LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON

STATUTORY REGULATIONS AND ORDERS

Tuesday, 23 June, 1987

TIME - 8:00 p.m.

LOCATION - Winnipeg, Manitoba

CHAIRMAN - Mr. D. Scott (Inkster)

ATTENDANCE — QUORUM - 6

Members of the committee present:

Hon. Messrs. Harper, Penner, Hon. Ms. Hemphill, Hon. Mrs. Smith (Osborne)

Messrs. Birt, Dolin, Maloway, Mercier, Scott

APPEARING: Representations were made to the committee as follows:

Bill No. 3

Ms. Joan Butcher - Provincial Council of Women of Manitoba

Ms. Margaret Cogill - Manitoba Action Committee on the Status of Women

Bill No. 29

Mr. A. Thawani - Private Citizen

Mr. Fred Breurkens - Winnipeg Condominium Corporation No. 6

Mr. Cliff Gunner - Winnipeg Condominium Corporation No. 169

Ms. Rosemary Hnatiuk and Mr. Abe Arnold - Manitoba Association for Rights and Liberties

MATTERS UNDER DISCUSSION:

Bill No. 3 - The Manitoba Advisory Council on the Status of Women Act

Bill No. 11 - The Change of Name Act

Bill No. 18 - An Act to amend The Securities Act

Bill No. 29 - An Act to amend The Condominium Act

Bill No. 31 - An Act to amend The Community Child Day Care Standards Act

Bill No. 36 - An Act to amend The Religious Societies' Lands Act

Bill No. 37 - An Act to amend The Liquor Control Act

Bill No. 44 - An Act to amend The Coat of Arms, Floral Emblem and Tartan Act

Bill No. 45 - An Act to amend The Manitoba Lotteries Foundation Act

Bill No. 50 - An Act to amend The Consumer Protection Act

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MR. CHAIRMAN: The Committee on Statutory Regulations and Orders, come to order, please.

This evening we are going to be dealing with Bills Nos. 3, 11, 18, 29, 31, 36, 37, 44, 45, and 50.

Shall we start, if it's the will of the committee, with presentations from people who are here from the public who wish to make presentations?

I will start by calling Bill No. 3, The Manitoba Advisory Council on the Status of Women Act.

Is Ms. Joan Butcher here, please?

BILL NO. 3 - THE MANITOBA ADVISORY COUNCIL ON THE STATUS OF WOMEN ACT

MR. CHAIRMAN: Ms. Butcher.

MS. J. BUTCHER: I'm the president of the Provincial Council of Women of Manitoba. I also have supporting me tonight the past president of the Manitoba Provincial Council, Sally MacDonald.

The members of the Provincial Council of Women of Manitoba welcome this opportunity to express their views on Bill No. 3, The Manitoba Advisory Council on the Status of Women Act.

The Provincial Council of Women, comprising Local Council of Women and federated women's organizations, actively lobbied the Provincial Government to establish an Advisory Council on the Status of Women, which happened in 1980. Recognition of women's roles in public life is needed at local, national and international levels.

The Provincial Council of Women of Manitoba supports the Manitoba Advisory Council on The Status of Women Act as a stronger legal base, ensuring that active consultation by the government on women's issues will continue.

In reviewing details of the bill, Council of Women recommends the following changes or consideration to that effect:

No. 6, in the area of gifts and bequeaths:

- specify that such gifts not preclude ongoing government funding and be designated for special projects; also

- specify that Advisory Council, not Lieutenant-Governor-in-Council, have discretionary power to assign money to special projects; and

- provision for disbursement of bequeath monies if the Advisory Council is disbanded.

The other area, No. 8, criteria for appointment, specifies that representative community groups be informed of new appointments or renewals and establish a means by which names can be submitted for consideration.

No. 9, the terms of office of members, a clarification of rotation of council appointments to ensure that newly-appointed members are working along with experienced members. We see this as one way to ensure the continuing strength of women's issues.

Thank you for your consideration.

MR. CHAIRMAN: Thank you, Ms. Butcher.
Are there any questions for Ms. Butcher?
Mr. Mercier.

MR. G. MERCIER: Ms. Butcher, thank you very much for your brief.

With respect to the appointment of the members, as you're well aware, the appointment of the members are all by the existing Cabinet of the government, whoever is in office.

Would you agree or be of the opinion that it would be better for the council, on a long-term basis, if the people on the council were appointed by all of the members of the House; that is, the government, whoever is in party at the time, might have the power to appoint a majority and that the Opposition could appoint a minority so that, when you had a change in government, you would not have a wholesale change in the council?

MS. J. BUTCHER: That's an interesting possibility. We didn't discuss it at our federate level, but we did discuss our concerns about how you ensure representative community groups, that they are aware that this process is going on, and perhaps that's one way to do it.

MR. G. MERCIER: Thank you.

MR. CHAIRMAN: Are there any further questions?
Thank you very much for making your presentation.
Is Ms. Margaret Cogill here, please?
Ms. Cogill.

MS. M. COGILL: Good evening. I'm here on behalf of the Manitoba Action Committee on the Status of Women. I've been a member of our volunteer board for the last two years, and I've acted in the capacity of treasurer.

The Manitoba Action Committee on the Status of Women applauds the government for introducing Bill No. 3, The Manitoba Advisory Council on the Status of Women Act.

We view this bill as a part of an historical development towards women's equality in Manitoba. It will establish the permanence of the council as an arm's length advisor to the government on women's issues.

This important step makes it possible to do long-term planning as the council works to advance the goal of equal participation of women in society, and to promote changes in social, legal and economic structures to that end.

We think it's important that the council members are representative of the various geographic, ethnic and socioeconomic sectors of the province, as outlined in section 8, to ensure that all Manitoba women have the opportunity for a voice to government.

We would encourage the government to increase the council's budget to carry out this important work, as they represent 50 percent of the population. We also ask that Bill No. 3 ensure that gifts and bequests, as outlined in section 6, "shall" be held in trust for the council, rather than "may."

The Manitoba Action Committee on the Status of Women congratulates the Minister responsible for the Status of Women, the Honourable Judy Wasylycia-Leis, for bringing forward Bill No. 3 to establish greater permanence for the council. We value the work of the Advisory Council and recognize their important role in working towards equality for women and, ultimately, all of society.

MR. CHAIRMAN: Thank you, Ms. Cogill. Are there any questions for Ms. Cogill?
Mr. Dolin.

MR. M. DOLIN: I'm just not clear on section 6. Not being a lawyer, maybe I can get some legal advice. But in section 6, it says: "gifts or bequests shall be paid to the Minister of Finance to be held in trust," which strikes me as mandatory, which would seem to be the object of what - am I missing something here?

MS. M. COGILL: Let me just look at the wording here. It says, "to be held in trust for use of the council and the Minister of Finance may, upon direction of the Lieutenant-Governor-in-Council, pay such monies to the Council." It's the "may" there that we're concerned about.

MR. CHAIRMAN: Any further questions? Thank you, Ms. Cogill.

The next bill we will deal with - or first, are there any further people here who I do not have a list of, who wish to make a presentation to Bill No. 3?
I see none.

BILL NO. 29 - THE CONDOMINIUM ACT

MR. CHAIRMAN: We'll move on to Bill 29, An Act to amend The Condominium Act.

I'll go through the list from top to bottom as I have it here. Mr. A. Thawani. Is Mr. Thawani present?

MR. G. MERCIER: A point of order, just to expedite things.

I believe the Minister has some rather extensive amendments to the act. I don't know whether the people who are prepared to make submissions are aware of those. I would think that, if they're aware of the amendments, the presentations might be much more limited than they would be otherwise.

As a member of the committee, I certainly wouldn't object to distributing the amendments to those persons who wish to make representations on The Condominium Act and perhaps even proceed on with representations on another bill and give them an opportunity to see those amendments.

MR. CHAIRMAN: Is that the will of the committee to do that first?

MR. G. MERCIER: I suppose, alternatively, the Minister could indicate now what she is prepared to amend. I know that would be unusual but . . .

HON. R. PENNER: . . . probably easier to understand than reading the amendment. I would agree with that.

MR. CHAIRMAN: Is it the will of the committee for the Minister to make an explanatory statement at the start? (Agreed)

Mr. Thawani, we'll come back to you in a couple of minutes.

MR. M. DOLIN: Would it be possible at least for the committee to see the amendments so I can relate them to the Minister's comments?

MR. CHAIRMAN: Yes.

Have all the members of the public who wish to comment on this bill - that's Mr. Breurkens, Mr. Gunner, Mr. Thawani - received copies of the amendments? Very well.

Okay, Ms. Hemphill please, to give a brief explanatory note to the amendments. Miss or Ms.?

HON. M. HEMPHILL: Mr. Chairman, I think it might be useful to just take a moment to indicate that, although there are a reasonable number of amendments that are being suggested, most of them are what we would consider to be either housekeeping or technical changes or improving the wording to conform to other clauses in the act.

However, the one of substance that may have generated interest or concern relates to the requirement to establish a reserve fund and to have that reserve fund reach a 5 percent level within a three-year period, the 5 percent being 5 percent of the value of the facility, the condominium. After receiving a number of representations and a fair amount of feedback on that clause, we have agreed to change it so that there is still to be a reserve fund but the level of the reserve fund will be determined by the corporation owners, the condominium owners and by the corporation itself.

In other words, there may be some condominiums that are new where the corporation or body believes that they need a very small reserve fund for the first five years, for instance, and might want to set it at 1 percent. There might be another unit where they may feel that there are major repairs ahead of them and they may want to set it at the 5 percent or, in some cases that we have found out, they have it set at an even higher rate.

So the flexibility will be completely with the boards of each condominium and the only requirement will be to have a reserve fund and to file, I think, an indication of what the level of that reserve fund is with our department within a two-year period.

So I would say that probably is the clause that may have the major interest. Most of the others are technical.

MR. CHAIRMAN: Is it the will of the committee to go to the presentations at this point, or would you like to leave the people a couple of minutes to dwell on that while we go to another bill? Go to the presentations? Fine.

Mr. Thawani again, please. Go ahead, sir.

MR. A. THAWANI: My name is Anand L. Thawani, and I thank the committee members for allowing me the opportunity to make this presentation.

The first apartment condominium which was developed in the early Seventies was promoted by me as a cooperative. The purchasers, who came to the development to buy the units, became the members of the corporation right from the day they joined the project, and they in turn formed the general membership of the condominium corporation and elected their board of directors before the condominium was registered, so the transition was very easy. The developer did not take the responsibility in the beginning. The transition was smooth and is working very well and worked right from the first day. Except in cases of financial responsibility, the co-op was to receive financial funds and disburse the funds. That didn't work well, but the management, as far as the running of the corporation as well as the design of units also, the technical part of the cooperative was very good.

This opportunity, when the amendment is being proposed, I would like to take this opportunity to inform the board, inform this committee, that the board at present, as constituted, has a good amount of power. The discretion of the reserve to be left to the board, though it may be desirable as has been found, because the 5 percent limit is of course very high, but the discretion to set the limit to the board is also not so healthy. Let me point out a couple of instances.

The boards are not elected as a matter of democracy or as a matter of right. The members of the corporation do not take interest in the management of the building. In general, it has been found that the boards and the committees are elected by persuasion. A couple of active members in the condominium go around and get the concurrence of the people who want to work. It is actually a responsibility and a duty to form a board. That board in most of the cases appoints management agents from outside the building to manage the affairs of the corporation.

As the generation becomes older or senior citizens become more in number, this trend will continue. Condominiums will grow in number here in Winnipeg because of the convenience that is offered to the people who cannot do their own chores in a single-family home. So the boards are more nominal. They're not really effective representatives of the membership.

So I would suggest that giving them powers is not healthy. I have seen in my own experience the co-op that was developed, where I continued to live and continued to participate to a desirable extent. The couple of people who are active, they go around to those whom they would like to come on the board. They don't approach everybody. The result is, in the general meetings, anyone who desires to be present and be working on the board, is not necessarily elected. Those who are elected are from the canvassing committee members or canvassers who try to promote their board members.

This, of course, happens in many elections but, in the case of condominiums, the representatives of the condominium do not go on the board at all.

The other point that I would like to make is that the insurance provisions in the declaration or in the by-laws should be emphasized more than what it has been. In my experience, whatever insurance programs are promoted right from the beginning or any good point that is brought forward, the next board comes and removes that provision from the board, from the insurance provision, I should say.

Let me give an example. When we built our 18-storey building in Tuxedo, the problem of leakage from one floor to the other was foreseen right in the beginning, because the construction contractor told us very clearly

that they cannot provide construction which is totally leak-proof. We saw recently in Cumberland House, there was a fire on the roof and, after a month or so when there was water and there was rain, the water leaked from the roof right to the basement. Every floor leaked in that building. This is common; it's not uncommon. Anything which leaks on any floor trickles right to the bottom, and there is damage all the way through. This provision should be provided, that damage against leakage, in the declaration or depicted by law, so that the people who are damaged, their contents and the structure itself are properly taken care of. The condominium corporation should not be burdened with the repairs from leakage.

There are other things also which should be looked into by a technical committee. The insurance provision in the declaration and the by-laws should be strengthened more than what they are. The result in our condominium is that the board indiscreetly removed the leakage from the insurance provisions. In the beginning, it used to be a part of the insurance coverage, but it's not there. After a few years, it was removed and nobody told the board not to do that.

If a small minority, one or two people, want to raise a voice against the board, they have no recourse except to go to the court. There is no simplified procedure. I don't think an individual is bold enough or has time and expense, the money, to go to the court and wait for redress there. Redress there in the court, of course, is not only time consuming, but is expensive also. There should be a simplified procedure to obtain redress, relief, from the actions of the board and the committees that are set up in the condominium corporation.

In the amendment that I was just reading on Bill 29, there should be a penalty provided when a board exceeds any statutory power. The board has gone against the declaration or the plan in the past in some condominiums, and I'll give an example, and there is no relief from that exceeding the power. There is no relief provided anywhere except to go to the court.

In the case of balconies which are attached to the apartments, those balconies are sometimes treated as common elements. Sometimes they are common elements used exclusively by the unit owners, to which those balconies are attached.

These balconies, in many cases, have been taken over by the concerned unit owners and fully enclosed. Those areas, common element areas, have been added to their private units, with the result that there is no control by the board. Originally, the balconies were kept as a common element, only to see that the exterior of the building is uniform, that there is some control over the construction of these balconies. But when the balconies are totally enclosed and incorporated in the private units, the area of the private units goes up. The result is that the expense that they contribute to the common fund is affected. Originally, when common element ratios were calculated, they were all based and they are invariably based on the proportion of the private areas that each unit owner has.

With the addition of the balconies, those areas change and therefore, actually, their contribution should also change. The contribution of the owner who takes over the balcony and makes it a part of his private area should increase to the common fund, but doesn't. The board either neglects it or is unable to enforce that provision to increase the common area. The result is that the others, who do not take the balconies in or who had already taken the balconies before the construction was finished, are paying a little higher than what they should actually pay in legal terms.

So there should be a simplified procedure to obtain relief from the actions of the board. This action of the board in allowing private areas to be expanded for balconies to be included in the private units goes against the declaration and the plan. The plan specifies very clearly that here is the boundary of the unit; it cannot incorporate any additional area without amendment of that plan and the declaration. Amendment of the plan and the declaration has not been tried. It has never been tried. The board does not want to do that. And here I find a procedure that 80 percent written consent will be required instead of 100 percent. There's an amendment in Bill 29 that we are dealing with, I think, that's on page 5, paragraph 9, that 80 percent is the requirement, as against 100 percent.

Now 80 percent, to me, looks very low as in regard to the amendment, to the declaration, is concerned. You might know that most of the condominiums include two-thirds or three-quarters of the votes for amending the by-laws. Eighty percent is not far from three-quarters; three-quarters is 75 percent. In certain provisions of the declaration, I think it should still remain as 100 percent.

This part of the amendment has not received wide publicity in the local media. I read it for the first time today in Bill 29. The only publicity that has been received is on the reserves, which I'm told now on reconsideration, has been left to the discretion of the board, which is not healthy but at least it's better than 5 percent - 5 percent is too high; 5 percent or any reserve for that matter, if I can come back to the reserve amount, the reserve amount has been specified here to be used for a particular purpose.

Now, if the board decides to use it for some other purpose, who is going to tell them not to do that? The ordinary member of the corporation, within the future, will be more unable to take up the matter. We will have more older generation people going into condominiums. Those older generation people do not take to the courts, or they do not take any action at all, so the members of the board will have full discretion to do what they like, and I have found they have exercised that power unscrupulously. They have no principles that they should follow in the furtherance of the quality of the building that they are managing.

The board works in the interest of the condominium, of course, in name. In most of the cases, it works in reality also, but there are certain cases where they do not work in the interests of the - for example, the acquisition of additional property or changing the common elements to incorporate some private areas. Now those things require, according to the current by-laws and the declaration that, when condominium passes, a vote of 80 percent or a vote of 85 percent sometimes. I know in our condominium, we have a high ratio to incur huge expenses. Now huge expenses is not defined again. It's at the discretion of the board. Never a vote has been taken, and I know efforts have been made to acquire some private units to add to the common elements so that the exercise of the boards' powers is extended.

So once again, let me request the committee to consider that the establishment of a reserve is a good idea. In our condominium, we already do it. Those who are responsible enough, they follow the general economic and sound principle of management that should be observed. And many condominiums, I'm sure, established a reserve. The establishment of a reserve, to a certain extent, is necessary, is being done. What is the need of providing an amendment to The Condominium Act and to give them or direct them to do that? That would be increasing the powers of the board which, to my mind, have not been judiciously exercised.

I would, in the end, suggest that a more thorough airing of this amendment, including the provision for reducing the percentage of amendment or declaration, should be aired. More views should be obtained, 80 percent looks pretty low. It should be close to 95 percent. In certain cases, there are five or six items in the condominium plan and the declaration, which should still require amendment by only 100 percent of the entire membership.

Thank you.

MR. CHAIRMAN: Any questions for Mr. Thawani? No questions?

Thank you very much, Mr. Thawani.

Is Fred Breurkens in please? Mr. Breurkens.

MR. F. BREURKENS: Mr. Chairman, members of the committee, my name is Fred Breurkens. I'm the president of the Board of Directors of Corporation No. 6, and I represent them plus a number of corporations, townhouse-type corporations, who asked me to represent them in the matter of the reserve funding when it became public.

I'd like to take this opportunity to make three points. No. 1, the previously spoken of 100 percent versus 80 percent, it is our consideration that the 80 percent is a good move because one dissident owner can stop the corporation from making changes that are required, and that is speaking as a president who was democratically elected and concerned.

The next point I'd like to make is to thank the Minister and her staff for the immediate concern that was shown to me and the people of my corporation in responding to the concern. I'd like also to single out the Rentalsman's Office and particularly Mr. Barsey. The professionalism that was shown by the people in responding to somebody who did not know his way around the legislative procedure was just excellent. All the cooperation was there.

So on behalf of Corporation No. 6 and the other corporations that I represent, thank you very much.

MR. CHAIRMAN: Are there any questions for Mr. Breurkens? I see none.

The next presentation is a written submission from Mr. Mark Young. I'd ask the Clerk to please distribute that to the committee members.

The last presenter I have before us this evening is Mr. Cliff Gunner. Mr. Gunner, are you present? Not seeing Mr. Gunner, we'll move on to the next bill.

BILL NO. 31 - THE COMMUNITY CHILD DAY CARE STANDARDS ACT

MR. CHAIRMAN: The next bill we deal with is Bill No. 31, An Act to amend The Community Child Day Care Standards Act. Are Mr. Abe Arnold and Ms. Rosemary Hnatiuk here please?

Mr. Arnold, welcome, sir.

MR. A. ARNOLD: Mr. Chairman, members of the committee, I'm here on behalf of MARL this evening together with my colleague, Rosemary Hnatiuk, who is our legal researcher. The reason why I'm here rather than some other committee member is because all our active committee members are busy meeting tonight on another bill.

In dealing with this act, An Act to amend The Community Child Day Care Standards Act, I just wish to cite the three sections of the act which give us some concern, namely: "Refusal to issue," sections 29.1(1) and 29(2), where the director is authorized to refuse to issue a certificate where there are probable grounds that the employment of the person may be hazardous to the health, safety or well-being of children; the section dealing with "Cancellation or suspension of certificate," section 29.1(2), subsections (a) and (b), where a certificate has been issued and the director may be satisfied that the person named made a false statement or where there are believed to be grounds that the employment of the person may be hazardous to the health, safety or well-being of children, then the director may cancel or suspend the certificate; and finally, the section on "Burden of proof," 29.1(5), where the director shall have the burden of showing that the person made a false statement on the application for a certificate or that the employment of the person may be hazardous to the health, safety or well-being of children.

Now, before I ask Rosemary Hnatiuk to give you the details of what our concerns are about this, it is my understanding that the Minister of Community Services made a statement earlier today that there might be some further amendments coming to this bill in the light of the court decision yesterday on the Child Abuse Registry.

MR. CHAIRMAN: Madam Minister.

HON. M. SMITH: For clarification, that has to do with The Child and Family Services Act, not The Community Child Day Care Standards Act.

MR. A. ARNOLD: Oh, not this one. I think The Child and Family Services Act has already been before committee, has it not?

MR. CHAIRMAN: It's previous year's legislation.-(Interjection)- Oh, excuse me.

MR. A. ARNOLD: Okay, all right. Well, in that case, we won't say anything about that right now and I'll ask Rosemary Hnatiuk to carry on.

MR. CHAIRMAN: Rosemary Hnatiuk.

Go ahead, Ms. Hnatiuk.

MS. R. HNATIUK: I think that everybody has a copy of the brief in front of them now, I hope.

The sections which Mr. Arnold was referring to are typed up on the first page and the words which we are worried about are in italics, and they are "may be hazardous" in section 29.1(1): "Where the director has reasonable and probable grounds to believe that the employment in a day care centre of a person who has made an application under subsection 29(2)" - which is an application for a certificate to work in a day care centre - "may be hazardous to the health, safety or well-being of children, the director shall refuse to issue a certificate and shall forthwith notify the person."

I'll just continue with the brief and I'll elaborate on the points on that page.

In our opinion, the wording of these sections, firstly, is not specific enough and, secondly, gives too much discretion to the individual directors of day care services.

In these sections, the words "may be hazardous" are used. There is no indication in the act of what would be considered a hazard. This should be stated in the act itself or in regulations.

MARL believes, for example, a criminal record for physical or sexual abuse or an admission to such abuse would constitute grounds for licence suspension, cancellation or refusal. We, however, do not believe that any list of suspected child abusers should be used to establish such grounds.

I think that the decision which came down on Monday in the St. Hilaire case really underlines that point, and we look forward to new legislation that the Minister referred to coming in, in the other act.

An additional concern is the use of the word "may." This seems to indicate that a person could be refused employment, suspended or fired on the mere suspicion that they are a hazard to children. In Canada, a person is presumed innocent until proven guilty.

The legitimate objective which we share, or concern which we share of protecting children before the damage is done, we feel is met adequately by the use of the word "hazardous," which refers to situations where harm is anticipated but has not yet occurred, when you think of what is a hazard that has enough contingencies in it to cover the situation. The addition of the word "may" only serves to create ambiguity. Someone either constitutes a haard or does not constitute a hazard.

MARL therefore recommends that the words "may be" are replaced by the word "is" in these sections.

Concern over the vulnerability of children and the difficulty of definitely proving child abuse has led to a desire for more stringent screening of day care workers. However, in meeting that concern, MARL believes that the rights of day care workers must also be protected. The Minister today, on radio, also referred to these polarities. We're glad to hear that's being considered.

As the bill reads, it gives the director powers of suspension and cancellation of a certificate, as well as refusal to issue a certificate on what she or he considers reasonable and probable grounds. We believe that the director should have the power of suspension. However, cancellation and refusal to issue a certificate requires such a high degree of discretion and would so drastically affect the livelihood of a person that they should not be carried out by a single individual.

In addition, the decision to cancel or refuse to issue a certificate should not be made by the same person who is responsible for the investigation and suspension. There should be a separation there in the interest of impartiality.

Moreover, MARL finds it unacceptable for the proposed act to provide that the actual hearing of evidence and the opportunity for the worker to defend him or herself against the charges occurs only at the appeal level. That means that a certificate can be revoked before a hearing is heard. By contrast, The Medical Act provides for revocation of licences only after a full inquiry. That also deals with the licensing of medical professionals to deal with people in care situations.

What is more, since appeals go directly to the Court of Queen's Bench, the procedure would be costly and time consuming, thus discouraging people from exercising their right to a fair hearing altogether. Day care workers aren't very well paid yet.

MARL, therefore, suggests that, in an emergency situation, the director have the power to suspend, with pay, any worker apparently constituting a hazard to children. The Medical Act contains similar provisions in sections 51 and 55(1) which are quoted at the bottom of this page, page 4 of the brief. Such a suspension should be promptly followed by a full hearing before a neutral review board. Appeals from decisions reached there should then go to the Queen's Bench.

Just to recap the recommendations in a concentrated form, MARL recommends, firstly, that a specific definition of the word "hazardous" be included in the act or regulations; secondly, that a criminal record for physical or sexual abuse or an admission to such abuse be considered evidence of a hazard to the health, safety and well-being of children; thirdly, that a registry of suspected child abusers not be used to establish grounds for certificate cancellation or refusal; fourthly, that the word "is" be used instead of the words "may be" in the phrase "may be hazardous to the health, safety and well-being of children"; fifthly, that the director of a day-care service have the power, in an emergency situation, to suspend with pay any worker where she or he has reasonable or probable grounds to believe the employment of that worker is hazardous to the health, safety or well-being of children; and sixthly - there's a glitch in the numbering in the brief - sixthly, that the power of cancellation or refusal to issue a certificate lie with a neutral review board; and lastly, that appeals from the decisions of that board go to the Queen's Bench.

That's the end of the presentation.

MR. CHAIRMAN: Okay, thank you very much. Are there any questions for Ms. Hnatiuk from the members of the committee?

Mr. Dolin.

MR. M. DOLIN: I realize to me it's something of a conundrum, and I'm just wondering - one of the points you're making about "may be a hazard" and making a determination in that, I think that the operative sentence in your brief is somebody that constitutes a hazard or does not constitute a hazard. I don't know and I'm not clear. You define what some of the criteria you think a hazard should be, but I think of a hazard as something that's impending, a potential for damage

or danger and, in this case, to a child. To determine beyond the shadow of a doubt that someone is a hazard by definition, by criminal record, etc., you do take away the discretionary power for someone who is determined to have a violent temper but has never been convicted in situations like this.

I'm wondering if maybe you could set my mind at ease a little bit. How would you deal with taking away that kind of discretion?

MS. R. HNATIUK: Well, I think that the words "reasonable or probable grounds" strengthen the discretionary power of the director. As far as the specifics go - I'm not a professional day care worker - I think that should be worked out by the people who are working in the field and laid down as specifically as possible. As it stands now, I think it's sort of ballpark kind of considerations. From what I understand, how the child abuse registry functions is that all kinds of things can serve to get your name on that. We feel that's not all right, that it should be hammered out as specifically as possible.

MR. M. DOLIN: One further question, Mr. Chairman.

The "burden of proof" section, if we continue with "may be a hazard," using a definition in the burden of proof is on the director, which gives basically a right of appeal, would this not clarify the situation rather than requiring specific identification of what constitutes a hazard to allow the individual to be able to justify, within reasonable grounds, whether or not they constitute a hazard and have a right to obtain a certificate?

MS. R. HNATIUK: Would you run that by me again?

MR. M. DOLIN: Well, the director has to prove that under - let's say, we leave it the way it is. It may be a hazard, and the director determines that so-and-so who has applied for a certificate may be a hazard for various reasons - temper or a previous record or something of that nature. That person has a right to appeal under section 29.1(5). The burden of proof is on the director to show why that person has been refused a certificate and why they may be a hazard.

Would that not be satisfactory in putting not the burden of proof to prove they are not a hazard on the individual who has been denied the certificate, but on the director to be able to show. There is a further appeal procedure to the courts to basically give cause on why they're saying this person may be a hazard, which that person can confront and say no, and it's up to the director to prove it, not the person who's either attempting to obtain or being refused a certificate.

MR. CHAIRMAN: Is that a question for clarification?

MR. M. DOLIN: Well, I'm just wondering if that doesn't solve the problem that is identified here. I'm not clear why it doesn't, and I'm asking for some clarification.

MR. CHAIRMAN: Ms. Hnatiuk, if you wish to respond, you may.

MS. R. HNATIUK: Well, first of all, the fact that the appeal goes to the Queen's Bench, as I outlined in the brief, that makes it problematic. There isn't enough of a chance for that person who's accused to defend him or herself. I think that the "burden of proof" section is quite good, but I think that we should build in as many safeguards as possible. Why leave it open? A situation could arise and the wording of the act would justify discriminatory treatment. Why leave it open? What are committees for? Change it and make it better.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Ms. Hnatiuk, would you agree with me that since, in that particular clause, we're dealing with a person who is about to be hired and, if hired, is in a fairly sensitive position with a young, vulnerable group of children that, grammatically, you can't say that at that point they are a hazard?

All you can, on the basis of evidence - and I appreciate the point you're making - would you agree that all you can say at that point is that they may be and, if in fact, they may be, don't you think that there should be the power to say, whoa, we have some concerns here and we want to get those sorted out before you get your certificate and are there in the position?

MS. R. HNATIUK: When I read the act, I was sitting there wondering exactly what kind of scenarios that would involve. I suppose one could paint all kinds of scenarios. I don't know what kind of situation specifically can come up in reality. I would imagine that with standards improving, education improving for day care workers, people who are not fit to be working with children would be screened out earlier.

I can just reiterate the point that I made in response to Mr. Dolin's question that why make it that vague and that discretionary in the wording of the act. We know what the courts like to do with wording of acts that are very sloppy. They can bend them one way or the other, and something could end up coming out that wasn't at all intended. I don't know if that's . . .

HON. M. SMITH: Thank you very much for your thoughtful presentation.

I just would like to draw to your attention that the "director" referred to in 29.1(1) does not refer to the director of an individual day care but, referring back to the definition section in the act, it does refer to the director of the provincial program.

With regard to the issue of hazardous and whether it should be "may be" or "is," I share the concern about predictability. I guess what I would invite your group to do is draft a definition for us of what you think "hazardous" should imply.

With regard to the information relating to the registry, as you know, because we have been consulting, we have been taking your concerns into account and will shortly be making clear what recommendations we are making with regard to that.

With regard to the certificate of a worker, currently, the granting of a certificate is appealable, in the first instance, to the Day Care Staff Qualifications Review Board. What we're talking about is the withdrawal of a certificate when a hazard is perceived. We felt that building in another appeal process at this stage, other than the referral to the court, was unnecessary.

That was the thinking behind the presentation, but we have registered your recommendation and concern, and will consider it.

MR. CHAIRMAN: Do you have any response, Ms. Hnatiuk?

MS. R. HNATIUK: Would you please repeat what you said last about the appeal process?

HON. M. SMITH: Currently, the granting of a certificate, in the first instance, to a day care worker is currently appealable under . . .

MS. R. HNATIUK: The not granting.

HON. M. SMITH: No, the granting, the initial granting to a worker. There is an appeal process there or, if the classification level is queried, to the Day Care Staff Qualifications Review Board.

We are dealing with a situation where some evidence has come to light where it is felt there may be a hazard. We felt, in that instance, to build in another appeal, other than referral to the court, was unnecessary, but we did put the onus of proof on someone likely to be a hazard on the director. So, in a sense, we're trying to forestall any frivolous or just simply prejudicial approach. There would have to be reasonable grounds identified.

MS. R. HNATIUK: Could I make another comment?

MR. CHAIRMAN: Certainly, go ahead.

MS. R. HNATIUK: With respect to drawing up guidelines, I think it would be a good idea if the workers who are the people who are going to be affected, but also if they're doing their job, should also be concerned about the welfare of the children, would perhaps get together and draw up recommendations.

MR. CHAIRMAN: Any further questions?

Thank you, Ms. Hnatiuk.

That concludes presentations on the bills before us. I haven't missed anybody on any of the bills before us this evening, have I? Very well.

BILL NO. 3 - THE MANITOBA ADVISORY COUNCIL ON THE STATUS OF WOMEN ACT

MR. CHAIRMAN: Let us return, members of the committee, to Bill No. 3. Proceed through? Do you have any amendments?

HON. R. PENNER: There are going to be amendments on page 3.

MR. CHAIRMAN: Bill No. 3, The Manitoba Advisory Council on the Status of Women Act, page by page? -(Interjection)- Yes, we have amendments, but they don't start until page 3, do they?

Page 1, pass?

A MEMBER: No.

MR. CHAIRMAN: Okay. We'll wait till everything is handed out; excuse me. May we proceed?

Page 1 - Mr. Mercier.

MR. G. MERCIER: Page 1, the last clause, "AND WHEREAS the role of women in childbearing should not be a source of discrimination," can the Minister indicate what specifically she has in mind in that particular area?

MR. CHAIRMAN: The Honourable Minister.

HON. J. WASYLYCIA-LEIS: The intent of this clause is to basically acknowledge the central role that women have in childbearing and to ensure that role is not exploited in terms of limiting women's opportunities or in defining only female parents as primary care givers.

it's also in line with general statements of principle that Canada has been a party to the U.N. Convention to end all forms of discrimination, as well as the "Forward-looking Strategies" document of the United Nations.

MR. G. MERCIER: Mr. Chairman, does that clause also mean that the council would be taking some steps to ensure and work towards avoiding discrimination against women who choose to stay at home and raise children?

When I spoke to this bill, I raised that aspect and it is, in my mind, women who choose to do that feel belittled in society today.

HON. J. WASYLYCIA-LEIS: Mr. Chairperson, the intent of the act and with that preamble, as well as the record of the council over the past number of years, has been to deal with issues pertaining to women wherever they may, in whatever occupation, in whatever life choice they make. The council has always been an active adviser on issues pertaining to women in the home, as well as women outside the home. I think that this preamble entrenches that notion and that purpose to deal with all concerns of all women.

MR. CHAIRMAN: Page 1—pass; page 2—pass.

Page 3 - Mr. Penner.

HON. R. PENNER: I move, seconded by the Member for Kildonan,

> THAT section 6 of Bill 3 be amended by striking out the word "may" in the 6th line thereof and substituting therefor the word "shall."

In French:

> IL EST PROPOSÉ que l'article 6 du Projet de loi 3 soit modifié par la suppression de "peut" et son remplacement par "doit."

HON. J. WASYLYCIA-LEIS: I just wanted to make a couple of comments in support of that and acknowledge the contributions made by the two organizations that presented briefs this evening in both the brief of the Provincial Council of Women and the Manitoba Action Committee on the Status of Women.

A very significant suggestion was made for tightening up that section to ensure that funds donated to the council be specifically used for purposes of the council, and I think that word tightens it up.

I wanted to just mention that this clause was originally inserted so that gifts and bequests would be directed to the Advisory Council even though they must first go through general revenue. It's our hope and certainly the intent of this bill that any such bequests will not jeopardize the government's ongoing commitment to funding for the Advisory Council.

MR. G. MERCIER: Mr. Chairman, what bothers me in a bill like this is that I really think there's too much political involvement by the government, and when I say the government, I mean any government because all the members are appointed by whatever government is in power. Nobody in any political party disagrees with the objectives of the council.

It seems to me that we should be working towards giving it more independence, and to that end, I wonder why, if someone - and I'm sure we can all imagine someone being very active in an organization like this, and many women have in this province for many, many years, and be very committed to seeing the council achieve success. Supposing one of those women or a man or any person decided that they wanted to leave a bequest to the council to do special work or to do additional work over and above what they are doing, why should the use of that money be subject to the direction of the Cabinet of the government, whoever is in power? Because certainly it's held in trust for the use of the council, but the payment is upon direction of the Lieutenant-Governor-in-Council. You could have money left to the council for a certain purpose with which the Cabinet of the day might object and the Cabinet of the day could stop payment to the council.

I'm just wondering why there is so much heavy government involvement in an organization that I think everybody, parties of all political stripes, are committed to, and why they really are not much more independent.

HON. J. WASYLYCIA-LEIS: A couple of points, I think the first point that has to be made is that this is a standard procedure. It's nothing new that's being added to in the case of the Advisory Council. It's a normal procedure for bodies that are advisory to the government who have, as part of their enabling legislation, the ability to accept donations, that it be channeled through general revenue. The section as it was written was intended to ensure that money be redirected back to the council to be used for purposes that they saw fit.

I think, with the change from "may" to "shall," it's clear, without a doubt, that your concern is addressed and that there's no possibility of interference by the Government of the Day by going this route and, in that context, it becomes a standard government procedure.

MR. M. DOLIN: Mr. Chairman, I'm sympathetic with the Member for St. Norbert and the brief presented by Ms. Butcher on behalf of the Provincial Council of Women.

It strikes me as when a gift or bequest is made to the council, it's made to the council, and what's happening here is the Minister of Finance is acting as a trustee for that money to be disbursed to the council when the Advisory Council so requires.

I really do not understand why this does not say "shall, upon direction of the Advisory Council, pay such monies to the council." It would seem to me that is the intent of the bequest and that should be the direction. The Minister of Finance, in this case, strikes me as being in the role of a trustee rather than having the monies as discretionary monies to disburse or not disburse as he or the Lieutenant-Governor-in-Council sees fit.

I'm wondering if this would change the intent that the Minister just stated. I think the intent the Minister stated is the independence of the council. This would certainly ensure their independence and that the Minister acts as a trustee and that the intent of bequest is met. So I'm wondering if perhaps they're missing something.

But what's the problem here?

HON. R. PENNER: Yes, you are, in fact. As the Minister pointed out, this is very standard. I can think of at least half-a-dozen clauses of exactly that kind. It's very beneficial to the organizations in concern.

They have a trustee who has standing behind him or her the whole consolidated revenue - and believe me, when you have a kind of an organization that has rapidly shifting membership sometimes, you want to make sure that the funds are held by a trustee in a reliable trust account. This is one that simplifies the whole question of administration for these organizations and, in addition, you should know that, by the General Manual of Administration, these trusts pay interest. The money that is there, held in trust for their organization, accumulates interest at something like prime plus. It's altogether a very advantageous arrangement.

But by the same token, in order to make sure that there is a mechanism for the payment out, there is a standard mechanism pursuant to which payment of money out of consolidated cannot be made unilaterally. I don't think that anybody around this table would want to change a system pursuant to which long-standing procedures for guaranteeing the payment of money out of consolidated is only done, except for a certain level of preclearance, and even preclearance comes ultimately to Cabinet, is done by Order-in-Council. This is not an unusual section. I can produce half-a-dozen examples of the same kind.

MR. G. MERCIER: Mr. Chairman, whether it's unusual or not, I think it's wrong. How would you encourage someone to leave a gift or bequest to the council when there is this type of direction or possibility of interference? If someone leaves a gift or bequest to an organization, they want to make sure it goes to that organization, and all the organization has to do is put it in a bank account or investment certificate and they have the use of the funds.

It just seems to me that it should be clear that the Advisory Council have the sole authority over the use of a gift or bequest to the organization. We're not talking about payment of their annual budget over which the government has control. But I raise it - if the Attorney-General or the committee doesn't share the concern, then . . .

HON. R. PENNER: I understand what the Member for St. Nobert is saying, but I think the key words here in terms of trust law, as I understand trust law, "shall be

paid to the Minister of Finance to be held in trust for the use of the council." The Minister cannot use that money for any other purpose than the trust purpose and, since he's a bare trustee, can only act at the direction of council.

Now if that direction, as it happens, in order to get money paid out of consolidated, comes by an Order-in-Council, it still can only be paid out at the direction of counsel. It can't be paid out as the Minister of Finance or the Lieutenant-Governor-in-Council on its own thinks. It has to come at the direction of counsel.

QUESTION put on the amendment, MOTION carried.

MR. CHAIRMAN: There's another amendment on page 3, is there not?

HON. R. PENNER: No, not on page 3. But there is a motion on section 11, and then I have a comprehensive motion dealing with sections 7 to 14. Maybe I'll take that second motion first.

MR. CHAIRMAN: Yes, I would think so.

Madam Minister, if she wishes to . . .

HON. J. WASYLYCIA-LEIS: I just wanted to make a comment on section 8, since the Provincial Council of Women also made an important suggestion in that regard, and I'd just like to comment on it briefly.

The suggestion was that representative community groups be informed of new appointments or renewals and establish a means by which names can be submitted for consideration.

I just wanted to point out that certainly that's a process that we try to follow now and we'll attempt to follow in the future, whereby we consult widely with the community and try to, on the basis of that consultation, ensure a very representative council; a council that is made up of women from all walks of life, including women in the home, in the labour force, in the trade union movement, in the business world, from the ethnocultural community, the rural community, the farm community, the Native community, the disabled community, and so on.

So it's our intention to live up to the spirit of that recommendation by the Provincial Council of Women and to seek actively consultations from such organizations.

MR. CHAIRMAN: Mr. Penner, on the second motion.

HON. R. PENNER: Yes, I am going to move the second motion on the paper that has been circulated.

The motion, seconded by the Member for Osborne, is:

> THAT the French version of sections 7 to 14 of Bill 3 be struck out and the following sections be substituted therefor:

Before attempting to read the French, I first of all would like to see if we can get consent to dispense with the reading of French.- (Interjection)- Okay, yes. Just to explain - well, the Minister can explain the amendment. It's just syntax.

HON. J. WASYLYCIA-LEIS: I think there's a concern that the actual amendment be read in full.

MR. CHAIRMAN: Yes.

HON. J. WASYLYCIA-LEIS: Our council here seems to - I'll make a stab at it, if you'd like as well.

HON. R. PENNER: I think, though, we have the Clerk of Committees here. If the committee as a whole agrees to dispense with the reading, do we have a problem?

HON. J. WASYLYCIA-LEIS: No, we're okay. The reason for this amendment, we thought it only fitting that with legislation of this nature that an attempt be made, in the French text, to use the feminine noun as opposed to the masculine noun in all cases. It's been a practice that certainly we wouldn't mind seeing - I certainly wouldn't mind seeing in other legislation as well, but we thought we might implement this in this symbolic legislation to begin to set the tone and precedents for the future.

MR. CHAIRMAN: You haven't added new words?

HON. J. WASYLYCIA-LEIS: No new words.

MR. CHAIRMAN: No new words, very well. Okay all those in favour of the motion by Mr. Penner, seconded by Mrs. Smith—pass.

HON. R. PENNER: Page 3, we'll dispense then, as amended.

(Amendment - French version)

IL EST PROPOSÉ de supprimer les articles 7 à 14 de la version française du Projet de loi 3 et de les remplacer par ce qui suit:

Membres

7 Le Conseil est composé d'une présidente et d'au moins huit autres membres, sans dépasser 18 membres, tous nommés par le lieutenant-gouverneur en conseil.

Critère de nomination

8 Lors d'une nomination faite en application de l'article 7 ou du renouvellement d'un mandat en application des articles 9 ou 10, le lieutenant-gouverneur en conseil s'efforce de choisir des personnes qui représentent les divers secteurs géographiques, ethniques et socio-économiques de la province.

Mandat des membres

9(1) Les premiers membres du Conseil, autres que la présidente, sont nommés pour un mandat d'au moins un an et d'au plus deux ans. Par la suite, chaque membre est nommé pour deux ans.

Nomination des successeurs

9(2) Le membre dont le mandat expire reste en fonction jusqu'à la nomination de son successeur.

Renouvellement du mandat

9(3) Le membre dont le mandat est expiré peut recevoir un seul nouveau mandat.

Nomination au poste de présidente

9(4) Le paragraphe (3) n'a pas pour effet d'empêcher un membre d'être nommé au poste de preésidente et de voir son mandat renouvelé conformément au paragraphe 10(5).

Vacances

9(5) En case de vacance du poste d'un membre du Conseil en cours de mandat, une remplaçante est

nommée pour la durée restant à courir du mandat et par la suite jusqu'à ce qu'un successeur soit nommé.
Présidente.
10(1) La présidente du Conseil dirige toutes les réunions du Conseil.
Présidente intérimaire
10(2) En cas d'absence ou d'empêchement de la présidente en raison de maladie ou pour toute autre cause, le Conseil nomme un de ses membres à titre de présidente intérimaire jusqu'à ce que la présidente reprenne ses fonctions ou qu'une nouvelle présidente soit nommée, selon le cas.
Mandat de la présidente
10(3) La première présidente du Conseil est nommé pour un mandat de deux ans. Par la suite, la présidente est nommé pour trois ans.
Nomination des successeurs
10(4) La présidente dont le mandat est expiré reste en fonction jusqu'à la nomination de son successeur.
Renouvellement de mandat
10(5) La présidente dont le mandat est expiré peut recevoir un seul nouveau mandat à titre de présidente.
Rémunération
11 Les membres du Conseil, la présidente ainsi que la présidente intérimaire reçoivent la rémunération pour leurs services que fixe le lieutenant-gouverneur en conseil et le remboursement des dépenses raisonnables qu'ils ont dû engager dans l'exercice de leurs fonctions.
Directrice générale
12(1) Une directrice générale du Conseil est engagée à titre de première dirigeante, avec l'approbation du lieutenant-gouverneur en conseil, conformément à la Loi sur la fonction publique.
Fonctions de la directrice générale
12(2) La directrice générale engagée en application du paragraphe (1), sous réserve des directives du Conseil, est chargée:

a) de coordonner le travail du Conseil;
b) de la responsabilité des affaires quotidiennes et des activités du Conseil;
c) d'agir à titre d'employeur pour le Conseil au sens de la Loi sur la fonction publique et pour les fins de cette loi;
d) de l'accomplissement des devoirs et fonctions que le Conseil peut lui demander d'accomplir.

Dirigeantes et employées
13 En plus de la directrice générale engagée en application del'article 12, les dirigeantes et employées que le Conseil juge nécessaires afin d'exercer ses devoirs et ses fonctions en vertu de la présente loi peuvent étre engagées conformément à la Loi sur la fonction publique.
Réunion
14 Le Conseil doit tenir au moins six réunions par année aux dates, heures et lieux que le Conseil détermine, et il peut tenir des réunions additionnelles sur convocation de la présidente.

MR. CHAIRMAN: Page 3, as amended—pass.
Page 4 - Madam Minister.

HON. R. PENNER: English and French, as amended.

HON. J. WASYLYCIA-LEIS: Again, a very quick comment here on section 9, since again a suggestion was made by the Provincial Council of Women on the rotation of council members, I just wanted to point out that through section 9(1), as well as through section 10(2), it's our intent to ensure rotation of members. Those clauses provide for staggered replacement of members, so that council will always consist of experienced as well as new members to ensure stability and continuity.

MR. CHAIRMAN: Page 4 - Mr. Mercier.

MR. G. MERCIER: Will you be accepting appointment of a specific number of members upon recommendation of the Opposition?

HON. J. WASYLYCIA-LEIS: Upon - sorry?

MR. G. MERCIER: Upon recommendation of the Opposition.

HON. R. PENNER: Of Her Majesty's Loyal Opposition.

HON. J. WASYLYCIA-LEIS: Will I be accepting recommendations from Her Majesty's Loyal Opposition, is that the question?

MR. G. MERCIER: And making appointments.

HON. J. WASYLYCIA-LEIS: In terms of appointments, I'm always looking for suggestions and would encourage members of the Opposition, just as I've encouraged other organizations, to make suggestions.

MR. G. MERCIER: I want to ask the Minister if she would be agreeable to opening up, say, of the 13 positions, 5 positions to be appointed on recommendation of the Official Opposition?

HON. J. WASYLYCIA-LEIS: While I thank the Member for St. Norbert for that suggestion, I think that the recommendation, as outlined in the legislation, is the appropriate way to go. It ensures a representative council with input from all segments of society. I think that, if members opposite have suggestions to make, we'll certainly take them into consideration.

MR. CHAIRMAN: Page 4—pass.
Page 5, we have an amendment - Mr. Penner.

HON. R. PENNER: I move,
THAT section 11 of Bill 3 be amended
(a) by striking out the word "such" in the 6th line thereof; and
(b) by striking out the words "as the Lieutenant-Governor-in-Council may approve" in the 8th, 9th and 10th lines thereof.

En Français:
IL EST PROPOSÉ que l'article 11 du Projet de loi 3 soit modifié par la suppression:
(a) dans la version anglaise, de "such" à la sixiéme ligne;
(b) de "et que le lieutenant-gouverneur en conseil approuve" à la fin du paragraphe.

MR. CHAIRMAN: Is there any discussion?

Madam Minister.

HON. J. WASYLYCIA-LEIS: Basically, this amendment corrects an oversight in the original draft. With the wording of the original, the legislation as you have it before you, it would have required every expenditure of the council to be approved by the Lieutenant-Governor-in-Council through an Order-in-Council for every seperate expenditure right. That's certainly nohere may be a disposition to pass the bill as a whole and accordingly, if it's in order, I would move all of the motions, one at a time, of course, and then the bill as a whole.

MR. CHAIRMAN: Okay. Is that in agreement with the members of the committee? (Agreed)

Very well, Mr. Penner.

HON. R. PENNER: I move,

THAT subsection 4(2) of Bill 11 be struck out.

In French:

IL EST PROPOSÉ de supprimer le paragraphe 4(2) du Projet de loi 11.

A MEMBER: Explain.

HON. R. PENNER: It just occurred to us at the time that it wasn't such a good thing.

HON. M. SMITH: It was not the intent to discriminate in any way to a common law spouse in terms of naming a child. We feel that section 4(1) which deals with change of name of children by parent covers the general case. There is no need for the specific, it was included in error.

HON. R. PENNER: 4(1) covers all parents.

MR. CHAIRMAN: So, it's been struck out because it's redundant, is that true?

HON. R. PENNER: Yes.

MR. CHAIRMAN: Page 4—pass.

HON. R. PENNER: I move,

THAT subsection 4(3) of Bill 11 be amended by striking out "or (2)."

In French:

IL EST PROPOSÉ d'amender le paragraphe 4(3) du Projet de loi 11 par la suppression des mots, chiffres et signes "ou (2)."

That is consequential upon the previous change.

The next motion is strictly a renumbering.

I move, en anglais,

THAT subsections 4(3), 4(4), 4(5) of Bill 11 be renumbered as 4(2), 4(3) and 4(4), respectively.

In French:

IL EST PROPOSÉ d'amender le Projet de loi 11 par substitution, aux actuels numéros de paragraphe 4(3), 4(4) et 4(5), des numéros 4(2), 4(3) et 4(4).

MR. CHAIRMAN: Pass.

HON. R. PENNER: Finally, Sir, I move,

THAT the French version of subsection 5(1) of Bill 11 be amended by striking out "14" and substituting therefor "4."

It's a misprint.

In French:

IL EST PROPOSÉ d'amender la version française du paragraphe 5(1) du Projet de loi 11 par suppression du chiffre "14" et son remplacement par "4."

MR. CHAIRMAN: Pass.

Page 5, as amended.

HON. R. PENNER: Bill, as amended.

MR. CHAIRMAN: Bill, as a whole, amended—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 18 - THE SECURITIES ACT

MR. CHAIRMAN: Mr. Penner will be the surrogate, Mr. Mackling?

HON. R. PENNER: I'll just stay where I am. A surrogate should be seen and rarely heard. There are a few amendments here. Could I ask that the amendments be circulated, please?

MR. CHAIRMAN: Page 1—pass; page 2—pass.

Page 3.

HON. R. PENNER: I move,

THAT section 113(4) of The Securities Act as set out in section 2 of Bill 18 be struck out and the following substituted therefor:

Defence.

113(4) No person or company shall be found to have contravened subsection (1), (2) or (3) if the person or company proves that

a) the person or company reasonably believed that the material fact or material change had been generally disclosed; or

b) the material fact or material change was known or ought reasonably to have been known to the seller or purchaser.

IL EST PROPOSÉ QUE le paragraphe 113(4) de la Loi sur les valeurs mobiliéres figurant à l'article 2 du projet de loi 18 soit supprimé et remplacé par ce qui suit:

Défense

113(4) Aucune personne ou compagnie ne peut étre déclarée coupable d'avoir contrevenu au paragraphe (1), (2) ou (3) si elle prouve:

a) qu'elle avait des motifs valables de croire que le fait important ou le changement important avait fait l'objet d'une divulgation générale;

b) que le vendeur ou l'acheteur connaissait ou aurait dû normalement connaître le fait important ou le changement important.

MR. CHAIRMAN: Mr. Birt.

MR. C. BIRT: What was the reason for the addition, basically (b), reading it would be an additional defence.

I don't disagree with it, I would just like to know the reasoning.

HON. R. PENNER: What we're doing is in effect making sure that the same defences are available if you proceed civilly or if you proceed criminally. It's making the defences uniform.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Page 3, as amended.

MR. CHAIRMAN: Page 3, I guess is amended. Yes, page 3 as amended—pass.

The next one is on page 4.

HON. R. PENNER: I move, on page 4

THAT proposed subsection 113.1(1) of The Securities Act as set out in section 3 of Bill 18 be amended:

a) by adding immediately after the word "unless," the words "the person or company in the special relationship with the corporation proves that"; and

b) by striking out in clause (a) the words "the person or company in the special relationship with the corporation proves that."

IL EST PROPOSÉ QUE le paragraphe 133.1(1) de la Loi sur les valeurs mobiliéres figurant à l'article 3 du projet de loi 18 soit modifié par la suppression des mots qui suivant "à moins que" et leur remplacement par ce qui suit:

-(Interjection)- You want an explanation?

This is an onus provision, pursuant to which the defendant in raising this particular defence, the onus of establishing that defence is on the defendant.

MR. CHAIRMAN: Pass?

Mr. Birt.

MR. C. BIRT: Mr. Chairman, as I understand it, they're attempting to provide sort of a uniformity of legislation across the country. Is this bringing us into line with the other legislation or is this something that we're adding in - and I'm referring now to all of these changes because they seem to be additional points or concepts that are being put in.

HON. R. PENNER: No. We have been in touch with the people in Ontario and they will be making exactly the same amendments.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Page 4, as amended.

MR. CHAIRMAN: Page 4, as amended—pass.

Page 5.

HON. R. PENNER: I move,

THAT proposed subsection 113.1(2) of The Securities Act as set out in section 3 of Bill 18 be amended:

a) by adding immediately after the word "unless" the words "the person or company in a special relationship with the corporation proves that"; and

b) by striking out in clause (d) the words "the person or company who informed the other person or company proves that."

IL EST PROPOSÉ QUE le paragraphe 113.1(2) de la Loi sur les valeurs mobiliéres figurant à l'article 3 du projet de loi 18 soit modifié par la suppression des mots qui suivent "à moins que" et leur remplacement par ce qui suit:

la personne ou compagnie qui a informé l'autre personne ou compagnie ne prouve:

d) qu'elle avait des motifs valables de croire que le fait important ou le changement important avait fait l'objet d'une divulgation générale;

e) que le vendeur ou l'acheteur connaissait ou aurait dû normalement connaître le fait important ou le changement important;

f) dans le cas d'une action contre une corporation ou une personne ayant des relations particuliéres avec la corporation, le renseignement a été donné dans le cours nécessaire des affaires;

g) dans le cas d'une action contre une personne ou compagnie mentionnée au sous-alinéa c)(i), (ii) ou (iii), le renseignement a été donné dans le cours nécessaire des affaires afin de susciter l'offre publique d'achat, la combinaison d'entreprises ou l'acquisition.

This too has been in association with the Ontario people.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Page 5, as amended.

MR. CHAIRMAN: Page 5, as amended—pass.

HON. R. PENNER: Page 6.

MR. CHAIRMAN: Page 6—pass.

Page 7.

HON. R. PENNER: Page 7, I move that . . .

MR. CHAIRMAN: It's on page 8.

HON. R. PENNER: Well, it's either at the bottom of page 7, or the top of page 8, so let's assume . . .

MR. CHAIRMAN: Oh, it's a new item. I see. Proceed.

HON. R. PENNER: . . . it's an addition to section 3.

THAT Bill 18 be amended by adding immediately after section 3 the following section:

Well, it doesn't matter where we move it. We could move it at the bottom of page 7.

Subsec. 114(1)am.

4 Subsection 114(1) of the act is amended by

(a) striking out "a transaction referred to in subsection (1) of section 113" and substituting therefor "the purchase, sale or communication, as the case may be, referred to in subsection 113.1(4)"; and

(b) striking out "section 113" wherever it appears in the subsection and substituting therefor "subsection 113.1(4)."

IL EST PROPOSÉ QUE le projet de loi 18 soit modifié par l'insertion, aprés l'article 3, de ce qui suit:

Mod. du par. 114(1)

4 Le paragraphe 114(1) de la Loi est modifié par:
a) la suppression des mots "d'une opération mentionnée au paragraphe 113(1)" et leur remplacement par les mots "de l'achat, de la vente ou de la communication mentionnée au paragraphe 113.1(4)";
b) la suppression de "de l'article 113," "à l'article 113" et "par l'article 113," à chaque accurrence, et leur remplacement par "du paragraphe 113.1(4)," "au paragraphe 113.1(4)" et "par le paragraphe 113.1(4)" respectivement.

MR. CHAIRMAN: Pass.

HON. R. PENNER: It's a numbering motion - 7 as amended.

And the final motion, Sir, is a renumbering motion.

THAT sections 4, 5, 6 and 7 of Bill 18 be renumbered as sections 5, 6, 7 and 8 respectively.

IL EST PROPOSÉ QUE les articles 4, 5, 6 et 7 du projet de loi 18 deviennent les articles 5, 6, 7 et 8 respectivement.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Pages 8 and 9, as renumbered.

MR. CHAIRMAN: Pages 8 and 9, as renumbered—pass.

HON. R. PENNER: Okay, the bill.

Thank you.

MR. CHAIRMAN: Bill—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 29 - THE CONDOMINIUM ACT

MR. CHAIRMAN: Next is Bill No. 29, An Act to amend The Condominium Act. We have a number of amendments here.

Mr. Birt.

MR. C. BIRT: Move everything, as well as the amendments. I understand them. I can appreciate them. I accept them. We approve of them. So is there an expeditious way of doing it?

HON. R. PENNER: Yes. Give me the amendments. I'll move the amendments in English and in French, and then we'll just take the bill as amended.

I move,

THAT section 1 of Bill 29 be amended by striking out clause (a) thereof and substituting therefor the following clause:

(a) by adding thereto, immediately after clause (n) thereof, the following clause:

(n.1) "minister" means the member of the Executive Council charged by the Lieutenant-Governor-in-Council with the administration of this Act;

In French:

IL EST PROPOSÉ de remplacer l'alinéa la) du project de loi 29 par ce qui suit:

a) par l'adjonction, aprés la définition de "fraction de terrain nu," de la suivante:

"ministre" Le membre du Conseil exécutif que le lieutenant-gouverneur en conseil charge de l'application de la présente loi.("minister").

I move,

THAT the proposed new subsection 5(1.8) of The Condominium Act, as set out in section 4 of Bill 29, be struck out.

IL EST PROPOSÉ de supprimer le paragraphe 5(1.8) de la Loi sur les condominiums, édicté par l'article 4 du project de loi 29.

I move,

THAT the proposed new subsection 7.1(2) of The Condominium Act, as set out in section 12 of Bill 29, be struck out and that the following subsection be substituted therefor.

Information to be received by purchaser.

7.1(2) No agreement to purchase a unit is enforceable against the purchaser unless the purchaser has received, before or at the time of executing the agreement,

(a) the most recent financial statement of the corporation and a budget statement for the current financial year setting out
  (i) the common expenses,
  (ii) the amount of each expense,
  (iii) the monthly common expense contribution for each type of unit,
  (iv) the portion of the common expense to be paid into a reserve fund, and
  (v) the amounts in all reserve funds at the start of the current financial year;
(b) any services not included in the budget that the vendor provides or expenses that he pays and that might reasonably be expected to become, at any subsequent time, a common expense and the projected common expense attributable to each of those services or expenses for each type of unit;
(c) a copy of any management agreement or proposed management agreement;
(d) a statement indicating whether or not the unit is tenant occupied and, if so occupied, the length of time the tenant is entitled to remain in occupancy in accordance with subclause 5(1.1)(d)(1), together with a copy of any existing tenancy agreements;
(e) a statement specifying any parts of the common elements that the owner of the unit is not entitled to use;
(f) a copy of the proposed declaration or, if already registered, a copy of the declaration;
(g) a notice that the purchaser should obtain a certificate in accordance with clause 14(1)(g);
(h) a statement specifying the number and type of parking stalls that are included in the purchase price and whether there is to be any additional monthly charge for the use of the stall; and
(i) such additional information as may be prescribed by regulation.

IL EST PROPOSÉ de remplacer le paragraphe 7.1(2) de la Loi sur les condominiums, édicté par l'article 12 du projet de loi 29, par le suivant:

Divulgations faites à l'acheteur
7.1(2) La convention d'achat d'une partie privative n'est opposable à l'acheteur que s'il a reçu les documents ci-après énoncés avant ou au moment de la signer:

a) l'état financier le plus récent de la corporation et l'état prévisionnel pour l'exercice actuel indiquant:
   (i) les dépenses communes,
   (ii) les montants de chaque dépense,
   (iii) le montant de la fraction des dépenses communes qui correspond à chaque genre de partie privative,
   (iv) la partie des dépenses communes qui est versée au fond de réserve,
   (v) le solde des fonds de réserve au début de l'exercice actuel,
b) les services, non compris dans l'état financier, que fournit le vendeur et les dépenses qu'il fait et qui sont vraissemblablement susceptibles de devenir des dépenses communes, ainsi que le montant prévu de la fraction des dépenses communes y relatives qui correspond à chaque genre de partie privative;
c) copie des conventions de gestion actuelles ou envisagées;
d) déclaration de l'état locatif de la partie privative et, le cas échéant, du terme de location auquel le locataire a droit dans le cadre du sous-alinéa 5(1.1)(d)(i), ainsi que copie du bail actuel;
e) déclaration des portions des parties communes dont le propriétaire de la partie privative n'a pas le droit d'user;
f) copie de la déclaration de condominium ou du projet de déclaration de condominium;
g) avis de l'obligation de l'acheteur d'obtenir un certificat sous le régime de l'alinéa 14(1)(g);
h) déclaration du nombre et du genre de places de stationnement qui sont comprises dans le prix d'achat et divulgation de l'existence de frais mensuels supplémentaires y relatifs;
i) les rensignements additionnels prévus par règlement.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Dispense in the French. Is that okay?

MR. CHAIRMAN: Saved.

HON. R. PENNER: Okay—pass.

I move,

THAT the proposed new subsection 7.1(3) of The Condominium Act, as set out in section 12 of Bill 29, be amended by striking out the words and figures "subsections (1) and (2)" in the second line thereof and substituting therefor the word and figure "subsection (1)."

IL EST PROPOSÉ de modifier le paragraphe 7.1(3) de la Loi sur les condominiums, édicté par l'article 12 du projet de loi 29, par le remplacement de "aux paragraphes (1) et (2)" par "au paragraphe (1)."

MR. CHAIRMAN: Pass.

HON. R. PENNER: Okay.

I move,

THAT the proposed new subsection 7.1(4) of The Condominium Act, as set out in section 12 of Bill 29, be amended by striking out the words and figures "subsection (1) or (2)" in the second and third lines thereof and substituting therefor the word and figure "subsection (1)."

IL EST PROPOSÉ de modifier le paragraphe 7.1(4) de la Loi sur les condominiums, édicté par l'article 12 du projet de loi 29, par le remplacement de "des paragraphes (1) ou (2)" par "du paragraphe (1)."

THAT the proposed new subsection 11(4) of The Condominium Act, as set out in section 14 of Bill 29, be amended by striking out the word "whenever" in the 4th line thereof and substituting therefor the words "within six months after."

IL EST PROPOSÉ de modifier le paragraphe 11(4) de la Loi sur les condominiums, édicté par l'article 14 du projet de loi 29, par le remplacement de "aussitôt" par "au plus tard six mois après."

THAT the proposed new subsection 14(1.1) of The Condominium Act, as set out in section 16 of Bill 29, be amended by striking out the words "within three months of" in the 4th line thereof and substituting therefor the words "at any time after."

IL EST PROPOSÉ de modifier le paragraphe 14(1.1) de la Loi sur les condominiums, édicté par l'article 16 du projet de loi 29, par le remplacement de "dans les trois mois du défaut" par "en tout temps après le défaut."

THAT the proposed new section 29 of The Condominium Act, as set out in section 20 of Bill 29, be amended

(a) by renumbering subsection (1) thereof as section 29; and
(b) by striking out subsection (2) thereof.

IL EST PROPOSÉ de modifier l'article 29 de la Loi sur les condominiums, édicté par l'article 20 du projet de loi 29, de la façon suivante:

(a) par le remplacement de l'indice du paragraphe (1) par "29";
(b) par la suppression du paragraphe (2).

THAT the proposed new section 30 of The Condominium Act, as set out in section 20 of Bill 29, be struck out and the following section be substituted therefor:

Level of reserve funds.
30(1) The total amount to be accumulated and maintained in the reserve fund of a corporation, or the total aggregate amount to be accumulated and maintained in the combined reserve funds of a corporation, as the case may be, shall be determined annually by a simple majority vote of the owners of the units in the corporation.
Filing of reserve fund statement.
30(2) In each year, every corporation shall file with the minister, in a form prescribed by regulation, a statement certifying that the corporation has a reserve fund in an amount specified in the statement and that the amount has been determined in accordance with the provisions of subsection (1).
Time limit.
30(3) Every corporation has two years from the date this section comes into force to commence filing the annual statements required under subsection (2).

IL EST PROPOSÉ de remplacer l'article 30 de la Loi sur les condominiums, édicté par l'article 20 du projet de loi 29, par le suivant:
Niveau du fonds de réserve
30(1) Les sommes accumulées et conservées dans le fonds de réserve ou, selon le cas, la somme globale accumulée et conservée dans les différents fonds de réserve de la corporation sont prévues annuellement par un vote pris à la simple majorité des voix des propriétaires de parties privatives.
Dépôt d'une déclaration de réserve
30(2) La corporation dépose annuellement auprés du ministre, en la forme prescrite par réglement, une déclaration attestant la constitution d'un fonds de réserve d'un montant à celui établit dans les termes du paragraphe (1).
Délai
30(3) Il est imparti un délai de deux ans, courant à compter de l'entrée en vigueur du présent article, à la corporation pour le dépôt des premiéres déclarations annuelles prévues au paragraphe (1).

MR. CHAIRMAN: Just one second, let me catch up. I've got to sign them each whether you read them or not.

HON. R. PENNER: Okay. Bismarck would approve.

MR. CHAIRMAN: Page 4.

HON. R. PENNER: I move,
THAT the proposed new subsection 33(1) of The Condominium Act, as set out in section 20 of Bill 29, be struck out and the following subsection be substituted therefor:
Reserve fund accounts.
33(1) Every corporation shall keep a reserve fund account ina form and manner prescribed by regulation.
IL EST PROPOSÉ de remplacer le paragraphe 33(1) de la Loi sur les condominiums, édicté par l'article 20 du projet de loi 29, par le suivant:
Comptabilité des fonds de réserve
33(1) La corporation tient un compte relatif au fonds de réserve en la forme et selon la maniére prescrites par réglement.
THAT the proposed new subsection 33(2) of The Condominium Act, as set out in section 20 of Bill 29, be struck out and the following subsections be substituted therefor:
Certified copies of reserve fund accounts.
33(2) In addition to complying with the requirement of sub-clause 7.1(2)(a)(v), every corporation shall provide each owner of a unit in the corporation, within three months after the close of each fiscal year of the corporation and at other reasonable times upon the request of the owner, with a certified copy of the reserve fund account kept in respect of that unit under subsection (1).
IL EST PROPOSÉ de remplacer le paragraphe 33(2) de la Loi sur les condominiums, édicté par l'article 20 du projet de loi 29, par le suivant:
Transmission du compte au propriétaire
33(2) En plus de se conformer aux exigences énoncées au sous-alinéa 7.1(2)(a)(v), la corporation transmet à chaque propriétaire de parties privatives une copie certifiée du compte, relatif au fonds de réserve, tenu conformément au paragraphe (1) à l'égard de sa partie privative. Cette transmission a lieu dans les trois mois de la fin de l'exercice de la corporation et, à la demande du propriétaire de parties privatives, à tous autre moment raisonnable.

MR. CHAIRMAN: Pass.
Page 5.

HON. R. PENNER: I move,
THAT the proposed new section 34 of The Condominium Act, as set out in section 20 of Bill 29, be amended by adding thereto, immediately after clause (d) thereof, the following clauses:
(e) prescribing the additional information, if any, that a purchaer if required to receive under clause 7.1(2)(1);
(f) prescribing the form and manner in which reserve fund accounts are to be kept.
IL EST PROPOSÉ de modifier l'article 34 de la Loi sur les condominiums, édicté par l'article 20 du projet de loi 29 par l'adjonction, à la fin de ses disposition, de ce qui suit:
e) prescrire les renseignements additionnels, s'il en est, que l'acheteur est en droit de recevoir aux termes de l'alinéa 7.1(2)(i);
f) prescrire la forme que dolvent revétir les comptes relatifs aux fonds de réserve ainsi que la façon de les tenir.

MR. CHAIRMAN: Pass.

HON. R. PENNER: Bill, as amended.

MR. CHAIRMAN: As amended—pass.
Oh, Mr. Birt, excuse me.

MR. C. BIRT: Mr. Chairman, my only comment on the proposed bill and the amendments, which were good, are long overdue. The only suggestion I would make to the Minister and to the government is that this is a helpful step forward.
In my speech, I recommended a major review of the whole Condominium Act and the industry in which we are involved today, and I would hope that this has whetted the Minister's appetite to see how she's sailed through this relatively unscathed, with some degree of political commentary to her credit - and she deserves the credit - that the next step be taken and the major review of the whole concept be undertaken. If it is done, I think you will find support for that position on our side of the House.
Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Birt.
Bill—pass; Title—pass; Preamble—pass.
Bill be reported.

BILL NO. 31 - THE COMMUNITY CHILD DAY CARE STANDARDS ACT

MR. CHAIRMAN: Bill No. 31, An Act to amend The Community Child Day Care Standard Act. Are there any amendments?

Bill as a whole, Mr. Mercier, or Mr. Birt, any commentary? Bill as a whole—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 36 - THE RELIGIOUS SOCIETIES' LAND ACT

MR. CHAIRMAN: Bill No. 36, An Act to amend The Religious Societies' Land Act, pass as a whole?

Bill—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 44 - THE COAT OF ARMS, FLORAL EMBLEM AND TARTAN ACT

MR. CHAIRMAN: Bill No. 44, bill, as a whole, pass?

Bill—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 45 - THE MANITOBA LOTTERIES FOUNDATION ACT

MR. CHAIRMAN: The next bill is Bill No. 45, and I must excuse myself from this bill because the very liberal interpretation of our conflict-of-interest legislation would indicate that I may have a conflict with this act. Therefore, I must pass over the Chair and leave the Committee Room.

MR. DEPUTY CHAIRMAN, M. Dolin: Are there any amendments?

CLERK OF COMMITTEES, Ms. S. Clive: Yes, there are two amendments.

HON. R. PENNER: Sir, I move,

THAT the proposed new subsection 8(1) of the Manitoba Lotteries Foundation Act, as set out in section 4 of Bill 45, be amended

(a) by striking out the words "as the foundation deems necessary" in the 7th and 8th lines thereof and substituting therefor the words "as is reasonably necessary." -(Interjection)- Yes, that's an objective, yes - and

(b) by striking out the words "that the foundation deems relevant" in the 2nd last line thereof and substituting therefor the words "that is or are reasonably relevant."

IL EST PROPOSÉ QUE le paragraphe 8(1) de la Loi sur la Fondation manitobaine des loteries, figurant à l'article 4 du projet de loi 45, soit modifié:

a) par la suppression des mots "qu'elle juge";

b) par la suppression des mots "que la Fondation estime avoir" et leur remplacement par les mots "qui ont."

Okay. Pass?

MR. DEPUTY CHAIRMAN: Pass.

HON. R. PENNER: I move,

THAT the proposed new subsection 8(2) of The Manitoba Lotteries Foundation Act, as set out in section 4 of Bill 45, be amended by striking out the words, "as it deems necessary" in the 2nd last line thereof and substituting therefor the words "as are reasonably necessary."

IL EST PROPOSÉ QUE le paragraphe 8(2) de la Loi sur la Fondation manitobaine des loteries, figurant à l'article 4 du projet de loi 45, soit modifié par la suppression des mots "qu'elle juge."Pass?

MR. DEPUTY CHAIRMAN: Pass.

HON. R. PENNER: I move,

THAT the proposed new subsection 8(4) of The Manitoba Lotteries Foundation Act, as set out in section 4 of Bill 45, be amended by adding thereto, immediately after the word "may" in the 1st line thereof, the words "upon reasonable grounds."

IL EST PROPOSÉ QUE le paragraphe 8(4) de la Loi sur la Fondation manitobaine des loteries, figurant à l'article 4 du projet de loi 45, soit modifié par l'insertion, après la première occurrence du mot "peut," des mots "pour des motifs raisonnables."

Pass?

MR. DEPUTY CHAIRMAN: Pass.

HON. R. PENNER: In each and every case, I'm moving the French as well for the record.

I move,

THAT the proposed new subsection 13(1) of The Manitoba Lotteries Foundation Act, as set out in section 5 of Bill 45, be amended

(a) by striking out the words "as the foundation deems necessary" in the 11th and 12th line thereof and substituting therefor the words "as is reasonably necessary"; and

(b) by striking out the words, "as the foundation deems relevant," in the 2nd last line thereof and substituting therefor the words "that is or are reasonably relevant."

IL EST PROPOSÉ QUE le paragraphe 13(1) de la Loi sur la fondation manitobaine des loteries, figurant à l'article 5 du projet de loi 45, soit modifié:

a) par la suppression des mots "qu'elle juge";

b) par la suppression des mots "que la Fondation estime avoir" et leur remplacement par les mots "qui ont."

MR. DEPUTY CHAIRMAN: Pass.

HON. R. PENNER: And finally, Sir, I move,

THAT the proposed new subsection 13(2) of The Manitoba Lotteries Foundation Act, as set out in section 5 of Bill 45, be amended by striking out the words "as it deems necessary" in the 6th and 7th lines thereof and substituting therefor the words "as are reasonably necessary."

IL EST PROPOSÉ QUE le paragraphe 13(2) de la Loi sur la Fondation manitobaine des loteries, figurant à l'article 5 du projet de loi 45, soit modifié par la suppression des mots "qu'elle juge."

MR. DEPUTY CHAIRMAN: Pass. Page 1.

HON. R. PENNER: Bill as amended?

MR. DEPUTY CHAIRMAN: Bill as amended—pass; Title—pass; Preamble—pass.

Bill be reported.

BILL NO. 50 - THE CONSUMER PROTECTION ACT

MR. DEPUTY CHAIRMAN: Bill 50, An Act to amend The Consumer Protection Act. Amendments?

Bill No. 50—pass. No amendments? Bill—pass; Preamble—pass; Title—pass.

Bill be reported.

Committee rise.

COMMITTEE ROSE AT: 9:49 p.m.

BRIEF PRESENTED BUT NOT READ:

GROSVENOR HOUSE WINNIPEG CONDO CORP. 71

811 Grosvenor
Winnipeg, Manitoba
R3M 0M3

June 11, 1987

TO WHOM IT MAY CONCERN:

RE: BILL 29 - AN ACT TO AMEND THE CONDOMINIUM ACT

Please consider this submission on behalf of Winnipeg Condominium Corporation No. 71 with respect to the above-captioned bill.

Our primary concern relates to the fact that if this act is passed, all condominium corporations in Manitoba will be required to maintain a reserve fund equal to 5 percent of the appraised value of the property.

According to news reports, this bill came into being largely due to efforts by the Manitoba chapter of the Canadian Condominium Institute who apparently felt that some legislation was necessary to govern the size of reserve funds maintained by condo boards. Although many condo corporations belong to the CCI (including ours), they do so only to be kept up to date on current issues affecting condos. To the best of my knowledge, the Manitoba chapter of the CCI has never solicited nor received instructions from its membership to make representations to the government concerning reserve funds. In short, they do not speak for the condominium corporations which make up their membership.

Having said that, I now turn to the reasons why we feel that this well-intentioned bill is misguided and may well do more harm than good. I believe that our views can best be summarized as follows:

(1) The proposed legislation is discriminatory. We cannot understand why condo owners should be singled out and treated differently from all other property owners in the province. Prudent owners will, as a matter of course, have resources to which they can turn in the event that money is required to carry out repairs to their property. Owners with less foresight will not be in a position to carry out repairs as expeditiously as might be desired. Throughout the city, one can see examples of well maintained and poorly maintained homes and apartment blocks. The owners of condos are as capable of governing their own affairs as other property owners and should be free to choose how their buildings will be maintained as well. To be forced to adhere to some arbitrary level imposed by government is unacceptable in a free and democratic society.

(2) The proposed legislation will not solve the "problem" it was intended to. Presumably, the intent of the legislation is to avoid the situation where a special assessment has to be made against all the owners in a building due to a large and unforeseen expense. Under the legislation, as I understand it, a reserve fund will have to be maintained at a certain level at all times to meet such expenses. But the moment an expense is paid out of the fund, the legislation requires that the fund be replenished by the owners. In either case, the owners will have to come up with an amount of money equal to the expense.

(3) The proposed legislation is arbitrary. The level of the reserve fund as proposed fails to take into account the varying characteristics of the various condo properties in the province. Further, for most of those properties, I suspect that the proposed level is onerous and out of all proportion to any expenses that are likely to occur short of a major disaster (which would be insured against in any event). For example, our building has an appraised value of $3 million. We would have to maintain a reserve fund of $150,000.00. Even if the roof, boiler and elevator had to be replaced in a single year, the fund would be nowhere near exhausted.

(4) The proposed legislation will have a detrimental effect on the value of condominiums. Any person considering purchasing a condo in a building with a fund less than that stipulated in the bill will be deterred knowing that he will be responsible for making up the difference. Conversely, any person considering purchasing a condo in a building with a fund that meets the requirement will be deterred knowing that he will have to pay the vendor the sizable amount standing to his credit in the fund. In either case, people will think twice about buying condominiums knowing that a sizable portion of their assets will be tied up in the reserve fund. The end result will be a depressed condo market and a general falling of values.

(5) The proposed agency to oversee this aspect of condominium affairs is inappropriate. The Rentalsman is best left dealing with disputes between landlords and tenants. The concerns of condo owners are entirely different. The fact that the Rentalsman has been designated to oversee reserve funds graphically illustrates that the drafter of the bill has a serious lack of understanding of the workings of condominium corporations.

We feel that the objectives of the legislation could be better achieved through a process of educating both existing and potential condo owners. For example, the government could prepare pamphlets setting out the manner in which the proper level of a reserve fund should be calculated and make it mandatory that every prospective purchaser of a condo receive the pamphlet at the same time that he is presently required by law to receive a copy of the condo declaration, etc. Similarly, copies of the pamphlets could be distributed to all condo boards. In this way, people would be free to assess for themselves the adequacy of the reserve fund of a particular condominium project.

In conclusion, it is our sincere hope that this seriously flawed bill will either be extensively reworked or scrapped altogether.

Respectfully submitted,

MARK YOUNG
President