair understands my question and relates that to 51(1), which says contravention is an offence. If you will consider why it's necessary and maybe Mr. Balkaran and he can inform us as to the need for this section.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Incidentally, on 15 and 11 because we were questioning the difference between the two of them, in reading it over again, 15 defines what conditional registration is and 11 outlines the rights of a holder of a conditional certificate to practice. So there is a slight difference in the two.

MR. CHERNIACK: I think it's awkward from the . . .

MR. CHAIRMAN: 18 (Agreed); 19 (Agreed); 20 is agreed? Mr. Cherniack.

MR. CHERNIACK: Just a moment, Mr. Chairman, I have a note about that. I guess my question again is why is it necessary to say they are going to take offence?

MR. SINCLAIR: Under 19?

MR. CHERNIACK: Yes.

MR. CHAIRMAN: 19, agreed?

MR. CHERNIACK: I'm just wondering, Mr. Chairman, why it isn't included under Section 17 where we deal with the employer's responsibilities? Why deal with conditional? That's probably a drafting question. I don't quarrel with the intent; it seems to me it ought to be one section that deals with employer's responsibilities. It's sort of separated here and, again, I would like to leave that to Mr. Balkaran to look at, at his leisure, and tell us rather than take up the time now to discuss it.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Balkaran may have an opinion on it right now.

MR. CHERNIACK: Sure, fine.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: I'm not so sure what the concern is, Mr. Chairman. Perhaps if I could have Mr. Cherniack express that again.

MR. CHERNIACK: There is a requirement in 17 setting out employer's responsibilities. I should assume that if the employer does not comply with Section 17, then it's an offence under the Act, under Section 51, which says so. My question is why should 19 stand separate from 17? Why shouldn't it be part of 17 to say every person who employs a registered nurse whose name is entered in the roster, holding conditional certificate, shall not cause or knowingly permit, or aid, or abet that person to violate? Why is it necessary to say is guilty of an offence? I don't understand it, and that's why it seems to me that even if it's necessary, then it should be part of 17, rather than be separated by 18. In other words, it should be clearly established. This is the section dealing with employer's responsibilities. The employer shouldn't have to grope through the Act looking for what the responsibilities are. It's really technical, I guess, and I shouldn't press it because it's not my concern.

MR. BALKARAN: 17, as I read it, Mr. Chairman, deals with the employment of a registered nurse; I suppose one whose name is on the active practice in the roster. 19 goes on to separate the person who is holding a conditional certificate. If you have conditions imposed on you and employees deliberately aiding and abetting you to violate and break those terms and conditions, then the proposed Act is saying that you are guilty of an offence, like aiding and abetting a commission of any other offence. I see two different substance of provisions here.

MR. CHERNIACK: Suppose under 17 the employer does not ensure that the person is registered or does not notify the report to the board of termination because of incompetence; isn't that an offence?

MR. BALKARAN: It may very well be. If there is a general offence section, Mr. Chairman.

MR. CHERNIACK: Yes.

MR. BALKARAN: I think there is something here which . . .

MR. CHERNIACK: 51(1).

MR. BALKARAN: Yes, you're probably right, Mr. Cherniack. That's right.

MR. CHERNIACK: Well, that's all I'm saying. If you would look at that, I don't care what your decision is, I just thought it would be more orderly to have them together packaged.

MR. CHAIRMAN: 19 (Agreed); 20 (Agreed); 21 (Agreed).

Part IV, complaints committee. 22(a), agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I compared that with RPN and I didn't quite know why there is a difference. I don't know why they have to be the same. On the other hand, why shouldn't they be the same? Mr. Chairman, two members of the association, the RPNs and three of the association in the RNs, two lay members in the RPNs and three in the — it doesn't really matter. I'm just looking for some sense of uniformity.

MR. SINCLAIR: A larger association, so I'm sure that you might have more people in a larger association.

MR. CHERNIACK: I don't think that's valid because you're really dealing with one infraction, one person infracting. I don't think it matters how many are in the association, but if the Minister doesn't care about the uniformity, I don't think I care.

MR. CHAIRMAN: 22(a), agreed?

Mr. Sherman.

MR. SHERMAN: I don't subscribe generally, Mr. Chairman, to too much uniformity.

MR. CHAIRMAN: 22(a) (Agreed); 22(b) (Agreed); 22(c) (Agreed); 23(1) (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I believe that when there is a complaint that it ought to bear the responsibility of it having been put in writing and I would suggest that it ought to be. The words in writing should be inserted after the word "member". The complaints committee shall receive and review complaints brought against any member in writing. It seems to me that there should not be a casual phone call that starts a whole machinery in action.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I would agree with that, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, that would apply in the RPN Bill, too, then.

MR. CHERNIACK: Yes, in the RPN, it's even worse, Mr. Chairman. There it says "either written or verbal',' and I have a note that we ought to delete "or verbal".

MR. CHAIRMAN: 23(1) — Mr. Ransom.

MR. RANSOM: Mr. Chairman, just a minute, please. Who would be making those complaints?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: It could, for example, be a patient who had a complaint against a member.

MR. FILMON: It could be a fellow member or be an employer?

MR. SINCLAIR: Or it could be a fellow member. For example, a member might know that another member is alcoholic or stealing drugs, or doing any sort of thing.

MR. RANSOM: It strikes me that perhaps there is a purpose here. It's headed Informal Resolution of Complaint, which would seem to indicate to me that they wanted some mechanism of examining a complaint that might be made by a person who wouldn't make the complaint if they had to put it in writing and the problem might be allowed to develop further that might otherwise be dealt with and resolved informally.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, I think the intention was that the resolution was to be informal but the complaint, I think in fairness has to be formal or else it could be very . . . It's like an anonymous phone call; what credence do you put in it?

MR. CHAIRMAN: 23(1) agreed — Mr. Ransom.

MR. RANSOM: On that point, Mr. Chairman, in responding to Mr. Filmon, I wondered if, because of the anonymous phone call received in the building tonight, that we chose to ignore it.

MR. CHERNIACK: Likely.

MR. CHAIRMAN: I'm looking for the committee's guidance. I guess we haven't come to an agreement.
Mr. Ransom.

MR. RANSOM: I guess my question to the MARN representatives would be, was that an intention to deal with that sort of situation or not? If it wasn't, then Mr. Cherniack is correct, I think, in his observation.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I think, Mr. Chairman, that the practice with all self-governing associations is to deal only with written complaints and it wasn't intended that this complaint committee should have to act on complaints which were not written, which is not to say that if the complaints committee did receive a complaint verbally, which a member of the complaints committee wanted to reduce to writing, that they would pursue it; but in that case it would be the member of the complaints committee who would reduce the complaint to write in himself or herself.

MR. CHAIRMAN: 23(1) (Agreed as explained); 23(2) (Agreed); 24 (Agreed).
Part V, Investigation Chairman. 25 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I can't help but offer the MARN an opportunity to change that word to "chairperson".

MR. BALKARAN: How about the heading?

MR. FILMON: Chairman is still accepted.

MR. CHERNIACK: I'm asking them. The whole Act says "she", except in one place.

MR. CHAIRMAN: Miss Tod.

MISS TOD: We would accept that wording.

MR. CHERNIACK: Good, thank you.

MR. SHERMAN: That doesn't say, Mr. Chairman, that the government accepts it. The term "chairman" is a well accepted, well established term that implies the leadership of a particular body, whether male of female. So we would want to think about that and there may well be a male investigation chairman of the . . .

MR. CHERNIACK: Of course, Mr. Chairperson.

MR. CHAIRMAN: Mr. Adam.

MR. A.R. (Pete) ADAM (Ste. Rose): Mr. Chairman, then you would have to, I suppose, remove it in the other areas where it does appear.

MR. FILMON: We would have to change all of our bills in the Legislature.

MR. ADAM: It appears twice in . . .

MR. CHERNIACK: They are going to think about it.

MR. BALKARAN: What do we do about 500 Acts, Mr. Adam? Revise . . .

MR. CHERNIACK: Oh, that's nonsense.
I'm not sure and, again, I was comparing with the RPNs, the LPN has a different wording where the complaints committee is advised that a member has been convicted of an indictable offence. Do we have to say is advised by somebody, because the LPN draft says, "where the committee has formed the

opinion that a member", etc.? I don't know what the legal implication of the difference in wording is. I'm asking Mr. Balkaran or Mr. Sinclair whether there is any significance to that difference.

MR. SINCLAIR: Can we have that question repeated, please, Mr. Cherniack?

MR. CHERNIACK: Looking at the LPN, it says, "where in the opinion of the complaints committee, a member," etc., etc. Here it says where the complaints committee is advised that, which makes it appear that the complaints committee doesn't have to agree with a conclusion, but is just advised of that conclusion. Now I don't know really what the legal implication is but we're going to be looking at the LPN which says, where in the opinion of the complaints committee, a member has done so and so, and there is that distinction in wording. I don't pretend to know the implication, although it seems to me that there is a greater responsibility placed on the complaints committee in the LPN description of, where they are of the opinion that, rather than in this bill which sort of makes it automatic, as long as they're told, then boom, they shall refer. You know I may be reading too much into it.

MR. BALKARAN: I wonder, Mr. Chairman, if in Bill 65, the words "The complaints committee is advised that" were struck out, and in Bill 66 the words "in the opinion of the complaints committee" were struck out and in 87 "the complaints committee is advised that". So that in each case it would read "where a member is guilty of and has done so and so, etc. etc.". If that would satisfy Mr. Cherniack and the committee.

MR. CHERNIACK: It's whatever you think is right, Andy.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Sorry, Mr. Chairman. Mr. Balkaran, that would read "where" — the first would just simply be "where" and then you'd go (a), (b), (c)?

MR. BALKARAN: No where a member.

MR. SINCLAIR: "Where a member, (a), (b), (c)" but whose going to make the decision as to whether a member is guilty of professional misconduct?

MR. BALKARAN: That's a question of fact, Mr. Chairman, and if . . .

MR. SINCLAIR: But someone has to adjudicate that. The reason, Mr. Cherniack, that the Registered Nurses Act reads as it does, is exactly what you read into it. It is the feeling of MARN that the complaints committee, where it has been advised, has received a complaint of this serious a nature, that the investigation chairman should be obliged to follow it up, and that it shouldn't be just dealt with informally. So that type of complaint could not be dealt with informally. There would have to be an investigation, that is the intention.

MR. BALKARAN: Mr. Chairman, at the risk of — and I've got to be very careful not to engage in political debate. The action by that committee then would be predicated on the advice of some person, but if no person volunteers that advice, can the committee not act on its own where it has that information? That is why I made the suggestion to where a member has done (a), (b) and (c), the committee may refer the matter to the investigation chairman. Those are questions of fact in (a), (b), (c).

MR. FILMON: (a) and (b) are questions of fact, but (c) isn't, so there is some . . .

MR. SINCLAIR: Mr. Chairman, if it is of assistance, I think MARN would be happy with either wording, where the complaints committee is advised that a member. They've adopted that wording because they thought that was a better wording but we have no objection to the wording used in the Licensed Practical Nurses Act, which is the original form that this appeared in the RPNs Act as well.

MR. CHERNIACK: You don't like it?

MR. BALKARAN: That's worse.

MR. SINCLAIR: The intention here is that if the complaints committee is advised of this sort of situation, that there's an obligation on the investigation chairman to look into that situation, and it can't be dealt with informally.

MR. FILMON: I'm concerned with that because I wonder then who advises on (c) . . . have demonstrated incapacity or unfitness to practise nursing. That's got to be something that has to come out of an investigation of some sort.

MR. SINCLAIR: Mr. Chairman, if I might. What's intended here is really a continuation of the provisions which relate to the complaints committee. The complaints committee is to receive and review complaints and 26 is intended as a follow-up to that, that where the complaint made to the complaints committee is of this type of thing, it cannot be dealt with informally under Part IV. Now that's the intent of the section.

MR. FILMON: I think the only one that is operative, Mr. Chairman, is, where in the opinion of the complaints committee, because certainly (c) involves an opinion. (a) and (b) could be statements of fact.

MR. SINCLAIR: I think, Mr. Chairman, (b) involves an opinion too.

MR. BALKARAN: Mr. Chairman, the difficulty I have with the phrase "in the opinion of the committee" is, how does a committee hold an opinion with respect to a conviction? A conviction's a conviction's a conviction. How do you form an opinion about that?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Well, Mr. Balkaran, perhaps you and I could have another go at this?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, it seems to me that the wording is adequate and accurate, the way it appears in 65, not in 87. The fact is that the complaints committee has to be advised of any kind of complaint. That doesn't preclude their getting their advice from, if you like, the media, and initiating a move to the investigation chairman on their own. They don't have to have had a written complaint from somebody to do that, it's obvious. But on both (b) and (c) they would have to have received a complaint from somebody, as Mr. Sinclair pointed out, which is provided for in 23(1) under Part IV, and in all cases, the complaints committee surely has to be advised of any alleged infraction or wrongdoing. Some of them will be of a nature that can be resolved informally. These are much more serious. If somebody writes to the complaints committee alleging professional misconduct on the part of an RN or alleging incapacity to practice nursing in a fit manner, those surely are serious enough to go to the investigation chairman, and they would have gone to the complaints committee in the first place, in a written complaint; that is the mechanism of advising the committee. So I fail to see where the difficulty comes in, in terms of accepting the wording as it appears?

MR. FILMON: Okay, I'll take one more run at it. Isn't it, where the complaints committee believes that a member (a), (b), (c), they refer this to the investigative chairman?

MR. SHERMAN: Is Mr. Filmon putting that question to me?

MR. FILMON: Or has reason to believe. Isn't that really what we're meaning? Because I still am uncomfortable with this business of advice.

MR. SHERMAN: Mr. Chairman, I don't think, in terms of (b) or (c) that that is necessarily true. That could be true in the case of (a), because you could, as I said, pick up your newspaper and read that an RN has been convicted of an indictable offence, you're a member of the complaints committee, you don't need any other kind of advice to huddle with your colleagues and decide to refer the matter to the investigation chairman. But on (b) and (c), there would have to be a complaint to the complaints committee, now, in writing, as Mr. Cherniack has requested, and as has been accepted, which complains that somebody is guilty of, or has demonstrated incapacity. That's the way I read it.

MR. FILMON: But you see the procedure of all these Acts and the discipline procedure is an attempt at informal resolution by a complaints committee. If that leads to an indication that it must be investigated further, the complaints committee refers it to the investigating chairman. If the investigating chairman finds that there is grounds for a full hearing, full-blown disciplinary hearing, he then makes the recommendation for the full-blown disciplinary hearing; so, in fact, it has to be that the complaints committee believes certain things to require the reference to the investigative chairman. So I believe that that's the way it should be. I stand to be corrected.

MR. CHAIRMAN: Mr. Balkaran.

MR. SHERMAN: I'm sorry, Mr. Chairman. That's true but I think that's covered in 23(1) where the complaints committee does such and such, where the committee considers it appropriate. Obviously there will be some cases that one would consider inappropriate to go to the investigation chairman with, and others in which it would be appropriate to go to the investigation chairman. And in the case of 26(b) or (c), certainly in the case of 26(a), but I submit also in the case of 26(b) or (c), those are complaints in which it is appropriate to go to the investigation chairman.

MR. BALKARAN: Mr. Chairman, at the risk of disagreeing with the Minister somewhat, that procedure is triggered by the advice or information of some person, to the committee. But what if a member of the committee itself has some knowledge, how do you utilize 26, to have that committee refer it now to an investigating chairman? So it seems to me you have to expand the phrase "where the complaints committee is advised, or any member thereof has knowledge, or has reason to believe that a member has (a), (b), (c)." Seems to me that would take care of almost all the circumstances under which the clauses (a), (b) and (c) will then be subject of an investigation by an investigation chairman.

MR. SHERMAN: Well, Mr. Chairman, at the risk of disagreeing with Mr. Balkaran, is he suggesting that seven of us sitting around this room, are members of the complaints committee, and one of us knows that there is one of these alleged offences or difficulties of a serious nature, where an RN is concerned, and that we are not going to advise our fellow members, and if it has to be put in a written memo, it has to be put in a written memo, but I just don't see that that creates any great difficulty, but I don't want to hold the committee up on this point.

MR. CHAIRMAN: If I may say, at the risk of interrupting the debate here, may I get the members of the committee to commit to having Legal Counsel take another look at this section here and rewording it, bringing it back when we — or is the Minister satisfied?

MR. SHERMAN: Well, I'm satisfied with the wording but a number of members of the committee aren't, Mr. Chairman, so I agree that it should go to Legislative Counsel for consideration.

MR. CHAIRMAN: Agreed? 26(a), (b), (c) agreed. 27. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I do have a concern about conduct unbecoming a member otherwise than in the professional capacity. I just wonder is that a proper charge? Professional misconduct, of course. Conduct unbecoming a member in a professional capacity, of course. Conduct unbecoming a member otherwise than in a professional capacity, is that something that should be a matter of review, concern, or investigation by a professional body? You know, somewhere they have and I frankly don't like it. Because it is very

udgmental. In their regulations, an applicant must be a person of good moral character. That's a pretty oose definition. And here we're saying, conduct unbecoming a member otherwise than in a professional capacity. I'd like some example of what the experience of the MARN is, with people who have been found guilty of conduct unbecoming a member other than in a professional capacity and why they justify its inclusion here?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, this is directed towards the type of activity carried on by a member, not during the course of their employment, but which affects their ability. For example, drug addiction, the person is addicted to drugs; it's not really something they do in their professional capacity.

MR. CHERNIACK: It's No. (c) for sure. I'm sorry.

MR. SINCLAIR: Yes. I don't have a ready example then, Mr. Cherniack. I can, for example though . . .

MR. CHERNIACK: Mr. Chairman, I'd like to let this rest but I would like to come back to whether or not we should delete the words "or otherwise". I really think that gives a pretty broad scope. After all, again, this kind of investigation has the same effect as a criminal investigation has amongst the members whose job is at stake and I'd like to think that there isn't an avenue open for . . . Why should I suggest what could be done? The fact is that Mr. Sinclair is not aware of a case, an example he can give us where they ought to have that right and, rather than press it at this stage, I'm willing to let it go. But I would like consideration given to the need to include that "or otherwise".

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: About the only traditional point I bring to bear for consideration by Mr. Cherniack on that point, Mr. Chairman, is that certainly it's my understanding that the College of Physicians and Surgeons, a council of the college operates in that manner, that medical practitioners are expected to maintain and observe a standard of good conduct and activity that at all times are becoming to the profession.

Now, Mr. Cherniack may say that that's too severe but it's my understanding that that's the way it is and so I don't see that this is a dangerous kind of proposition in any way but I just note that for the record, Mr. Chairman.

MR. CHAIRMAN: Mr. Blake.

MR. BLAKE: Mr. Chairman, I don't think it's that important and maybe we shouldn't dwell on it that long or make an issue out of it but I think obviously there are some areas that aren't covered in the other section of the Act, otherwise this would not be in there. There has to be a reason for it and I know that if we search long enough we could find reasons for finding someone guilty of professional misconduct. I don't want to get into it but I know there are reasons. I think that's why it's there and I think it should remain there.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I agree that when you find a case of professional misconduct, then of course. I'm talking about conduct as considered to be unbecoming of a member that has nothing to do with the professional capacity. I would be quite prepared to let it rest as well, hoping that MARN can come back when we deal with it in specific and give us some . . . Well, they must have, in all their years of being in existence and dealing with disciplinary measures, either had cases that would indicate the need for that or agree that it shouldn't be there because then maybe we've searched and not found a reason for that. The fact that the doctors have it may also be an archaic one and I don't know that they impose it or use it. I don't think it should be described as a kind of a crime and that's what I think it does describe. So I'm willing to let it go here but I do hope that the MARN, if they believe that it should be there, can support it with examples of what they think would be relevant.

MR. CHAIRMAN: 26(b) (agreed on condition); 26(c) (Agreed); 27 agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the RPNs have a phrase which is not in this section and again not having been privy to what is the pro forma legislation — I don't know whether it was deliberately ommitted or not — but if you look at Section 27 and let me read to you what the RPN says: On referral from the complaints committee the investigation chairman shall direct that a preliminary investigation of the matter be held by the registrar or such other person as the investigation Chairman sees fit.

The LPN says: Upon referral of a matter from the complaints committee the investigation chairman shall conduct a preliminary investigation or direct a preliminary investigation into the matter be held by the executive director or the registrar".

In the RPN, it says, the investigation chairman should do what apparently is his title, shall conduct an investigation or direct that it be done by somebody else. Here it does not give the investigation chairman the responsibility of investigating. It says he shall direct that the investigation be conducted by the executive director or registrar or such other appointee.

Mr. Chairman, I find it odd that employees of the organization who are there, I presume, to service the membership in the best interests of the organization, should become investigators and therefore eventually judges — I don't mean final judges but reporters on service — and I don't know just where to relate it. I certainly think in this Legislature we would not give to any of the servants of the Legislature the task of investigating a member. I think really it should be a peer or a specialist. I can understand — it's not really self-serving to suggest I can understand — their saying to a lawyer, this is the kind of matter that we think you ought to investigate but certainly I think it is more correct to say to a member of the committee whose responsibility is achieved by elective office, you should do that job of investigation, rather than give it to what I call the employee of the organization.

I'm very sure it doesn't apply in The Law Society Act which doesn't it necessarily wrong. I don't know how it's done in The Medical Act but it seems to me it's not a good idea. I think that the person who is the registrar should be very objective. The executive director should stand back and record what is happening and see that meetings are held and see that actions are maintained but should not become a detective, an investigator, a recommender. It just seems to me to be sort of offensive to the principle of the role of an employee of an organization in investigating a member of the organization.

MR. CHAIRMAN: 27 (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I've made my statement. I haven't heard a response and we can put it down as being something we have yet to look at it. I'm wondering, I said I have not seen the pro forma but the RPNs say the investigating Chairman shall conduct a preliminary investigation or direct that somebody else shall. Now, that's ommitted from here.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, I wonder how far Mr. Cherniack wanted to go. I would think that certainly it was just an oversight to have not said that the investigating chairman should be able to conduct the investigation, but are you strongly pursuing the point that no employee should be able to?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm glad someone asked me. I believe they shouldn't do it but I don't want to say that the investigation chairman shouldn't have the authority to let them do it. I don't think he should use that authority but I would go to the wording of the RPN and just say that, "Upon referral the investigating Chairman shall conduct a preliminary investigation or shall direct" and then it's on the chairman's responsibility that someone else is doing it. I don't think it should be the legislation that tells the chairman who shall do it. Does that answer, Mr. Filmon?

MR. FILMON: Yes, right on. Is that any problem for any of the groups?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, Mr. Cherniack has raised a point and I think that there are a number of us who would like a chance to think about it. So I suggest that that is a clause that we will have to come back to.

MR. CHAIRMAN: 27, agreed that we come back to this clause? (Agreed); 28(a) (Agreed); 28(b) (Agreed); 29 agreed — Mr. Cherniack.

MR. CHERNIACK: On 29, I am concerned about ex-parte orders. I'm concerned about somebody going to a judge and getting a subpeona, the right to seize records, look at books, and I have some concern about looking at the books and records of a member, "or other person" means that the investigating chairman can go to a judge and on an ex-parte application which means, without notice of any kind to that other person — that's a person outside of the organization — to get an order to order them to produce books, documents or others.

I'm wondering whether this is just a clause that's picked up and accepted or whether Mr. Sinclair is aware of any occasion when it has proven to be necessary so to do. My own feeling is, I really would like to take out the words, "or person or other person", as they appear in the third line and the sixth or seventh line or take out the "ex parte" and say that when a judge is satisfied that there is need for secrecy — that is for no notice though, the need that something may be destroyed and therefore rush into it — then the judge should waive notice. It's a slightly different approach. I wonder if we can consider that.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Without addressing the matter of the approach, Mr. Chairman, I think that the necessity for investigating records or documents, or papers of others, involves the employer really going to the hospital or clinic and being able to examine their records of patient-care, for instance, where they involve a member against whom the complaint has been laid.

MR. CHERNIACK: Or a doctor or a patient.

MR. FILMON: Yes. But as to the method, not being a lawyer, I'm not familiar with the procedure that's been suggested.

MR. CHERNIACK: Mr. Chairman, may I just elaborate then? There are two ways of dealing with it. You can say, may summarily apply, and I think then a judge will just grant it on without notice, or say that notice may be waived upon a case being made to the judge and I think the judge would then say, well, give me an affidavit setting out why I should not give notice to that person before I give the order. That's technical but I think there's a matter of principle of notice being given of an act that's going to be done and I'd like it that way, rather than this way.

MR. FILMON: Because this provision is similar in various Medical Acts in which I've been involved, I have had that discussion with respect to The Medical Act and I was told that a judge would require some convincing before he would do this sort of thing. I stand to be corrected, because I asked the same thing, would a judge automatically do it or does he require evidence that it's required, and I was told that he would. Now, am I wrong in that, Mr. Sinclair, perhaps?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I don't think that this section requires the judge to do anything that he doesn't want to do and I think that you were advised correctly that on an ex-parte application the party applying would have to make a case to obtain the order that he is requesting. All this section does is

allow the right to make that application. The judges are very very protective of the civil rights of people, in my experience, and don't make this kind of order I think, without having some justification for it.

MR. CHERNIACK: Mr. Sinclair's on record. Okay.

MR. CHAIRMAN: 29 (Agreed); 30 agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'd like to read a section which I dug out of The Ontario Health Disciplines Act: "Except where the hearing" — and it applies to this as well — "is public, every person conversant with information that evidence relating to a matter under inquiry, or a hearing by a committee, including any person employed in making inquiry or investigation, and any member of the council or committee shall preserve confidentiality with respect to all matters that come to his knowledge in the course of his duties or employment and shall not communicate any such matters to any other person, except

(a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act of the regulations; (b) to his counsel; or (c) with the consent of the person to whom the information relates, that any person who violates is guilty of an offence." I don't see anywhere in any of these bills a requirement of confidentiality on the investigation chairman or on the discipline committee. I think it's, again, natural justice that they should be required; and where the investigation and hearings have not been in public, that there be a requirement that there should be confidentiality. I don't know if there is any opposition to it, but I would suggest that a clause such as this should be in all the acts. There is something like that in The Law Society Act. I know it says Section 42(12), which is here, if you want to see it.

Mr. Chairman, subject to subsection 13, which deals with publication: "No bencher or member shall disclose or publish outside the governing body or a committee thereof any information concerning an inquiry conducted under this section." It occurred to me to raise it at the stage where a judge may have given an order permitting the investigation chairman or the investigator to look at all kinds of documents which would be confidential. Can there be agreement that some such section should be worked into all these bits of legislation? Can there be any objection to confidentiality?

MR. CHAIRMAN: 30 agreed as suggested? (Agreed); 31, 32 and 33 (Agreed).

Part VI, Discipline Committee: 34(1)(a) (Agreed); 34(1)(b) agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, The RPN Act provides for a quorum in Section 34(1). I guess that's advisable. I would like to suggest that there be a requirement that none of these persons in the Discipline Committee shall have been involved in the investigation. I say that, Mr. Chairman, because 15 years ago I appeared before a professional body on behalf of a member and I found that the people who are hearing the complaints had also been involved in investigating it and it was a pretty sad affair. I think it's a legitimate addition.

MR. CHAIRMAN: 34(1)(b)?

MR. BALKARAN: Just a minute. What was the suggestion here, Mr. Chairman, please?

MR. CHAIRMAN: Could we have the question again, Mr. Cherniack.

MR. CHERNIACK: I've raised two points. One is, as in the RPN section, there is provision for a quorum making up the complaints' committee, according to my notes, and I think there ought to be a quorum set up. More important, I think that none of the members of the discipline committee shall have been involved in the investigation of the complaint that they are considering.

MR. BALKARAN: What section of the bill are we in now, Mr. Chairman.

MR. CHAIRMAN: 34(1).

MR. CHERNIACK: If you look at the RPN, you will see that 35 says: "of whom five shall be a quorum," so I just think that belongs here, too. Of whom a certain number, any number, shall be a quorum, but I think it should be more than half because this is a very serious task they've got there — a discipline committee — I think they should all be there, or almost all of them should be present at a hearing. So I'm suggesting, as in the RPN, it says, of whom, let's say four, shall be a quorum. That's one point I'm making. Shall I leave it until that point is considered?

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, if I would understand the procedure, generally speaking, if that provision is in, that wouldn't prevent the investigating chairman, or whoever did the investigation, from reporting to that committee and participating in it, or would you say that it would just submit a written report and would not be there to be cross-examined, shall we say, by the discipline committee.

MR. CHERNIACK: No, he would then be giving evidence and advising, but it would not be a member of the committee itself that makes the decision. That's the other point. You see, I shouldn't have made the both points at the same time. The first point was, I think that, as in The RPN Act, it should say at the end of 34(1) "of whom four shall be a quorum" just to make sure that there is a good attendance. That's the one point. The other point is just that none of the members of this discipline committee shall have been involved in the investigation, so that they will be like any court would be, brand new to this complaint.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: Mr. Chairman, the reference to the quorum is in Bill 66, The Registered Psychiatric Nurses, rather than in Bill 87.

MR. CHERNIACK: I said RPN. I said the RPN.

MR. RANSOM: I thought maybe Mr. Balkaran didn't catch . . .

MR. CHERNIACK: Oh, thanks.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I don't have any difficulty with either of those proposals.

MR. CHAIRMAN: 34(1)(b) agreed to, as recommended; 34(2) (Agreed); 34(3) agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't know if it's necessary, but for the same example that I gave about a 15-year-ago case, I found that the solicitor of that association not only conducted the prosecution but then sat in in-camera when they made their decision. I think that the association solicitor may of course participate, but he should not be involved in the prosecution of the charge. I say that, because although you may think it unthinkable, the fact is it happened to me. I saw it happen and I'm wondering — Mr. Sinclair should I think agree with that: "but shall not vote thereat or have participated in the investigation or . . ."

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I do agree with that.

MR. CHAIRMAN: 34(3), agreed to, as recommended; 35 (Agreed); 36(1) agreed — Mr. Adam.

MR. ADAM: There is a difference there with the two acts fixing the date of an inquiry. In Bill 65, there is no requirment when an inquiry shall take place. In the other Act, where the investigation chairman directs that an inquiry be held into the conduct of the member or where the discipline committee decides to hold an inquiry into the conduct of a member, the discipline committee shall within 30 days fix a date and time and place for holding the inquiry, whereas in Bill 65, it just leaves it open. It could go on and on and on and have a member being held up for months. I don't think it would happen, but there is no protection there. I wonder if we could get an explanation.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: And the RPN specified 30 days, eh? Mr. Adam makes a very good point, but I think are also going to have to look at 37(1) in 66 because . . .

MR. ADAM: No, it says 31 days here.

MR. SHERMAN: All it says is the discipline committee shall within 30 days fix a date, time and place for holding the inquiry, but it doesn't put any limit on when that date might be.

MR. CHERNIACK: Like it could 80 days afterwards.

MR. SHERMAN: It could be a year from now.

MR. ADAM: Yes, this is it.

MR. CHERNIACK: But it has to be not less than 30 days after.

MR. SHERMAN: Yes.

MR. CHERNIACK: It should be looked at — you're right.

MR. CHAIRMAN: 36(1) as suggested, agreed? (Agreed); 36(2) (Agreed); 36(3) (Agreed); 36(4) (Agreed); 36(5) (Agreed); 36(6), agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on 36(6) — one, is the wording. It says: "All hearings shall be in private unless the person whose conduct is the subject of inquiry applies to the board for a public hearing." My interpretation, not my legal interpretation, but just the wording means to me that there is an application but it does not necessarily have to be granted. I'd like to be assured that if the person wishes to have it in public, then it shall be in public. Maybe that was the intent but that's not quite the way I read it. I'd like to be assured, firstly, that it was the intent, and if it was, then that the wording could make it clear.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: All the hearings shall be held in private, unless a person applies, in which case it shall be held in public.

MR. CHERNIACK: I didn't say that. I don't want to have an argument. I want to know what is the principle. If we believe that the person has the right to have a public hearing, then the wording is a matter of . . .

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I think, Mr. Chairman, that there can be situations, where because of the nature of the complaint, that it's open to the board not to accept the application for a public hearing.

MR. CHERNIACK: Mr. Chairman, that's my interpretation, and I disagree with it. Our whole principle of justice is that justice has a right to be seen to be done, and it is in exceptional cases when a court will decide that it will be held in-camera because of special circumstances. But that's a judicial body that makes that decision and I honestly don't grant to the board or to this committee that discretion. I would somehow much rather feel that there has to be somebody from outside to say, yes, there's a special case here whereby it ought to be in secret. It seems to me, if I were charged, Mr. Chairman, I would like to make sure that I have a right that the charge be in the open so that justice appears to have been done.

Now I think that the kind of case that Mr. Sinclair might give us as an example — that's up to him — might be where they want to protect the complainant and, frankly, I don't think a complainant should have

a right to be protected because the complainant is in a much less precarious position than the person charged. I just think it's a matter of natural justice that there should be a public hearing if it is required by the person charged.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Thank you, Mr. Chairman. This discipline proceeding is a section which is provided to us under the guidelines and I don't hold any particular brief on the issue that Mr. Cherniack is addressing. I don't think the board of MARN cares one way or the other. I think that the concerns here that have to be weighed are the person making the complaint. The complaint, particularly with nursing, I can envisage situations where the complaint may be of a very private nature and at the same time, I appreciate what Mr. Cherniack says about the right to a public hearing and perhaps the compromise is that, if the board or if the complainant wants the hearing to be private, that there be an onus on the complainant to make application for an order of a court, allowing that.

MR. SHERMAN: Mr. Chairman, I think the whole question of confidentiality of patient records could well be involved in instances of this kind. Obviously there would be some hearings that did not involve or invade that area, but I would suggest that it's likely that there would be a great many that would. That certainly was my appreciation and understanding of the clause as it was originally proposed.

I think the concern of Mr. Cherniack is addressed, it would be discretionary on the part of the board, and the board's discretion, I think, would be based entirely on whether there was confidentiality of patient records involved. If there weren't then there could certainly be a public hearing. If there were I think that this is one of those instances where we have to settle for the lesser of two evils.

MR. CHERNIACK: Mr. Chairman, if any matter goes to court, let's say a charge of negligence, a civil action of negligence, forget the criminal aspect, then these patient records would be a matter of public information.

MR. SHERMAN: And it may well go to court.

MR. CHERNIACK: That was my next point. On appeal then there's no question it would be public, so if it would be public on appeal, then surely the protection that we appear to be concerned about would be denied. There is a compromise, and I'm not really pushing or looking for a compromise, but in all fairness let me tell you what the Law Society Act says, again I don't hold it up as the criteria. 42(10) reads, subject to subsection 11, "an enquiry held under this section shall be held in camera". I don't agree with that, Mr. Chairman, but that's what the Law Society says. Then it says, "where the member into whose conduct an inquiry is being made under this section, requests that the inquiry be open to members, the inquiry shall be open to members". So you see there is a sort of in-between position here.

They say that the person charged shall have the right to require that at least members of the association, that is the colleagues, the peers, should have a right to be present to hear what is being done, and that's where that confidentiality section I referred to earlier, could well apply. It would become a breach of professional conduct if a member of the association be present and hearing it breaches the confidentiality required. That's a compromise. I don't offer it as a compromise, I just say this is the way the Law Society acts.

My own belief is that charges of this nature are so serious, and the consequences are so serious, that a person should have the right to say, my trial should be in the open, at least, as the Law Society says, open to other members, so that I'm not — what is the word? — railroaded or pushed around. Now there are some cases that may exist. I think that the need for protection of the person accused should be paramount and supersede the need of the personal private life of a person who is not being charged. That's my belief.

MR. SHERMAN: Well, Mr. Chairman, I think there is a difference, perhaps there shouldn't be and perhaps the lawyers wouldn't agree, but I think there is a difference between confidentiality of medical records and confidentiality of an accused in the ordinary, normal course of events of a court action, a court case, a legal proceeding.

The MARN, as a health profession, subscribes to total adherence and attempts to observe total adherence to the principle of the inviolability of medical records, and patient records. I'm not saying that there are never any invasions of that, but I'm saying that that is the ideal, that is the objective as it is for the medical profession, and with respect, I submit that it is a much more important principle, a much more important institution in the health field, than it is in the case of everyday events, which are normally the subject of legal proceedings.

Now, having said that, I recognize that with the appeal procedure that's available here, these situations could wind up in court; at that point in time the confidentiality of medical records is, of course, threatened, but that is a compromise, if you like, that society has to make when a proceeding goes that far. But all the way up to that point, I think everybody in the health profession wants to protect that principle of confidentiality of medical records, and that's why the clause is here, and I must say, Mr. Chairman, that I would be opposed to changing it.

MR. FILMON: Mr. Chairman, isn't there any mechanism in disciplinary hearings into medical matters for the patient records to be considered on the basis that the name is not used, where they say, patient x is a white male Caucasian suffering from acute bronchial congestion, or something like, without ever identifying the patient? Is that not something that is possible in these procedures, so that there never needs to be that concern?

MR. SHERMAN: In answer to Mr. Filmon's question, the answer is, yes, Mr. Chairman, that is the case. That's often what is employed, certainly at hearings of the complaints committee of the College of Physicians and Surgeons, but there also are situations, instances, in which testimony, either

verbal or written, is required and in which it becomes impossible to protect that confidentiality. But, yes, certainly in many cases it can be done through designation of the kind that he describes.

MR. CHERNIACK: Should we set this aside? Is the matter yet to be agreed on?

MR. CHAIRMAN: Okay. 36(6) agreed to pass? — Mr. Filmon.

MR. FILMON: May I just, for clarification, understand, is it Mr. Cherniack's position that a person against whom a complaint has been made, must have the right for a public hearing of the complaint?

MR. CHERNIACK: Yes. Unless we could agree on "public to the members of the association", and then the confidentiality would go. But I do think that that person should have the right to say, I don't want to appear privately before a discipline committee, without others having a view as to what's going on and what biases may be taking place, or what kind of hearing I am receiving here. I think that that's inherent and, you know, basic, and I do distinguish between a discipline committee of a professional association, and a court, and a judge appointed in a different way. I see the difference. And therefore, yes, I do. And the reason I suggest a setting aside, is that Mr. Sherman expressed a pretty firm point of view and I want to let him think about it, if he will, but the reason I say, set it aside, is that if he continues to be firm I will bring in an amendment and we'll debate it and vote on it, and deal with it that way, but we're not at that stage yet.

MR. CHAIRMAN: 36(6)— agreed to pass at this time; 36(7) agreed; 36(8) agreed; — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, is there any doubt that the person or her counsel would have the right to review all documents and records that are about to be used at the hearing — any sort of preliminary preparation?

MR. SINCLAIR: That's certainly not specifically dealt with in the legislation, and I don't see any reason why the legislation shouldn't provide that right to examine such documents, prior to the hearing.

MR. CHERNIACK: Thank you. Could we then ask Mr. Balkaran to prepare a suggested addition along those lines?

MR. CHAIRMAN: Is that agreed?

MR. SHERMAN: That's on 36(8)?

MR. FILMON: What was the suggestion? Sorry.

MR. CHERNIACK: To the effect that the person whose conduct is subject of inquiry or her counsel or agent should have access, in advance, to such documents as may be used in the complaint hearings. Mr. Sinclair says he sees no reason why it can't be there. That's correct, Mr. Sinclair?

MR. SINCLAIR: That's correct.

MR. CHAIRMAN: 36(8), as suggested agreed; 36(9) agreed; 36(10) agreed; 36(11) agreed; 36(12) agreed; 36(13) agreed; 36(14) agreed; — Mr. Cherniack.

MR. CHERNIACK: Is there any reason why the county court has been omitted from the list of courts that can certify as to conviction? I really don't know much criminal law, so I'm not sure that it's an oversight or there's a reason for it.

MR. SINCLAIR: Mr. Chairman, my criminal practice may be even less extensive than Mr. Cherniack's, but I believe the reason is that the county court does not certify, that the convictions are certified by the Queen's Bench.

MR. CHERNIACK: The conviction of the county court. Okay, Just trying to be helpful.

MR. CHAIRMAN: 36(14) agreed; 36(15) agreed; — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the RPNs have section 37(16) which say that The Rules of Evidence applicable to civil cases before the Court of Queen's Bench shall apply. I like that, I would have thought they would apply anyway, but it's not in this bill, it is in the RPN bill, I see no reason why it shouldn't be here. Is there any reason why it shouldn't be here?

MR. SINCLAIR: Mr. Chairman, that is deliberately omitted from this Act. To try and impose on a discipline committee, made up of lay people, a procedure used in the Court of Queen's Bench I think makes impossible the holding of an inquiry in any sort of reasonable fashion. My understanding is that — I should back up again, and Mr. Cherniack may correct me, but I'm not aware of any professional association where that restriction presently exists.

MR. CHERNIACK: Well I was just going by the RPNs have it and they got it somewhere I suppose. I don't know. I could look the Law Society Act, I can't conceive that that the Law Society wouldn't go by the accepted Rules of Evidence. Is it conceivable that a discipline committee would take hearsay evidence? Or would not swear a witness? Or would not follow the proper procedures? We do say that the solicitor for the association may participate in inquiry. Surely it would be his task to see to it that justice is being done.

Mr. Chairman, the reason we have Rules of Evidence is to protect all the parties and to deliberately say that you're not bound by them, I'm not even sure that a court on appeal would not throw it out on the basis simply that they were not followed. But should it be necessary to go to appeal, if we take Mr. Sinclair seriously, and tell the discipline committee in advance, look there are no rules of evidence for you to follow, you can just carry on as you like, and they then proceed to do that. I'm quite worried about that deliberate omission.

MR. FILMON: It's in the LPN's section.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: It may be in the two bills but it's not in any legislation that's existing that I am aware of. Mr. Chairman, it does not mean that there are no rules that apply. The rules of natural justice apply and the court, of course, can review the procedure entirely. The rules of natural justice are quite wide-ranging in scope and guarantee a person's rights. The rules of evidence, on the other hand, are very strict and technical and how can you ask a lay chairman to make decisions on matters that most lawyers have grave difficulty in understanding and which many judges do as well? But the rules of natural justice, Mr. Chairman, do provide adequate protection to a person.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, with complete deference to Mr. Sinclair, I'd like a third and impartial opinion. If he's right, then I have no argument. But it's so important a question, I wonder if Mr. Balkaran couldn't look into that principle and advise us on that.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I'm afraid I may have been instrumental in having the RNs drop that provision that appears in Bills 66 and 87.

I was concerned about the ability of a committee of this kind to observe and follow the rigid and technical rules of evidence at one of these hearings, notwithstanding that there might be a solicitor present. As a result, I believe I had suggested to them to take this subsection out but I guess I didn't figure up in the other two bills.

If the committee would like to have 37 (16) as it appears in Bill 66 to be included in the RN bill, I'm at your disposal.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I'd like to consider it, Mr. Chairman, but I'd also like to consult with Mr. Sinclair. So I'd like to lay it over.

MR. CHAIRMAN: Okay. 36(15) agreed to look into it further; 36(16) (agreed); 36(17) agreed — Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just at this point I would like to suggest to the committee that it would be my intention to move committee rise at the end of this part. In other words, at the end of 37(3), but I don't intend to be arbitrary about it and I give them warning. I think that it would be timely to do that and pick up tomorrow at Part VII, if nobody has any objections.

MR. CHAIRMAN: Is 36(17) agreed then? (agreed); 37(1) (agreed); 37(2) (agreed); 37(3) (agreed).

I have a motion committee rise. Agreed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, just on 37(3), the point was raised in the House on the question of a professional association having the power to award costs to itself for payment of its own investigation. I believe that if an investigation is being conducted it should be at the cost of the general membership, because they're all concerned about what is being done in this case.

What I'd like to know specifically, Mr. Chairman, and I hope that Mr. Balkaran or Mr. Sinclair could obtain that for me although I suppose I should be able to get it as easy as they do, but for the committee. Dr. Schwartz — you know, the rather celebrated case of Dr. Schwartz — was charged with something over 10,000 and costs by the Medical Association. I believe he appealed it and I believe the Court of Appeal did not grant his appeal; I believe, this is my impression. I'd like to know if they didn't do it on the basis they didn't think he was entitled to relief or if they didn't do it because of a section such as 37(3), which gives the board an apparent discretionary right and, if that is the case, I wouldn't like an appeal body not to be able to say, hey, woops, this is unfair.

Mr. Filmon seems to have some information.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, my understanding is that that occurred under The Medical Act and I was shown by the counsel for the College of Physicians and Surgeons and assured by him that all aspects of Dr. Schwartz's hearing were appealable to the Court of Queen's Bench, both the decision and the costs; so I would believe that that was not the reason why it was turned down, if it was indeed turned down. I hadn't heard the results of the appeal.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I'm sorry, Mr. Chairman, I was anxious before the committee rose to correct something that I said. I find that The Occupational Therapist Act does have a reference to the Rules of Evidence in the Court of Queen's Bench and I did say that I wasn't aware of any. In that regard I might undertake, Mr. Minister, to ask of the counsel who are involved in these discipline proceedings for various associations to provide you with their opinion as to what would be most appropriate, if that would be of assistance to you.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Yes, that would be of assistance. Thank you, Mr. Sinclair.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think that would be very useful to the committee.

MR. CHAIRMAN: 37(3) then . . .

MR. CHERNIACK: It's just that I'd like to get a little bit more assurance that the wording in itself does not grant a right which is not subject to appeal or which a court would not upset by saying, well, the Legislature said they could grant unto themselves damages. and I'm putting it that way bluntly because I conceive that the board might award costs. Incidentally, even if the discipline is not imposed, it

seems to me there is the right on the board to award costs. It wouldn't be right that they should but somehow it seems to me this is a very bare section. I wonder if it could be given a little bit more consideration the next time around, with some background thinking by Mr. Balkaran and Mr. Sinclair.

MR. CHAIRMAN: 37(3), is it agreed that it be given a little more consideration? (Agreed)

Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just before the motion to rise, for the benefit of those who are on hand here assisting the committee, from the three associations, I can't advise until I check with the House Leader when the committee will sit tomorrow but I think it would be a fair guess that it will be 2:00 p.m.

I move committee rise.

MR. CHAIRMAN: All agreed? Committee rise.