



**Fifth Session - Thirty-Fifth Legislature**  
of the  
**Legislative Assembly of Manitoba**

**Standing Committee**  
on  
**Law Amendments**

*Chairperson*  
*Mr. Jack Penner*  
*Constituency of Emerson*



**Vol. XLIII No. 1 - 9 a.m., Tuesday, June 28, 1994**

**MANITOBA LEGISLATIVE ASSEMBLY**  
**Thirty-Fifth Legislature**

**Members, Constituencies and Political Affiliation**

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NAME	CONSTITUENCY	PARTY
ASHTON, Steve	Thompson	NDP
BARRETT, Becky	Wellington	NDP
CARSTAIRS, Sharon	River Heights	Liberal
CERILLI, Marianne	Radisson	NDP
CHOMIAK, Dave	Kildonan	NDP
CUMMINGS, Glen, Hon.	Ste. Rose	PC
DACQUAY, Louise	Seine River	PC
DERKACH, Leonard, Hon.	Roblin-Russell	PC
DEWAR, Gregory	Selkirk	NDP
DOER, Gary	Concordia	NDP
DOWNEY, James, Hon.	Arthur-Virden	PC
DRIEDGER, Albert, Hon.	Steinbach	PC
DUCHARME, Gerry, Hon.	Riel	PC
EDWARDS, Paul	St. James	Liberal
ENNS, Harry, Hon.	Lakeside	PC
ERNST, Jim, Hon.	Charleswood	PC
EVANS, Clif	Interlake	NDP
EVANS, Leonard S.	Brandon East	NDP
FILMON, Gary, Hon.	Tuxedo	PC
FINDLAY, Glen, Hon.	Springfield	PC
FRIESEN, Jean	Wolseley	NDP
GAUDRY, Neil	St. Boniface	Liberal
GILLESHAMMER, Harold, Hon.	Minnedosa	PC
GRAY, Avis	Crescentwood	Liberal
HELWER, Edward R.	Gimli	PC
HICKES, George	Point Douglas	NDP
KOWALSKI, Gary	The Maples	Liberal
LAMOUREUX, Kevin	Inkster	Liberal
LATHLIN, Oscar	The Pas	NDP
LAURENDEAU, Marcel	St. Norbert	PC
MACKINTOSH, Gord	St. Johns	NDP
MALOWAY, Jim	Elmwood	NDP
MANNES, Clayton, Hon.	Morris	PC
MARTINDALE, Doug	Burrows	NDP
McALPINE, Gerry	Sturgeon Creek	PC
McCORMICK, Norma	Osborne	Liberal
McCRAE, James, Hon.	Brandon West	PC
McINTOSH, Linda, Hon.	Assiniboia	PC
MITCHELSON, Bonnie, Hon.	River East	PC
ORCHARD, Donald, Hon.	Pembina	PC
PALLISTER, Brian	Portage la Prairie	PC
PENNER, Jack	Emerson	PC
PLOHMAN, John	Dauphin	NDP
PRAZNIK, Darren, Hon.	Lac du Bonnet	PC
REID, Daryl	Transcona	NDP
REIMER, Jack	Niakwa	PC
RENDER, Shirley	St. Vital	PC
ROBINSON, Eric	Rupertsland	NDP
ROCAN, Denis, Hon.	Gladstone	PC
ROSE, Bob	Turtle Mountain	PC
SANTOS, Conrad	Broadway	NDP
SHELLENBERG, Harry	Rossmere	NDP
STEFANSON, Eric, Hon.	Kirkfield Park	PC
STORIE, Jerry	Flin Flon	NDP
SVEINSON, Ben	La Verendrye	PC
VODREY, Rosemary, Hon.	Fort Garry	PC
WOWCHUK, Rosann	Swan River	NDP

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON LAW AMENDMENTS**

**Tuesday, June 28, 1994**

**TIME — 9 a.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRPERSON — Mr. Jack Penner**  
(Emerson)

**ATTENDANCE - 10 — QUORUM - 6**

*Members of the Committee present:*

Hon. Messrs. McCrae, Orchard, Hon. Mrs. Vodrey

Messrs. Ashton, Chomiak, Helwer, Lamoureux, Pallister, Penner, Mrs. Dacquay

**APPEARING:**

Gary Kowalski, MLA for The Maples

John Plohman, MLA for Dauphin

**WITNESSES:**

Bill 19—The Mental Health Amendment Act

Nancy Davids, Private Citizen

Bill Martin, Canadian Mental Health Association

Bill 21—The Manitoba Medical Association Dues Act

John Laplume, Manitoba Medical Association

Bill 26—An Act to amend An Act to Protect the Health of Non-Smokers (2)

Jane Stewart, Council for Tobacco Free Manitoba

**Written Submissions:**

Bill 2—The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act

Donald Bailey, Manitoba Association for Rights and Liberties

Michelle Scott, Union of Manitoba Municipalities

Bill 4—The Energy and Consequential Amendments Act

Donald Bailey, Manitoba Association for Rights and Liberties

**MATTERS UNDER DISCUSSION:**

Bill 2—The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act

Bill 3—The Cancer Treatment and Research Foundation Amendment Act

Bill 4—The Energy and Consequential Amendments Act

Bill 15—The Law Society Amendment Act

Bill 19—The Mental Health Amendment Act

Bill 21—The Manitoba Medical Association Dues Act

Bill 26—An Act to amend an Act to Protect the Health of Non-Smokers (2)

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**Clerk of Committees (Ms. Patricia Chaychuk-Fitzpatrick):** Order, please. Will the Standing Committee on Law Amendments please come to order. Before the committee can proceed with the business before it, it must elect a Chairperson. Are there any nominations?

**Mrs. Louise Dacquay (Seine River):** I would like to move that Mr. Penner, the honourable member for Emerson, assume the Chair.

**Madam Clerk:** Mr. Penner has been nominated as the Chair. Are there any further nominations? If not, Mr. Penner, you are duly elected the Chair.

**Mr. Chairperson:** Will the Standing Committee on Law Amendments please come to order. This morning the committee will be considering Bill 2, The Prescription Drugs Cost Assistance

Amendment and Pharmaceutical Amendment Act; Bill 3, The Cancer Treatment and Research Foundation Amendment Act; Bill 4, The Energy and Consequential Amendments Act; Bill 15, The Law Society Amendment Act; Bill 19, The Mental Health Amendment Act; Bill 21, The Manitoba Medical Association Dues Act; and Bill 26, An Act to amend an Act to Protect the Health of Non-Smokers (2).

To date, we have had a number of presenters registered to speak to the bills this morning. I will read the names of the registered presenters aloud. If there are any other persons who wish to make presentations to the committee this morning, will they please register at the back of the room. In addition, if any presenters have a written copy of their brief and would require photocopies to be made, please contact the Clerk of the committee and she will ensure that a sufficient number of photocopies will be made.

We have on Bill 2, Peter Sim, the Manitoba Association for Rights and Liberties; on Bill 4, presenter Peter Sim, Manitoba Association for Rights and Liberties; on Bill 19, The Mental Health Amendment Act, Bill Martin, the Canadian Mental Health Association, and Maureen Koblun, Private Citizen; on Bill 21, The Manitoba Medical Association Dues Act, John Laplume, Manitoba Medical Association; and on Bill 26, An Act to amend an Act to Protect the Health of Non-Smokers (2), Jane Stewart, Council for Tobacco Free Manitoba.

I am going to ask the committee whether it is their will that we proceed with The Law Society Amendment Act, as I understand the minister responsible for the act has other urgent commitments, and I would ask with the indulgence of the presenters that we deal with this act first.

Is it the will of the committee that we proceed with Bill 15? [agreed] Thank you very kindly.

#### **Bill 15—The Law Society Amendment Act**

**Mr. Chairperson:** Could I ask the minister to come forward. Does the minister wish to make an opening statement?

**Hon. Rosemary Vodrey (Minister of Justice and Attorney General):** No, thank you, Mr. Chair, I believe my remarks were all covered in the introduction in the bill in first and second readings.

**Mr. Chairperson:** Thank you, Madam Minister. Does the critic for the official opposition have an opening statement?

**An Honourable Member:** Not at this time. No statement.

**Mr. Chairperson:** Thank you. Does the critic for the second opposition party wish to give an opening statement?

**An Honourable Member:** No.

**Mr. Chairperson:** Thank you very much. We will then deal with the bill on a clause-by-clause basis. Would it be the wish of the committee that we deal with the bill in its entirety from Clause 1 to Clause 15?

**Some Honourable Members:** Agreed.

**Mr. Chairperson:** Agreed? Thank you. Clause 1 to 15—pass; Title—pass; Bill—pass. Thank you.

\* (0910)

#### **Bill 2—The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act**

**Mr. Chairperson:** How would the committee wish to hear the presenters—in numerical order going back to Bill 2?

**An Honourable Member:** Yes.

**Mr. Chairperson:** Numerical order? Okay. Did the committee wish to use time limits for the public presentations?

**An Honourable Member:** No.

**Mr. Chairperson:** No? Okay.

I would like to advise the committee then that a written presentation to Bill 2 has been received from the Union of Manitoba Municipalities. This brief has been distributed to committee members. You have that presentation before you, I believe.

Could I ask then Mr. Peter Sim, Manitoba Association for Rights and Liberties, to come forward please. Is Mr. Peter Sim here? It has been indicated to the Clerk's Office that he might not be

here. We do have a written presentation which we will distribute at this time.

**Bill 4—The Energy and Consequential Amendments Act**

**Mr. Chairperson:** Could we ask Mr. Peter Sim then to come forward on Bill 4. Seeing he is not here, we do have a written presentation on his behalf which will be distributed.

**Bill 19—The Mental Health Amendment Act**

**Mr. Chairperson:** I call next then presenters on Bill 19, The Mental Health Amendment Act. I call forward Mr. Bill Martin, Canadian Mental Health Association. Mr. Bill Martin, would you proceed please.

**Mr. Bill Martin (Executive Director, Canadian Mental Health Association):** I do have one request in that Maureen Koblun was to speak this morning as well, and because of the change of date she could not be here. Another member from the same committee has agreed to make her presentation if that is acceptable to yourself.

**Mr. Chairperson:** Committee agreed to that?

**An Honourable Member:** Agreed.

**Mr. Chairperson:** Agreed.

**Mr. Martin:** My second request is, I think it would make a lot more sense for all of us if her presentation came first and mine second. Would that be all right?

**Mr. Chairperson:** By all means. Bring her forward. Ms. Nancy Davids, would you make her presentation, please? Do you have a presentation to be distributed? You may proceed.

**Ms. Nancy Davids (Private Citizen):** I am asking if you would go along with me with the reading, because I am going to read this for Maureen and then that way you can follow me. I am a consumer of mental health, and I am not exactly used to this process and I might not be all here. I am going to read this just as it says.

I wish to confine my remarks to the changes in Clauses 26.9(3)(f) and 26.9(3.1)(a). I understand that the purpose of these amendments is to ensure that the agencies external to government are bound

to follow guidelines of The Mental Health Act in regard to the confidentiality of a client's records.

These amendments are acceptable and should be passed. However, a number of issues are raised by these amendments which may require changes to The Mental Health Act, or may require the Legislature to establish regulations which will ensure confidentiality in these new agencies.

Over the years in which I have been a consumer of mental health services, I have been concerned about a number of practices. Some of these are: Staff talking about consumers with each other, even when there does not seem to be any apparent reason to do so. Sometimes these discussions occur where other consumers can hear.

A breach of trust wherein, although I expect my records should be confidential, I found they were shared with the head nurse, the social worker and the student social worker. I expected that what I told my doctor would not be told to anyone else. This harmed my trust in the doctor and interfered with my therapy. Being able to trust is essential in healing.

I get angry when my information is abused. It is as if I have been abused. When my records are shared in a seemingly inconsistent and casual way, I feel I have no sense of control. Yet it is crucial for me to feel a sense of control to be well.

I have always objected to being treated like a second-class citizen. If I do not have control over myself, my own life, I cannot gain and keep independence from the system.

I have not been offered opportunities to see what has been written about me at the time the notes were being made. If I could see this, it would help to ensure I understood what the doctors were saying and would also allow me to correct mistakes.

**Recommendations:** An oath of confidentiality be required for all persons who may have access to records. This must include all types of staff and all the different agencies and private offices, not just those run by government.

Clear client permission be obtained to release his or her information to other agencies.

Consumers be invited to review all additions to his or her records at the time they are being made.

Consumers be given the opportunity to request the records be changed or put in a note indicating their disagreement.

That the consumer's written viewpoint be considered of value equal to the service provider.

Guidelines for all agencies involved be established which outline how information should be handled.

Regular training programs be initiated and audits be done to ensure effectiveness and confidentiality procedures.

You do not know how hard that was to read that and read it for Maureen. Why I offered to do that for Maureen is because I know this is not something that is just a joke. I do not come here—matter of fact, I think your picture is crooked, but I have never been in this kind of thing and I really do not, well, care for your process. It is not my process. What I have read is something that I have read, and I just think it is something that is just entertaining or something. My own reasoning and the importance of it is my life is not something that I can in an hour be any different. I am going to be the same in an hour as I am tonight.

What is written about me is like a resume. It is my lifestyle. It is not something I can—it is not a job that I quit, and when I wake up in the morning I am the same consumer I am when I go to sleep at night. What is written about me is going to be with me for the rest of my life, and I feel I need the importance and security of other people who maybe have a different way of life. That does not mean I feel sorry for myself or feel sorry for other consumers, because I am very independent, stubborn and bullheaded, but I do feel that you have to—I am asking you to take this very seriously because you have a resume when you go for jobs that you have written. I have a resume that is attached to me for when I misbehave, so to speak, because of my illness. I hope you will take this seriously, and I hope I have made sense. I have behaved myself, I think. I have read this through,

and now I will let Bill Martin and I will go back and then I can really listen.

**Mr. Chairperson:** Thank you very much, Ms. Davids.

I want to indicate to you that it is quite normal for first-time presenters to be a bit nervous when they come to the mike. When I first presented to this committee a number of years ago, before I was an elected member, I felt as you did. I also felt a bit intimidated. But I think this process, this committee process, that we enter into, we are the only province in the country that allows for public input into the formation of legislation, and therefore I think it is extremely important that people like yourself—and you should be congratulated for coming before us today and making your views known because I think it is extremely important that you do. We welcome your views, and we take them very seriously.

\* (0920)

Therefore, I would say to you that if you ever have cause to present again, do not hesitate to come before us, because even though this might appear a bit intimidating, we are human beings like you are and we are here as representatives of government and the opposition, and we are here to hear your views and make amendments and changes to a legislation as suggested and government is duly able. So, again, thank you very much for your presentation.

Mr. Bill Martin, would you now make your presentation.

**Mr. Martin:** Thank you. I took a rather, for me, unusual step of just providing material to you which I had already provided to officials in the Department of Health. It makes the same point, and I did not bother to readdress it to this committee.

Before I begin, I would also like to thank the officials in the Department of Health for calling us up and asking our opinion about the proposed amendments. We really appreciate the chance to talk about that ahead of time and to prepare for it, and in actual fact we support the amendments that are before you. We think they are logical and should be passed.

What I would like is your indulgence just to raise some issues with you that are raised by these amendments and have been before us in terms of The Mental Health Act for quite a while. So I will just speak briefly to the material that is being provided to you.

What we do in our association is we talk to various people—family members, consumers, volunteers, lawyers—who work with us, and sort of say, well, what do you think about this, and they come back and tell us. One of the things that they were uniform in saying is that The Mental Health Act has become very cumbersome, it is sort of number after number after clause after clause. It is probably a horrible task, but everybody seems to agree that we should try to renumber it and straighten it out at some point in the future.

We also wanted to make the point that really we are looking for patient satisfaction as regards confidentiality of records, and oftentimes it is not the legislative act that brings about patient satisfaction. What it is is the process that happens in all the agencies that deal with records, and, you know, one of the effects of the new legislation is that it is dealing with new agencies now that are under Mental Health Reform that will have access to records for one reason or another.

It is our understanding that there is no uniform process for all agencies to follow in terms of mental health records. The government has been very thorough in those agencies, like Brandon Mental Health Centre, which are directly under the control of government, but agencies which are at arm's length, like hospitals or private practitioners' offices or social work offices or so on and so forth, are not under those guidelines. So it becomes a bit of a hodgepodge for a consumer who wants to have access to their records or see their records because every place is different. In some places it is pretty absent, and I do not think that the department at this point has initiated any way to run an audit on all of these and make sure that they are up to the standards that they should be. There are recommendations added to the letter that you have before you which would address that.

The other one that consumers tell us over and over again is that they cannot afford to access their records, and recently the Manitoba Medical Association, I think, came through with a policy that is \$170 or \$150 an hour if you want to go to a physician and see your records. Unfortunately, Grace Hospital has apparently adopted the same policy, but other hospitals do not. They have a different cost. So it depends where you are a patient as to how much it is going to cost you to see your own records—and the photocopying is also quite exorbitant. So it just ends up really meaning that the procedures that are in place frustrate the legislation.

It has been brought to my attention that in the Manitoba Gazette there are regulations about The Freedom of Information Act, and if we wish to access government information, then the fee is quite reasonable. It is \$10 for half an hour and then a reasonable photocopying cost. So there is an inconsistency there, and maybe it should be addressed by the officials in the Department of Health over the next year, and on both those issues we would very much like to work with the department in doing that.

The next one is our position on privacy and access to health records. I will just, if I may, hit the high spots of this again. The first issue is protecting the privacy of consumers of mental health services. As Nancy stated in her presentation, lots of people have access to records. You know, the janitors have access to records, social work students and so on and so forth, and there should be a regular routinized consistent policy put in place that no matter where the janitors work, whether it is a social service agency, a hospital or Brandon Mental Health Centre, they, as well as the professional staff, should be required to sign a document saying they will respect this and these are the procedures and the protocols. That is not in place right now.

Then, of course, consumer access to records, I think I have pretty well made my point on that. I will not go through it again, except that there should be a written policy in every agency as to how to do this, and perhaps we should also address

the issue of private practitioners charging what I think are exorbitant rates. One of the reasons they say is, well, we have to look at these records to make sure that there is nothing harmful. Well, it is not the consumers' fault that they wrote poor records, but the consumer has to pay the \$150 an hour so that they can make sure that they are protected and that the consumer is protected. There is some fundamental injustice there, I believe.

It has come to my attention that in enlightened practices, if I were a therapist and I were seeing a client, I would finish the session and then I would write down what it is and show it to the client and say this is what I have written about you. And the client can say, well, I do not agree with that, I do, or whatever. It is negotiated at that point, and then people become much more careful about what they put in their records because they know that the client can see them and this solves itself.

Another big issue, a number of consumers have come to us over the years with the complaint that anybody else can get access to their records but they cannot, and this often comes to a case of an insurance company or so on and so forth wants it. The therapist or the doctor will provide the company with that, but they will not provide the person themselves with a copy of what they said to the company. And that seems like, again, a fundamental injustice and illogical. So there should be routinized procedures set up to have that take place.

I would like to again support what Nancy said, that one of the most terrible things that can happen to us is to lose control over our lives. If you are experiencing an emotional problem or a mental illness, then that is just multiplied many, many times. So one of the ways of a system helping people to keep control of their lives is giving them the information in a factual way all the time, and it should be a standard operating procedure, just a standard therapeutic technique. You wish to create safety for people so that they can heal. Well, give them the information.

Then, finally, informing consumers of policies regarding confidentiality, there should be a regular routinized procedure for that. This is what

happens. You come into the Grace Hospital, for instance, you should know that students are going to have access to your record. You should know that if you disclose something about child abuse, for instance, that will be told. There are limitations to confidentiality, and that should be written down in a very clear way and given to everyone who enters into this kind of procedure. Again, people will accept that if they know ahead of time. They are shocked and dismayed if it happens afterward.

\* (0930)

The last page is just a suggested form that any hospital or agency could use, and we provided that to your officials just for their use. Oh, it is not attached? My apologies. Well, I have it and I will leave it with the Clerk, if I may. It is just a form which can be used or adapted and used in every situation. It is headed up Confidentiality and Health Care Records.

That is my presentation. I really do appreciate your listening, and I would be happy to answer any questions you may have.

**Mr. Chairperson:** Thank you very much, Mr. Martin. Are there any questions?

**Mr. David Chomiak (Kildonan):** Mr. Chairperson, and through the Chair, thank you for the presentation, Mr. Martin and also Ms. Davids. I appreciated both presentations.

It is clear that generally both of you are in favour of these amendments, and what you are going on to say is that what we should be doing is broadening consumer access to the records as well as protect expanding the protection of the confidentiality provisions of those records to other agencies, et cetera. Is that generally a correct assumption as to what you are saying?

**Mr. Martin:** Yes, and I do not think it is legislation, in my opinion, that is required. It is regulation either through, you know, at one level or another, but it does require some action on your part, I believe. We have written to the various hospitals and said, would you please provide us with your policies and the papers you provide out, and they have not returned them, you know, just for the press of busyness or whatever. So it is something that requires the weight of the



department saying: Well, you are funded by us; we expect you to adhere to the standard of the legislation; and in the return mail, we want to see your policies.

**Mr. Chomiak:** Yes, I also take it that major problems are not with the regular agencies that people may deal with. It is more the arm's-length agencies. Is that a correct—

**Mr. Martin:** Yes.

**Mr. Chomiak:** Other than us passing some form of—is that basically your suggestion that we amend the various acts or enter into some kinds of protocols in order to remedy this situation?

**Mr. Martin:** I believe that it would not require legislation. I think it is just a ministerial directive perhaps or, you know, in terms of The Freedom of Information Act, I think it was listed in the Manitoba Gazette, but I do not know if you need to go to that extent. I think it is just giving it an imperative and doing it.

**Mr. Chomiak:** Yes, it would seem to me that is probably the case, because we are extending the act's provision to agencies that are funded by government. Certainly into the case of confidentiality, I think there is no legislation required. With respect to the case of disclosure of information and the like, I am not certain myself. It may require an amendment under The Freedom of Information Act, or I doubt that. It would require, actually, perhaps an amendment under several acts, but I am not certain.

**Hon. Donald Orchard (Minister of Energy and Mines):** Mr. Chairperson, thank you, Mr. Martin and Ms. Davids, for your presentations.

Mr. Martin, just a little clarification, in terms of what I would consider to be possibly discussions that were referenced by Ms. Davids in discussions about consumers and sometimes that happening in front of the consumers, I find that troubling, to say the least, although I recognize that from time to time case generalities will be discussed amongst professionals for obvious reasons. Do you know of any instance where an individual has identified a consumer by name to other individuals, where that issue was taken up with their respective professional governing bodies, be it social worker,

physician, psychiatric nurse?—because it seems to me that that would be a breach of their professional conduct in those circumstances. There probably are adequate provisions in the professional governance of the respective professions if it were pursued and maybe added emphasis to in terms of how they conduct themselves in public.

**Mr. Martin:** I am not aware of any specific instance, although Maureen alluded to it in her presentation. We have contacted all the professional organizations and asked for their guidelines on this, and some are very thorough, in particular, psychiatric nursing and occupational therapy. The medical profession has now really paid a lot of attention to this, and so that procedure is there, but it kind of varies as to how well it happens. Some people are really reluctant to go to the profession that has violated, what they feel has violated their rights, to have it corrected.

It is sort of a stereotype, I guess, that people believe, oh, all those professionals hang together, and if I go and make a complaint about one, they will all band together and I will be punished. There is that strong sentiment repeated to me over and over, and it speaks for the need of a more independent reporting body, I believe. Do I make myself clear on that?

**Mr. Orchard:** Yes, I understand the reluctance, and I guess I think that would make for an excellent case that CMHA might advance to those respective professional groups in terms of—I do not sense any of the caring professions would dismiss something like that out of hand because that is not an appropriate use of client information, and I think a process of reminder, and maybe if it has to be formal, through CMHA, would have quite remarkable results in the workplace.

**Mr. Martin:** Mr. Orchard, we do that to the extent as an advocacy organization. I think it sort of lets people know that the community is interested. They tend to pay more attention to it, and it is helpful. But I think there is a role as well for the department perhaps to just work with us. You know, set a goal and over a period of time—because sometimes the department has more weight than an advocacy organization does, and

when we add them together, maybe we can move things along more quickly.

**Mr. John Plohman (Dauphin):** Mr. Chairperson, I am really disturbed and shocked by the information here today. I was not aware that there was no standard procedure and policy in place that would deal with this kind of confidential information across the board by all agencies and hospitals and so on, and I think it is something—from what you have said today, it is just common sense that it is desperately needed.

Have you been making this kind of presentation? I do not recall this same kind of presentation in previous years. Have you made this presentation of the Canadian Mental Health Association to the government over the last number of years, precisely asking for this kind of thing? Or is this the first time that this bill comes forward that you have had occasion to do this, to ask specifically for this?

**Mr. Martin:** I guess I would have to ask Mr. Orchard to search his memory as well, because I am searching mine. This is the first time that we have been, I think, this crisp and this clear about this particular issue. Certainly, in terms of previous times when The Mental Health Act went through a major amendment, it was mentioned and talked about, and one of many issues, and so it just did not come forward to the extent that it has. To be fair to government, I do not think it has been presented this pointedly before.

**Mr. Plohman:** Well, I was not even pointing to this government or successive governments whether over the years this has been made as a major request and never been addressed. If it has not, it has been a major error, it seems to me.

**Mr. Martin:** I cannot quite recall how specific we were in our request. I know it has been an issue for a number of years, not only this administration but previous ones.

**Mr. Plohman:** Mr. Chairperson, I think that we will have to look very carefully at this and whether legislation is required or not or whether there are other ways that the government can address this issue and ensure that it is addressed as quickly as possible.

\* (0940)

**Mr. Chairperson:** Are there any further questions?

**Mr. Brian Pallister (Portage la Prairie):** Thanks, Mr. Martin, for your presentation. Just in terms of your No. 3 suggestion, providing consumers with copies of information provided to third parties, I just wanted to get some clarification from you on that. You are suggesting that on every occasion that information is forwarded, for example, to an insurance company on an application that a full copy of the medical information or any information forwarded to said insurance company should be sent to the person applying.

**Mr. Martin:** Yes.

**Mr. Pallister:** You are also saying in here that often the consumer is in the uncomfortable position of having to provide written consent for exchange of information and then not having access to this information himself or herself. I do not know what cases you are referring to.

I know it is a practice of reasonably long standing in the case of personal insurance applications for every applicant to be given notification that their medical information may be accessed if they so desire. They can call a toll-free number or they can write and get a complete copy of the information forwarded to the insurance company on their application. So, you know, in the case of the insurance applications that people may make, they do have the right to get the information that is forwarded concerning them on their application. Now there may be other instances where they do not have that.

**Mr. Martin:** First of all, if that right exists it is not widely known by people, because certainly we have people coming to us saying, you know, we wanted to get this information and we could not, and we have worked with them phoning and writing the company and the physician concerned. It is just sort of conventional wisdom. The physician will say, well, you do not share that with the patient. It is sort of like years ago people said, well, of course, the women will not have a vote. It is just conventional wisdom. We are sort of in the

process, and I guess you as legislators are in the process, of moving conventional wisdom a little further.

**Mr. Pallister:** I make you aware of this as someone who formerly was in that industry, that it is something that certainly applicants can have access to if they wish. It is not provided by the physician directly but by a bureau called the Medical Information Bureau. It is available and it is a practice of agents to notify applicants that they have that information available if they wish. It has been a standard practice for some time.

**Mr. Chairperson:** Thank you very much. That concludes the presentations on Bill 19. I want to, for the information of the committee, indicate that the attachment that Mr. Martin was talking about is, in fact, included with your presentation, and therefore there will not be a requirement to copy and/or distribute any further material, that committee members do have it.

Thank you, Mr. Martin.

#### **Bill 21—The Manitoba Medical Association Dues Act**

**Mr. Chairperson:** I will call now presenters on Bill 21—The Manitoba Medical Association Dues Act, Mr. John Laplume, Manitoba Medical Association. Mr. Laplume, would you come forward please. Have you a written presentation to distribute?

**Mr. John Laplume (Manitoba Medical Association):** No, I do not.

**Mr. Chairperson:** Would you proceed then, please.

**Mr. Laplume:** I am essentially here on behalf of the medical association to support The Manitoba Medical Association Dues Act as it has been presented to the House. As members of this committee will be aware, the relationship between the province's physicians and the government of Manitoba has had its ups and downs for a number of years, not only recently but obviously in past years and past decades.

The medical association views the introduction of The M.A. Dues Act as illustrative of a period of what I would call an up period as opposed to a

down period. It is part and parcel of a major five-year agreement which was reached between the province and the medical association respecting the fee-for-service physicians in the province who are in the large majority in the province.

The agreement does a number of things, and principally, I believe, it settles an age-old question which has been troubling the Province of Manitoba and the province's doctors, and that has to do with trying to provide the best possible level of medical services to Manitobans at an affordable cost.

The agreement does not give us the answer, but the agreement gives us a mechanism to try to find that answer. It creates structures such as the Manitoba Medical Services Council and the Physician Resource Committee to try to wrestle with these questions of affordability and maximum medical services at this affordable price. The Manitoba Medical Association Dues Act from the medical association's point of view is an instrumental part of trying to reconcile all the problems that are in the health care system to enable the medical association to take its rightful role at the table. An example of that would be, for example, the Manitoba Medical Services Council.

Yesterday the council had its first meeting, of which I am sure there are going to be very many more. There are obviously costs involved in the administration of the council, the participation of physicians who give up practice time to take part in council activities. The same could be said, of course, with the Physician Resource Committee, and, of course, the same also applies to a very large number of physicians who are now members of various health reform committees to which the medical association has been invited to participate in.

So, in all, the medical association is quite pleased with the relationship as it has been developing between the government of Manitoba and the province's doctors. I am not suggesting there are no problems. Clearly there are many problems and there are many issues. However we now have a process, we believe, where the parties

can sit down and attempt to find solutions to these difficulties.

**Mr. Chairperson:** Thank you, Mr. Laplume. Are there any questions or comments to Mr. Laplume?

**Mr. Dave Chomiak (Kildonan):** Thank you for that presentation. I am tempted, given your presentation, to discuss perhaps the five-year agreement, but I think I will generally—since I will have ample opportunity to do that at some other point, I am probably just going to confine my remarks to this particular amendment that has been brought in.

Can you just give me some general statistics on the number of physicians that are presently practising in Manitoba that now pay dues and the number that do not pay dues as a result of the changes that were made by the government three years ago to the act?

**Mr. Laplume:** At the present time, and I just checked our records this morning, there are 128 physicians who have not paid dues to the Medical Association for the current fiscal year. The balance have paid dues. I believe that is 2,068. The number who have paid dues has considerably increased in recent months as a result of the agreement reached between the province and the association.

**Mr. Chomiak:** Thank you, Mr. Laplume.

This particular amendment differs somewhat from the previous act that had been repealed by the government several years ago. Can you just highlight for me the changes in this particular act versus the previous act?

**Mr. Laplume:** There are two fundamental differences, Mr. Chairperson. The first difference is that the previous act provided that a physician who was covered under the legislation who failed to pay dues to the Medical Association would be subject to an automatic \$1,000 fine for breach of the requirement. The current legislation does not include any automatic penalty or fine. There is provision in the act for failure to pay becoming a matter of a civil debt, which is recoverable by the Medical Association in court.

The other significant difference, I believe, is that this act provides that the collection of dues is a

requirement of government on behalf of the Medical Association as opposed to the Medical Association having the primary responsibility to collect dues, similar to the situation that the Medical Association has with respect to physicians that it represents in collective bargaining, doctors employed by the government of Manitoba, emergency medical officers, pathologists, various physicians in rural Manitoba.

**Mr. Chomiak:** Mr. Chairperson, is this a classic example of the Rand Formula in operation?

**Mr. Laplume:** In my view, it is.

**Mr. Chomiak:** Would doctors who are on salary at various institutions also be subject to this act?

**Mr. Laplume:** Any physician who carries a full licence to practice with the College of Physicians and Surgeons of Manitoba would be covered under this piece of legislation, similar to the previous legislation. Any physician who does not have a full licence would be exempt.

\* (0950)

**Mr. Chomiak:** Mr. Chairperson, you made mention of the meeting of the Medical Services Council yesterday. Can you give me any idea as to when the next meeting of the Medical Services Council will be?

**Mr. Laplume:** We anticipate that the council was meeting at least once monthly, and that is going to recommence in September, probably the third Friday of each month.

**Mr. Chomiak:** Mr. Chairperson, I slipped off my original pledge that I had made, but—

**Mr. Chairperson:** I am going to hold you to the bill in the discussions very soon.

**Mr. Chomiak:** Insofar as we did make reference to the Medical Services Council, I had made a suggestion in the Legislature through the minister that perhaps the agendas of the Medical Services Council should perhaps be made public.

Can you give me any indication whether there is any objection from your part as to having the agendas made public so the public can have some ideas as to what matters are being discussed?

**Mr. Laplume:** I can tell you that from my particular point of view, speaking as a member of that council, that I would not have any objection, but it would be a matter for discussion within council. It would have to be decided essentially by the two co-chairs who are not voting members of council but are there to run the organization of council.

**Mr. Chomiak:** Thank you, Mr. Laplume. Mr. Chairperson, one final question. Has the Physician Resource Committee been meeting? If it has not, do you have any idea when it next will meet?

**Mr. Laplume:** The Physician Resource Committee had its first meeting on the 23rd and 24th of June. I believe it was just last week.

**Mr. Chairperson:** Thank you very much. Are there any further questions? If not, thank you very much Mr. Laplume.

That concludes the list of presenters that I had on Bill 21, unless there are any further presenters on Bill 21 that have been identified to the Clerk.

**Bill 26—An Act to amend an Act to Protect the Health of Non-Smokers (2)**

**Mr. Chairperson:** We will move then to Bill 26, An Act to amend An Act to Protect the Health of Non-Smokers (2). We have one presenter that has been identified as Jane Stewart. Would you come forward please. Ms. Stewart, have you a presentation to distribute?

**Ms. Jane Stewart (Council for Tobacco Free Manitoba):** Yes, I do. It is being handed out.

Good morning. I am here representing the Council for Tobacco Free Manitoba, CTFM, as I will refer to it later. We are not a radio station; we are a coalition of health organizations. Many of my colleagues are here with me today from the Cancer Society, the Heart and Stroke Foundation, the Lung Association and, of course, Mr. Laplume—well, he was here—from the Medical Association, and also Manitoba Health.

This morning I am going to provide CTFM's comments on Bill 26 which we strongly support. I will not go into a lot of detail, because I think I have provided quite a bit in the brief that you now have, but I will go through some of the concepts

that we wish to raise with you this morning. The main point that we want to make is that we want this bill to be passed and proclaimed so that the Act to Protect the Health of Non-Smokers has some teeth to it and can actually be enforced.

I also want to note that we have a lot of support for this from the public. Many of you will have received a little postcard that came out—actually it was a CTFM campaign—and we also have close to 10,000 petitions here that were signed by people right around the province, 5,000 alone from the Parklands region, supporting the type of amendments that actually have been introduced in Bill 26. So although I speak on behalf of CTFM, we are confident that we have the support of the public, and you can feel confident of that as well.

There are nine basic issues that I want to address. As I said, most of them have been detailed in the written submission, so I will go through it quite quickly and then you can ask any questions if you have any afterwards.

On a general note, we would like to see and we are optimistic that this act can now be enforced because we understand that there are some changes happening to the provincial tobacco tax legislation that through that somebody who sells tobacco products will lose his or her licence if in contravention of this particular Act to Protect the Health of Non-Smokers. So we are encouraged by that, and we are also encouraged by some changes that we will discuss in a minute in the act itself.

In terms of specifics, Section 5 of Bill 26 where it talks about minimizing the drifting of smoking into non-smoking areas, we are very encouraged to see that. I think that is a good attempt to try to make sure that people are not subjected to smoking when they are trying to sit in a nonsmoking area.

We would, however, like to suggest that Section 5(2) could be amended. As it is currently worded, it could be open to abuse. For instance, a proprietor could decide to put, if he had 40 seats in total, 20 of them in one small corner for a group that is coming in and leave the rest open for smoking, which means that anybody else who comes in—and the majority of Manitobans are nonsmoking—will have to sit in a smoking area.

So we suggest that you might want to change the wording to read that the smoking area does not exceed in size 50 percent of the eating area.

We would also like to suggest that you might want to amend the entire component so that all restaurants are smoke free. It is a trend that is happening in the United States. Some of the larger chains are doing it, and certainly it is in keeping with public health initiatives. So it is something to look at, but we do not want it to delay the passage of this act.

Section 6, we feel, has been improved with the addition of elevators, but we are concerned that banking institutions have been omitted from the areas that can now no longer designate smoking areas. We hope that is just an oversight and that it will be included again. Certainly banks are one of the places that many of us go to, more often than we sometimes want to and not to get what we want but to give what we have to give to the banks. So we think that it is important that banking institutions are included again.

We also would like to see health facilities exempt from being able to have designated smoking areas. It is obvious why we want to see that, but, again, we do not want to delay the passage of this act. Perhaps that is an amendment that should be addressed at a future time and also give health organizations an opportunity to participate in those discussions.

Section 7, we think, could be strengthened further by adding "posting signs in locations visible to the attending public." Sometimes it seems we have to spell everything out, because otherwise some people will take advantage. The signs might be visible, but not to those who need to see them.

Section 8 is a great improvement on the act. Section 7 of the original act, with the word "knowingly," did leave it difficult to enforce the act, and we are really pleased to see the word "knowingly" removed and Section 7(2) included. So we are now confident that there is a much better opportunity to actually enforce no sales to minors.

We do recommend, however, that, in addition to putting the words "shall sell or offer to sell," you include the words "or give." Those are in the original act, and again it may have just been an oversight. We would like to see those included again.

Section 9, we think, is a reasonable addition, and we would like to suggest the following amendment made to Section 8(1) so that it would read, "and liable on summary conviction to a minimum fine of \$500 and a maximum fine of \$1,000," et cetera. We think if you add a minimum fine in there you have a better chance of having some deterrent effect. If somebody ends up with \$1,000 maximum, they will probably only get a \$100 fine, which may not be sufficient.

Section 10 is a tremendous opportunity for Manitoba from a public health perspective. We have some suggestions as to how labelling and packaging could be used to promote health in this province and start to see a better reduction of smoking.

First of all, we should require manufacturers to list their ingredients on their tobacco packages. Anybody who smokes now and starts to read that will want to go to the hazardous waste disposal area.

Restrict labelling that makes claims such as mild and light. It is very difficult to support the terms "mild" and "light" if you start putting the ingredients and the amounts on the packages and once people understand what is in them.

You also now have an opportunity to create Manitoba-made labelling and packaging, which can help obviously in terms of any smuggling problems that may arise.

You can now create plain packages or packages that are completely covered with health warnings in a very visible and even a Manitoba-made fashion. For instance, you could put: One in five Manitobans die from smoking. Finally, eliminate any sale of kiddy packs, any packages that are less than 20 cigarettes.

We also would like to suggest that the clause be strengthened by adding the following phrase after

the word "including": "but without limiting the generality of the foregoing." I believe that is earlier on in the act, and it just would help make sure that the first part of the clause is not restricted by the second part.

\* (1000)

CTFM strongly urges you to pass this bill, see it proclaimed and then encourage the regulations be enacted. The regulations are essential to the enforcement and value of this act. For instance, any signage that has to be posted—and we know that signs are a very effective way of compliance with acts. Any signage has to be dealt with under the regulations, so that needs to be dealt with quickly. Also, in terms of designating the size of a smoking area, that has to also be dealt with under the regulations, so we would like to see that happen quickly.

Again, we encourage you to pass this piece of legislation quickly for the sake of all of us and especially for our kids. I would welcome any questions that you may have.

**Mr. Chairperson:** Thank you very much, Ms. Stewart. Just as a piece of information for you and those present here, the hazardous waste site that has been established in Manitoba will be a smoke-free site. There will be no burning on that site. So I would suggest that you cannot ask people to go over there with their smokes.

**Mr. Dave Chomiak (Kildonan):** Thank you for that presentation. Prior to the introduction of this legislation in the Legislature, was your association approached about the particular amendments that there are before us today?

**Ms. Stewart:** Mr. Chairperson, we have been on and off, in fact, consulting with the government and the opposition parties since 1991, when the original act was proclaimed, so we were consulted in the sense that we have not stopped speaking with the government and sometimes maybe harassing them to a degree. Yes, we certainly have been involved.

**Mr. Chomiak:** As I recall from your campaign, two aspects of your suggested changes are not in this legislation and are not in your presentation. The first, as I recall, is vending machines. I

understand that is not a problem because of the nature of vending machines, that is, for the distribution of tobacco products in Manitoba, so I might want your comment on that firstly.

**Ms. Stewart:** Vending machines—we did not discuss vending machines today for two reasons: One, we are very concerned to see the passage of this act, and we do not want it delayed by that; the vending machine issue supposedly is going to be dealt with through federal legislation, which will restrict vending machines to areas accessible only by people 18 or over. So we are hopeful that will address that issue.

We also understand, from some work that was done by Dr. Richard Stanwick a few years ago, that most kids—now this is going back a few years, but at that point, most kids accessed their cigarettes through stores, not through vending machines. So while we recognize that it is one potential source, we have decided that we would not focus on it too heavily today.

**Mr. Chomiak:** The second area that was not touched upon is the question of the licensing of—and you touched upon it in a tangential way by talking about changes to acts that would remove someone's licence. Maybe you could elaborate on that a little bit, please.

**Ms. Stewart:** Our understanding is that through the Finance department, there is going to be some legislation that will affect the way the tobacco licence works right now so that you can in fact—if you are a retailer, you cannot sell tobacco without having a licence, and you will lose that licence if you are in contravention of the Act To Protect the Health of Non-Smokers. So, while we had wanted to see licensing included, my understanding is that it cannot come under the Health department. It has to go through another area, so we hope this legislation will go through.

**Mr. Chomiak:** The minister just indicated that is, in fact, part of The Statute Law Amendment Act this session.

**Hon. James McCrae (Minister of Health):** Mr. Chairperson, the Minister of Finance (Mr. Stefanson) has legislation regarding The Tobacco Tax Act before the House in the omnibus statute

law taxation amendment act, some such name like that.

**Mr. Chomiak:** I thank the minister for that information. I think that is important that all the organizations are aware of that.

I, too, noted in the amendments that banks were removed and my first inclination—banks have been removed and I wondered if it was an insidious plot that had been hatched, but I assume that is only an oversight. Generally, those are my questions with respect to—thank you for that presentation.

**Mr. Brian Pallister (Portage la Prairie):** I would just like to say thanks for the presentation. Thanks for your concern for the fitness and well-being of Manitobans. I really enjoy your columns in the Free Press, and I hope they continue to show good judgment in that one area by retaining you and your services.

I assume with the recent federal government initiatives in the area of smoking tax that your organization has endeavoured to communicate your feelings on that. I am just curious as to what your feelings are about their initiatives.

**Ms. Stewart:** Primarily through our federal counterparts, we deal with the federal legislation. We get requested by the Canadian Council on Smoking and Health periodically to participate in a strong letter-writing campaign which we do from time to time of our own initiative as well. We are hopeful that a lot of the issues that are coming up at the federal level will actually come in place.

I do not know if this is the correct time to throw in my other little bit of propaganda about the fact that a lot of that legislation came in, because it was almost an apology because of the tobacco tax rollbacks and we were very concerned about that. I was certainly pleased that Manitoba has maintained its tobacco tax.

The other place we are looking—of course, we monitor what is going on in the other provinces, and Ontario has just passed I believe its legislation which is tremendous legislation particularly because you can no longer purchase or will no longer be able to purchase tobacco in pharmacies which we strongly support. A pharmacy is no place

to be selling a lethal product, the only one that is legally available and kills when used as intended. We do monitor all of that as well.

**Mr. Chomiak:** Yes, I have just one final question. Do you have any idea—it is clear and I am sure all members of this committee have read Michael Rachlis' book in terms of second opinion, and now his new one with respect to health, but he makes a very valid point I think that we all agree with, preventative measures would save immeasurably in terms of our health care costs.

Do you have any statistics or data as to what the costs of health care are in Manitoba with respect to the health risks imposed by smoking or by tobacco in general? Is there any general number that can be attached or attributed to the toll of tobacco on the health of Manitobans that you are aware of?

**Mr. Chairperson:** I will allow the question, although you are riding on the fringe of acceptability here, Mr. Chomiak.

**Ms. Stewart:** I do not have Manitoba statistics. I have tried to obtain those. I know there are some people in the department of epidemiology that have looked at that—thank you, I got that out.

The statistics that I have seen for Canada have suggested between \$11 billion and \$14 billion a year I believe. That is direct health costs. That is not talking about all the other issues, social issues and so on. That is simply what it costs the health care system itself. I guess you can extrapolate from that what it costs to Manitoba.

I have seen reference to something that I believe said one in five Manitobans are killed prematurely because of tobacco, so again you could look at that.

**Mr. Chairperson:** Thank you, Ms. Stewart, for your presentation.

That concludes the presentations before us.

I should indicate to the committee that before starting clause by clause there is agreement of the committee to have the written submissions appear in Hansard as well.



**Bill 2—The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act**

**Mr. Chairperson:** Could we then start with Bill 2, The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act?

Would the minister have an opening statement?

**Hon. James McCrae (Minister of Health):** Very briefly, Mr. Chairperson, I commend this legislation to my colleagues this morning.

The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act will assist us in getting our Drug Program Information Network system on the road and providing Manitobans with safer prescription drug services, a more convenient system, as well as one which will address the issues of abuse of our prescription drug Pharmacare system. I commend this bill to honourable members.

**Mr. Chairperson:** Any further comment?

**Mr. Dave Chomiak (Kildonan):** Mr. Chairperson, I just wanted to reiterate a comment. We are also in favour of this particular bill and will be passing it accordingly. My only comment that I am making is one that I referenced during my speech in the House over the reading—

**Hon. Donald Orchard (Minister of Energy and Mines):** It was memorable.

**Mr. Chomiak:** The member for Pembina indicated my speech was memorable. I thank him for those words of praise.

I commend other members of the committee who have not had an opportunity not to probably bother because I will be repeating the essence.

Actually, in all seriousness, the point I wanted to make was that this is the first time we have entered into a—as we enter the technological provision of matters of this kind, we are setting a precedent, I think, with this particular bill. I think a good deal of attention has been paid to ensuring that confidentiality is looked after as well as other matters relating to this, but I suspect that we will see issues arise in this area that were probably unforeseen.

\* (1010)

We are going to have to be relatively flexible in this area, because I think as we establish precedence in this and as we move towards the smart card and towards more advanced technology this is an area of generally uncharted waters, and it is something that we as legislators have to spend a good deal of time on and be fairly flexible on, because I believe it is certainly the expansion into an area that is generally uncharted.

I am sure we are doing this generally right. I suspect there will be glitches in the system that are unforeseen, and we should tread very carefully. Those are generally the comments that I wanted to make.

**Mr. McCrae:** Mr. Chairperson, just generally also in response, I take what the honourable member says seriously and appreciate the fact that, as we get into a changed way of providing services, we must use great care to ensure that people's confidentiality is not breached and that the services we are providing are indeed the improvements we want them to be. I think consultation is the key.

I think the reason that we can have some confidence or a good, high level of confidence about the quality of the programming is the nature of our consultation with all the pharmacists in Manitoba and their representative bodies and the medical profession, as well as consumers, as well as organizations like the Manitoba Association of Rights and Liberties. All of these people have been involved in the consultation, so, as I have said before, we are all in this together and we will be watching carefully to see that our programs operate as we had expected them to.

**Mr. Kevin Lamoureux (Inkster):** Mr. Chairperson, I did want to put a couple of things on the record with respect to this particular bill. I know in the past the Liberal caucus as a whole has been very supportive. In fact, during previous campaigns, it has talked about the benefits of having a Pharmacare card. I know there was some exception used with that particular wording, so new words were found out—or sought out, I should say—but the concept still remains a very positive one. We would like to believe that there

will be ongoing consultations with the different interest groups in terms of the whole question of confidentiality, which has to be one of the highest priorities in the implementation of any program of this nature.

**Mr. Orchard:** Mr. Chairperson, the issue since discussions on the use of electronic technology in terms of facilitating medical transactions, shall we call them, has been confidentiality, which has been one of the key areas from inception.

I simply want to indicate to my honourable friends, recall the number of times probably since we have been government, but certainly over the last decade, the number of times that paper medical records have been found blowing in the wind in back alleys.

It is my sincere belief that the way the system has been introduced with the wide consultation that has been undertaken with providers and with organizations concerned about individual rights and confidentiality that an electronic system has every opportunity to be much more secure than the current system of paper records. That applies not only to the instance where prescription drugs are part of the electronic and technology revolution in terms of information systems, but I think the opportunity is there for the electronic information technology to be extended across the system and reduce even further the opportunities for those breaches of confidence that we have seen that have been news articles in terms of paper records being inadequately disposed of.

I think we can all take comfort in the assurance that probably the second most important piece of information that an individual requires to keep confidential is one's financial records as kept by the banking systems, whether they be credit union, trust companies or chartered banks, and I do not recall a single instance where that information has been breached. So the ability to maintain confidentiality in an electronic knowledge system is there and, I think, has been focused to the greatest degree possible and the greatest sophistication possible in the implementation of this system.

I think there are a lot of people who co-operated with the implementation process that deserve a tremendous amount of credit. Key in that, of course, in this instance was the pharmacists of Manitoba who through their association have worked very, very diligently for approximately a year and a half to work this system through to catch potential problems, in anticipation of them so that we implemented a process as flawlessly as possible.

I think that we will have this as a significant achievement that will be emulated across Canada, because my understanding is this system is better than anything that is in place anywhere in Canada. It supersedes systems that are in place in some of the other provinces to the West and to the East of us. I make the prediction to honourable members of the committee that we may well see at the next sitting of the Legislature similar legislation for a wider information system built on the strengths of this one that will indeed serve us exceptionally well.

**Mr. Chairperson:** Thank you. What is the will of the committee? Is it the will to deal with this bill from Clauses 1 to 17?

**An Honourable Member:** Clause by clause.

**Mr. Chairperson:** Clause by clause. Clause 1—pass; Clause 2—pass; Clauses 3(1) and 3(2)—pass; Clause 4—pass; Clause 5—pass.

Clause 6, shall the item pass?

**Mr. Chomiak:** Mr. Chairperson, yes, I note that the written submission provided by the Manitoba Association for Rights and Liberties deals with Clause 6 and that the gist of their presentation is that this penalty is arbitrary insofar as it is an automatic forfeiture in that it could affect those at the lower end of the income scale quite disproportionately from others at the other end of the income scale, and MARL certainly recommends an amendment to allow the court to have discretion in order that the forfeiture of the benefits be only in certain cases. As I read it, it is almost a mandatory provision, and I am wondering if the minister has any comment on that particular suggestion and the subsection.

**Mr. McCrae:** Mr. Chairperson, the bill before us deals with changes required to put into effect an electronic Pharmacare system. The clause that we are discussing—and it has been the policy of the Legislative Counsel to address issues of gender-specific language whenever amendments come before this House—this clause is here to correct what was previously gender-specific language and so it really reflects what was already in effect in Manitoba except to take out the gender-specific language. That is the reason it is here.

**Mr. Chomiak:** Mr. Chairperson, so the minister is saying that clause is already in effect, and it is only highlighted because it was brought in for gender-specific. Does the minister have any comment about this particular point that has been made by MARL, though?

**Mr. McCrae:** If you go back to Section 4, which refers to providing false or misleading information for the purpose of obtaining a benefit—in my view a very, very serious matter—in my experience not only as Minister of Health but for a long time before that, my constituents and others have been very critical of anybody who abuses these publicly operated programs.

I think there are sanctions here for people who would abuse the Pharmacare system, and that is appropriate that there be sanctions there. We are not moving today to fix all of the things that might be wrong with the present regime. We are moving today to put together some amendments that help us put our electronic Pharmacare system in place.

\* (1020)

It may well be that the honourable member and I should discuss this matter as we address the next session of the Legislature and perhaps deal with other issues. Today, though, we are dealing with the bill that we have in front of us. I would be comfortable to discuss this further with the honourable member, but I do not think his point requires attention by way of corrective action today.

I can understand someone losing their benefits and how that might have an impact on them, but I think it is also important to make sure that our system runs well for the benefit of the general

public. In order for that to happen, you have got to have an understanding on the part of people who would abuse the system that there are indeed effective sanctions in place should somebody want to abuse the system.

**Mr. Chomiak:** I think we ought to perhaps consider looking at this at some future point. While it certainly is an interesting issue insofar as an individual could be convicted of an offence under this act and fined and, at the same time, if found guilty under the act, would have their benefits, in the case perhaps of some kind of life-sustaining drug, completely eliminated as a result of abuse of this act. So it is an interesting question of almost a double penalty.

I appreciate that it is done in other areas such as The Highway Traffic Act and other areas, but I think it is something we might want to discuss at some future point. I do not want to belabour the point, because it is important that this legislation be passed.

**Mr. McCrae:** Very briefly in response, I agree with the concern that the honourable member would have. I do not know that there is much in the way of prosecutions under this legislation. My understanding is that it is quite rare that a prosecution would come into the courts flowing from this legislation.

However, I think there is a lot of protection built into the administration of this program which prevents things from getting this far in any event. But I would be happy to discuss this further with the honourable member in the context of future changes to the act should they be necessary.

**Mr. Chairperson:** Item 6. Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass.

Clause 10.

**Mr. Chomiak:** Mr. Chairperson, again, this is another section highlighted by the presentation from the Manitoba Association for Rights and Liberties. They are suggesting that an exception to this provision be provided where the certificate is not readily available. I am wondering if the minister has any comment on that particular recommendation.

**Mr. McCrae:** We, of course, are encouraging members of the public to use their purple card because that is what allows access to the system, but pharmacists are also professionals and they are in a position to make a judgment as well based on the medical necessity or emergency nature of a particular situation.

I do not think that any legislation will ever take away from a physician or a professional the duty that they would feel as imposed upon them to preserve life in a given situation. Here, again, I suspect the issue raised by the honourable member and by the MARL would deal with those rare occasions when I am led to believe that professional judgment of a pharmacist, or a medical practitioner, would take precedence over in an emergency situation.

**Mr. Chomiak:** Mr. Chairperson, I agree with the minister in terms of the professionalism and the ability of pharmacists to make a distinction. It is interesting, though, that the subsection 8.1(3) does say, "Where a purchaser of a specified drug refuses to comply with section (2)"—that is to provide the certificate—"the pharmacist shall refuse to fill the prescription." I guess read strictly, a pharmacist cannot provide a prescription on a specified drug unless that certificate is presented and a pharmacist does provide a specified drug without the presentation of the certificate, then he or she is in contravention of the act. I wonder if the minister has comments on that, and then I will go to my next questions.

**Mr. McCrae:** Mr. Chairperson, when a pharmacist requests this number and it is refused, that is when the directive nature of this legislation takes effect. A pharmacist who requests this and is refused, I suggest to the honourable member, already has reasons to be wondering what kind of person they are dealing with. Do not forget, one of the main features of the Pharmacare card system, or the Drug Program Information Network system, is to do something about abuse.

Of course, we want to respect people's rights, but I think that, if a pharmacist has reason to think that there is something fishy going on, this legislation is there in that situation as well. It is not

to deny people who needed pharmacy products. We are trying to put a stop to abuse which is something we hear about so very often.

**Mr. Chomiak:** Mr. Chairperson, I take it that every time a request is made for drugs the purple card will have to—[interjection] It is the number, so if the individual goes to a pharmacy and says this is my medical health number and the pharmacist punches it into the computer, it is not necessary to demonstrate that one has that number by presentation of the purple card. It is only when the pharmacist requests it. Is that the correct understanding?

**Mr. McCrae:** For many, many Manitobans, Mr. Chairperson, they have an ongoing customer-pharmacist relationship. If you either remember your number or the pharmacist has a quick way on the computer to call up your number, that is what is needed. It is in the situation when you are making your first contact with your pharmacist, that pharmacist does not know your number, and that is why you need to have the card. The pharmacist wants to be sure that he or she is dealing with the person that the person says he or she is.

**Mr. Chomiak:** That does clarify that. So if I go to the pharmacy and I say my name is Dave Chomiak and I live at so-and-so address, the pharmacist will have the ability to access my name on the computer and verify that I am who I am and will not necessarily have to request my purple card. Is that correct?

**Mr. McCrae:** I think that would be correct if you had dealt at that pharmacy before. If you are a first-time visitor at the pharmacy, somehow the pharmacist needs to know your number. It is on subsequent occasions you give your name, as in the example you have suggested. Then the pharmacist can then access your number through your name and then access the information that he or she needs to assist you.

\* (1030)

**Mr. Chomiak:** We can anticipate some difficulty with that, for example, people going to their doctor and then going down to a pharmacy the first time and perhaps not having their cards, so I am wondering what kind of education program is

being embarked upon to alert Manitobans about this particular matter.

**Mr. McCrae:** There is a public education program in effect to let the public know the importance of the program but also the importance of the use of that purple card. We think the vast majority of Manitobans will have their cards with them when they present at the pharmacy. But, in any event, the relationship between pharmacists and the medical profession is such that that is another way to obtain the number that is required to access the system. There are a lot of ways, I think, that—we have not even thought about all the ways that we can improve the system and also look out for the abuses that are there. We do not want to, in our efforts to prevent abuse, impact negatively all those vast majority of Manitobans who just want to have a good and efficient system.

**Mr. Chomiak:** Yes, I guess that is a valid point, that the pharmacist could refer back to the issuing doctor, who would have the right to provide the number and the names. So that is perhaps—because there will be some problems in that. I am just trying to anticipate them, but that is a valid point about how one could deal with that issue.

**Mr. McCrae:** I make one suggestion, Mr. Chairperson, and that is that I dare say, going into something new like this, potentially dozens of questions might arise. The honourable member is welcome to let me know, if he would wish this to happen, I could make available the director of the program to the honourable member to answer the questions that he might have.

**Mr. Chairperson:** Clause 10—pass; Clause 11(1)—pass; Clause 11(2)—pass; Clause 11(3)—pass; Clause 12(1)—pass; Clause 12(2)—pass.

Clause 13.

**Mr. Chomiak:** Actually, I do not have any comments on the proposed Section 13. It is actually later on under the new Section 13 that comes in under Section 14.

**Mr. Chairperson:** Clause 13—pass.

Clause 14.

**Mr. Chomiak:** This is the final section on which MARL makes some recommendations. The gist of

what they are recommending concerns the new proposed Section 13, Recovery of benefits. The point they are making, if the section does not make any distinction between benefits paid by an error on the part of the government and benefits paid as a result of false information from the recipient, I wonder if the minister has any comment on that particular recommendation of MARL.

**Mr. McCrae:** If I understand the honourable member, he is suggesting that if by some error some member of the public benefits, the government should not have the right to try to recover that. I am not sure I agree with that. I think, for example, the honourable member at his bank or credit union, if they accidentally credit a hundred dollars to the honourable member's account, it seems to me that that is not his \$100. They are entitled to their money back as soon as they learn that error has been made.

If that is what the honourable member is getting at, then I think maybe we differ on that point. Even though administrative errors happen, I do not think most people—and about 99 and 44/100 percent of the people of Manitoba are good honest people. They do not want to benefit from somebody's mistake, whether it be a pharmacist's or the program's or the government's or whoever's mistake it is. The key word in the clause is "may" recover. Obviously, the government is wanting, I hope, to—and I direct that the government uses some common sense in its dealings with the people of Manitoba as well.

I think maybe most legislation covering programs must have a clause like this to protect the program from that kind of thing. The government in the future, of course, would use whatever discretion is required in the given circumstance before using this clause.

**Mr. Chomiak:** I agree with the comments of the minister as it concerns the recommendations of MARL, insofar as it is not mandatory and it does say "may." In the case of an obvious error by government, when an individual has through no fault of his or her own received some drugs, for example, it seems to me the government ought and should be sympathetic to situations where the

persons arrange their financial affairs in such a way that recovery would be difficult and would put them in a difficult situation. On the assumption that it is not mandatory, I do not think I would have difficulty with his suggestion as long as we are cognizant of the element of fairness and common sense in this provision.

**Mr. Chairperson:** Clause 14—pass; Clause 15—pass; Clause 16—pass; Clause 17—pass; Preamble—pass; Title—pass; Bill—pass. Bill be reported.

### **Bill 3—The Cancer Treatment and Research Foundation Amendment Act**

**Mr. Chairperson:** Did the minister have an opening statement? No statement. Opposition member statement? No statement. Second opposition? No statement. Is it agreed that we pass the bill?

Clauses 1 to 9—pass; Title—pass; Preamble—pass. Bill be reported.

\* \* \*

**Mr. Chairperson:** Bill 19, The Mental Health Amendment Act, if that is in concurrence with the Minister of Energy (Mr. Orchard). I think we will leave this one because the Minister of Health (Mr. McCrae) has his staff here. Is that agreed?

**Mr. Steve Ashton (Thompson):** I am just wondering if we could hold Bill 4, for I am also on the other committee.

**Mr. Chairperson:** Yes, we are holding Bill 4 till—

**Mr. Ashton:** Yes, I am just asking if we hold it until I get back. I am on the other committee and there is a vote coming up in a couple of minutes.

**Hon. Donald Orchard (Minister of Energy and Mines):** Mr. Chairperson, could we accommodate the member for Thompson by dealing with Bills 19, 21, 26, and then deal with Bill 4 at the end of the agenda? We can inform Mr. Ashton that it is up.

**Mr. Chairperson:** Agreed? [agreed]

\* (1040)

### **Bill 19—The Mental Health Amendment Act**

**Mr. Chairperson:** Shall we deal with Clauses 1 to 7?

**An Honourable Member:** No.

**Mr. Chairperson:** No? Would the minister have an opening statement then? Sorry about that.

**Hon. James McCrae (Minister of Health):** No, thank you.

**Mr. Chairperson:** Would the honourable member of the official opposition have an opening statement?

**Mr. Dave Chomiak (Kildonan):** No.

**Mr. Chairperson:** Mr. Chomiak, on questions.

**Mr. Chomiak:** Yes, we are on Clauses 1 to 7. I did have some questions of the minister on this particular act. The questions deal with the—and heaven knows that was a very valid suggestion made by the presenters that the wording for this act ought to be updated. It is a very confusing and difficult act to work through. I commend it to whatever process we can to try to bring the numbering in this act up to date in order to follow it.

I do have questions on this act. The questions I have are in relation to the removal of the subsection dealing with second opinion, which I am attempting to find. In The Mental Health Act, the second opinion, Section 26.3(2) is deleted. Actually, my question is: Why is that subsection being deleted?

**Mr. McCrae:** Part of the reason for the amendments before us are to facilitate the operations of the Mental Health Review boards. The honourable member may be familiar with the operation of those boards.

There was a case that came forward whereby an applicant basically asked for a change in his or her status and offered no evidence. The board was left in a position where all it had was its own expert people to give evidence that really was not in the interest I take it of the applicant and with no remedy for the benefit of the applicant. We were calling for, and I am not as able to fit it in with the existing legislation as the honourable member,

because he has it in front of him and we do not, but the second opinion aspects of this legislation are designed to benefit the applicant in a situation like that so that another opinion is available which is independent in the sense that the applicant is not saying anything and yet nothing is being said on the applicant's behalf.

Therefore, we think this assists the board in allowing applicants to have their rights respected. That is what the genesis of this is.

**Mr. Chomiak:** Mr. Chairperson, yes, I understand that is the requirement, and there is generally no disagreement with that. I just would like if it is possible to understand why the second opinion—I suspect it is a matter of process, but the second opinion provision is moved from one section of the act to kick in at a later section of the act. Perhaps it could be explained to me as to why we are deleting it here and adding it somewhere else.

**Mr. McCrae:** Mr. Chairperson, the placement of these changes is to allow a broad application of this second opinion provision. Initially, the second opinion provisions dealt with certain types of clients only, and putting it in this part of the bill or the law allows its application to go to any hearing that goes beyond institutions themselves.

**Mr. Chomiak:** Mr. Chairperson, so I take it from the minister's response that in fact the removal of the one clause and second opinion and its movement to another section of the act, in fact, is broadening the rights to individuals. I appreciate that because it is difficult to obtain from a reading of either of the acts. Of course, we agree with that, and I assume that it is the correct interpretation, so I am happy to hear that is the case.

**Mr. McCrae:** For the honourable member's information, I have trouble reading legislation from time to time, but we have very capable staff at the Legislative Counsel whose advice I have been taking for about six years now, and I tell you, it has always been advice I can rely on.

**Mr. Chairperson:** Thank you very much. Shall Clauses 1 to 7 pass?

**Mr. Chomiak:** Mr. Chairperson, I think all members of the committee received some very valuable information from the presenters, and

there has been a good deal of co-operation and good will in terms of changes to mental health. I hope we commit to perhaps deal with some of the, I think, very valid recommendations that were made by the presenters and that we not lose sight of the concerns raised by them. I know that the minister will do so, and I urge all members of the committee to work in that direction.

**Mr. McCrae:** I thank the honourable member, Mr. Chairperson. The member for Dauphin's question seemed to point in the direction that these were some issues that had been longstanding and nobody has done anything about it. In fact, in specific terms, the matters raised today by Mr. Martin, I am sure, will come up again in our discussions now, but they have not been at the top of the agenda. If they had been, they would have been given more attention than they have. So in future, should those matters be brought forward, they will form our agenda for discussion with the Canadian Mental Health Association.

**Mr. Chairperson:** Thank you very much. Once more, Clauses 1 to 7—pass; Preamble—pass; Title—pass. Bill be reported.

#### **Bill 21—The Manitoba Medical Association Dues Act**

**Mr. Chairperson:** Does the minister have an opening statement?

**Hon. James McCrae (Minister of Health):** No, thank you.

**Mr. Chairperson:** Opposition members, opening statement?

**Mr. Dave Chomiak (Kildonan):** Mr. Chairperson, nothing major other than to indicate, of course, we are very pleased to see the reintroduction of this particular piece of legislation and commend it to all members of the committee and the Legislature for its speedy passage.

**Mr. Chairperson:** Any other comments? If not, is it the will of the committee to deal with this bill from Clauses 1 to 14? Agreed? [agreed]

Clauses 1 to 14—pass; Preamble—pass; Title—pass. Bill be reported.

\* (1050)

**Bill 26—An Act to amend An Act to Protect the Health of Non-Smokers (2)**

**Mr. Chairperson:** Has the minister an opening statement? No. Has the opposition then an opening statement?

**Mr. Kevin Lamoureux (Inkster):** Mr. Chairperson, I did want to make note that this is, in fact, a bill that we have addressed in the past in different form. I know that there was some concern expressed in terms of what has been happening most recently in the tobacco tax industry in particular or the level of taxation and the impact that has had. There have been a lot of things that have been inferred upon the provincial Liberal caucus, and I just thought we would make a special note. Some of the measures that had been suggested in this bill have been something that we have been talking about for the last couple of years in terms of government needs to take some sort of action on, and particularly Clause 7.

Just having said those few words, we are prepared to pass it on with future anticipation that there will be additional amendments.

**Mr. Chairperson:** How do you wish to deal with this bill? Shall we pass items 1 to 11 clause by clause?

Clause 1—pass; Clause 2—pass; Clause 3(1).

**Mr. Dave Chomiak (Kildonan):** Mr. Chairperson, one of the presenters made reference to banks. I recall from my review of the original act that banks—am I mistaken in terms of my assumption that banks were removed? I am sorry I did not bring the act here, but I seem to recall that from my original review of that. Perhaps I am wrong, but one of the presenters did make reference to that point.

**Hon. James McCrae (Minister of Health):** The banks are public places and subject to the same restrictions as all public places. That is, a smoking area may be designated, but the smoke must not drift into the nonsmoking space. Therefore, it was not felt necessary to include them in an exclusion clause. That is the answer that I have at this point. Between now and report stage I will have the matter looked into a little further.

**Mr. Chomiak:** I could be wrong. I am only going from memory of my review of the act, and somehow it twiggled. When the presenter presented—it might have been an oversight, or it might have been done for some other reason.

**Mr. McCrae:** If there has been an oversight, I intend to correct it.

**Mr. Chairperson:** Clause 3(1)—pass; Clause 3(2)—pass; Clause 3(3)—pass; Clause 4—pass; Clause 5(1)—pass; Clause 5(2)—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass; Clause 10—pass.

Clause 11.

**Mr. Chomiak:** Mr. Chairperson, I wonder if I might have leave just to return to Section 9 for a question. I think I held my hand up.

**Mr. Chairperson:** By all means, go ahead.

**Mr. Chomiak:** I am just curious as to the genesis of this section, the inclusion of a limitation period in this legislation. I just wonder if the minister has a comment on it. I am not familiar with our generally putting in that kind of a provision.

**Mr. McCrae:** I understand that under The Summary Convictions Act there is a limitation period of six months. This extends that six months to one year for the purposes of this legislation. So it extends the statute of limitations, if that is the right words, for six more months under this legislation. We had a similar provision in the other bill on prescription drugs, too.

**Mr. Chomiak:** I was not aware of that. So that means that there is a notwithstanding provision in The Summary Convictions Act that says other legislation can take precedence over the summary—I would assume that, because they would otherwise—yes, a nod in the affirmative?

**Mr. McCrae:** It must be so.

**Mr. Chomiak:** On Section 10, which was cited by the presenters as an ideal opportunity for the government to enact regulations—and I think that is a very positive section, and it is one of the unheralded sections of the act, I think. I wonder if the minister might outline what policies, provisions they have in mind for this particular subsection.



**Mr. McCrae:** Mr. Chairperson, it is unheralded because the matter is really before the courts down east. If it is found ultimately by the courts that Ottawa does not have jurisdiction to act in these areas respecting kiddy packs or warnings and a percentage of the package that can be the subject of warnings, and all of those kinds of things, then we want to take that jurisdiction, if the feds do not have it anyway by virtue of court rulings. This gives us the right then later on, should it be necessary or possible, for us to legislate in this area.

So while somebody might want to take this off to the court too, but they really do not have any action to go along with the legislation to take to court at this time, and if the feds do not have the jurisdiction, then we are going to say that we do. If somebody wants to argue that we do not either, well, then we will find out who does. Somebody needs to have jurisdiction to deal with things like the small packages, the kiddy packs as they are called, or the issue of plain packaging which—I mean, in desperation because of the federal action, unilateral or bilateral, I should say, as a result of that, the provinces were all scrambling looking for things to do to counteract the federal action, which is clearly so bad. Well, we are not scrambling anymore, I think we are thinking in a positive and organized sort of a way.

We discussed these kinds of measures with Ontario and Nova Scotia, who were provinces very, very affected by the legislation. We consider ourselves affected by the federal initiative, if you can call it that, as well, but we just want to have the comfort of knowing that we will have jurisdiction to act should it be found that we want to or that it is necessary. Therefore, it is in this legislation to give us the regulatory power later on.

**Mr. Chomiak:** Mr. Chairperson, that is an interesting issue, and I appreciate the minister's comments. If, for example, it is found that the federal government has authority to act in this area, but they cave in again and do not enact legislation, say, dealing with kiddy packs and/or packaging, that would allow us for the right to do that. It would make for an interesting court challenge, though. That is an interesting issue.

**Mr. McCrae:** It is an interesting legal issue, I suggest, but you know, if at some point in the future the feds, it is ruled that they have authority and they refuse to exercise it, well, we have got this legislation. It would be interesting as to who might want to challenge it, and we will see where we go from there.

At least I think we are being vigilant enough here in Manitoba, all the parties in Manitoba, to try to address the issues, but I am not going to, I guess, forgive very quickly the federal action on the point, because it really threw our nation into a tizzy. There are some cynics around who would suggest that maybe the federal government will regain its senses after a Quebec election is over. There are people who are cynical like that, and I listen to those people too.

**Mr. Chomiak:** Mr. Chairperson, on that related point, the presenter, I asked her about details concerning the health costs of tobacco in Manitoba. Does the minister have ready access to those particular figures insofar as it is significant?

She said about \$11 billion to \$14 billion, I believe, and Manitoba's 4 percent population would mean a fairly significant—that would amount to at least half a billion dollars per year. Does the minister have those figures, or access to?

**Mr. McCrae:** I think it might be hard to claim total accuracy, but whatever figures or information we have in this area I would undertake to share with the honourable member. The federal tax reduction decision has been called by people who know the most important and negative health care decision in the history of this country. Now, that is pretty significant, and sometimes I think we lose sight of that. I will attempt to find what epidemiological information—I learned how to say that word, so now I like to say it quite often—we have and I will make available to the honourable member through a letter or some such mechanism.

**Mr. Chairperson:** Clause 11—pass; Preamble—pass; Title—pass. Bill be reported.

\* (1100)

#### **Bill 4—The Energy and Consequential Amendments Act**

**Mr. Chairperson:** Bill 4. I will ask the honourable Minister of Energy and Mines to come forward, please.

Welcome, Minister. Did the Minister of Energy and Mines wish to make an opening statement?

**Hon. Donald Orchard (Minister of Energy and Mines):** Mr. Chairperson, I distributed to the member for Thompson and the member for The Maples (Mr. Kowalski)—received copies of two amendments that I intend to propose. One is a typographical error, and the other two change slightly or clarify the intent of the legislation.

**Mr. Chairperson:** Would the critic for the official opposition have an opening statement?

**Mr. Steve Ashton (Thompson):** Mr. Chairperson, as I indicated in committee, we do not have problems with some of the sections of this particular bill. However, as the minister is aware, we have in the past opposed the elimination of the Manitoba Energy Authority and still consider the government's move in that direction, which this legislation continues, to be not wise and counterproductive. We will be watching in terms of the process on this bill.

I am pleased to see the minister bring in at least one amendment in response to MARL's concerns. We will be continuing debate on our concerns related to the Manitoba Energy Authority in third reading in the House. Thank you.

**Mr. Chairperson:** Would the critic for the second opposition have an opening statement?

**Mr. Gary Kowalski (The Maples):** This bill, this motherhood-and-apple-pie bill, gives lip service to sustainable development. It provides regulation of a minimum energy sufficiency standard.

One element of this bill we were concerned about is the search and seizure powers. It recalls the days of the writ of assistance that used to be given to RCMP members that they could go into almost any home or any business with a writ of assistance to enforce drug regulations. We are almost creating a writ of assistance by not putting the reasonable and probable grounds and no

regulations in here for return of property within a specified period of time, putting undue hardship on individuals and businesses, and also a concern that these do not have to be reviewed within a time frame by a magistrate or some form of judiciary review within a reasonable period of time. So that does concern us about this bill.

**Mr. Chairperson:** Clause 1—pass; Clause 2—pass; Clause 3—pass; Clause 4—pass; Clause 5(1)—pass; Clause 5(2)—pass; Clause 5(3)—pass; Clause 6—pass; Clause 7(1).

**Mr. Orchard:** Mr. Chairperson, we can pass 7(1) and 7(2), but I would like to propose an amendment for Clause 7(3).

**Mr. Chairperson:** Clause 7(1)—pass; Clause 7(2)—pass; Clause 7(3).

**Mr. Orchard:** Mr. Chairperson, I would like to move

THAT the English version of subsection 7(3) be amended in the part preceding clause (a) by striking out "a prescribed energy-using product is" and substituting "prescribed energy-using products are".

#### **[French version]**

Il est proposé que la version anglaise du paragraphe 7(3) soit amendée par substitution, dans le passage qui précède l'alinéa a), à "a prescribed energy-using product is", de "prescribed energy-using products are".

Let me, if I may, Mr. Chairperson, explain the intent. Although I am informed that in legal drafting the interpretation before the courts is that the singular can be the plural and the plural can be the singular, a concern was identified in that the way the section of the act was written in that it referenced the singular that it would allow inspectors the opportunity where there was only one item of a given product in a premises which is manufacturing or storing them or offering them for sale or lease that the inspectors could move in. In changing this to the plural, we are indicating that is not the case.

To answer the concerns of my honourable friend the member for The Maples (Mr. Kowalski), 7(3) the powers of the inspectors, they have to establish

at any reasonable time and they must have reasonable grounds. Both of those provisions are consistent with other legislation that has been passed. In fact, the wording is identical, and there are guiding principles, if you will, that guide the conduct of inspectors according to the Charter of Rights and Freedoms, which, in essence, makes it highly unlikely that an inspector would abuse the powers that are inherent in the wording here and not establish both reasonable time and certainly to have reasonable grounds to enter. Otherwise, there would be a pretty legitimate case to be made that in fact there was a suspicion of harassment by the inspector. We have been through succeeding governments served well by this wording and have few complaints.

**Mr. Kowalski:** I just give way to my more learned colleagues here, more experienced, but is not the phrase usually used "reasonable and probable grounds" in legislation or am I thinking more of the Criminal Code, where "reasonable and probable grounds" is a term used in law more frequently than just "reasonable grounds" and, in fact, in common law "reasonable and probable grounds" is the phrase that is recognized?

**Mr. Orchard:** Mr. Chairperson, legal counsel informs me that that indeed was the wording that was part of the Criminal Code, but in the last amendment it was revised down to "reasonable" only, the "and probable" was dropped. So this becomes consistent with the current provisions in the Criminal Code.

**Mr. Chairperson:** It has been moved by the Honourable Mr. Orchard

THAT the English version of subsection 7(3) be amended in the part preceding clause (a) by striking out "a prescribed energy-using product is" and substituting "prescribed energy-using products are".

[French version]

Il est proposé que la version anglaise du paragraphe 7(3) soit amendée par substitution, dans le passage qui précède l'alinéa a), à "a prescribed energy-using product is", de "prescribed energy-using products are".

Agreed? Agreed and so ordered.

Clause 7(3) as amended—pass; Clause 7(4)—pass; Clause 7(5)—pass; Clause 7(6)—pass; Clause 8(1)—pass; Clause 8(2)—pass; Clause 9(1)—pass; Clause 9(2)—pass; Clause 9(3)—pass.

Clause 10(1). Shall the item pass?

\* (1110)

**Mr. Orchard:** Mr. Chairperson, if I may propose an amendment which corrects a typographical error in Clause 10(1) subsection (b). If one reads the act, it says: "if a corporation, to a fine of not more than". The "that" should be "than." I would move

THAT the English version of clause 10(1)(b) be amended by striking out "that" and substituting "than".

[French version]

Il est proposé que la version anglaise de l'alinéa 10(1)(b) soit amendée par substitution, à "that", de "than".

Furthermore, Mr. Chairperson, if I may, I would propose an amendment to subsection 10(2). The amendment is:

THAT subsection 10(2) be amended by striking out "employee".

[French version]

Il est proposé que le paragraphe 10(2) soit amendé par suppression de "employés".

Motions agreed to.

Clause 10(1) as amended—pass; Clause 10(2) as amended—pass; Clause 10(3)—pass; Clause 10(4)—pass; Clause 11(1)—pass; Clause 11(2)—pass; Clause 11(3)—pass; Clause 12—pass; Clause 13—pass on division; Clause 14—pass on division; Clause 15—pass; Clause 16—pass. Table of Contents—pass; Preamble—pass; Title—pass. Bill be reported.

There is no further business before the committee.

Before the committee shall rise, might I suggest to the committee that the committee shall sit tonight at 7 p.m. in Room 255 of the Legislative Building to consider Bill 16, The Provincial Court Amendment Act; Bill 17, The City of Winnipeg Amendment and Consequential Amendments Act;

and Bill 20, The Municipal Amendment Act. I understand that there are a number of presentations on these bills. We will see you at seven o'clock.

Committee rise.

COMMITTEE ROSE AT: 11:13 p.m.

**WRITTEN SUBMISSIONS PRESENTED  
BUT NOT READ**

**Bill 2—The Prescription Drugs Cost  
Assistance Amendment and Pharmaceutical  
Amendment Act**

Submission of The Manitoba Association for Rights and Liberties (MARL) to the Minister of Health

A representative of MARL was involved in some of the consultations leading up to this bill, and MARL sent the department officials some comments on earlier drafts. However, the actual bill raises some new points which caused significant concern to members of MARL's Charter Rights and Legislative Review Committee.

Section 6—the provision for automatic forfeiture of the right to benefits for a defined period where a person is convicted of certain offences under the act. This is an arbitrary penalty which could be unjust in certain cases.

Punishment for breach of a statute should generally be proportional to the seriousness of the offence and the circumstances of the offender. Forfeiture of benefits may be insignificant to well-to-do persons, but it would be devastating to poor persons who require costly medication.

The section should be amended to give the court the discretion to order the forfeiture of benefits only in appropriate cases.

Section 10—proposed subsection 8.1(3) prohibits a pharmacist from filling certain prescriptions where the purchaser does not present a registration certificate. There should be an exception to this provision where the certificate is not readily available and the prescription must be filled immediately to preserve life or health.

Section 13—the proposed Section 13, which provides for recovery of benefits, has a number of

problems. The section does not make any distinction between benefits paid by an error on the part of the government and benefits paid as a result of false information from the recipient. It is unfair to demand repayment from innocent persons who arranged their personal budgets on the assumption that they were entitled to benefits. The provision to recover benefits by set-off against future benefits may deprive persons of vital medication at times when they are in financial difficulty.

MARL also believes that a person whose records are improperly disclosed should have a claim for damages if one is not already available at common law or under The Privacy Act.

Donald A. Bailey, President  
Board of Directors  
Manitoba Association for Rights and Liberties  
Winnipeg, Manitoba

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The following is the UMM's presentation on Bill 2, The Prescription Drugs Cost Assistance Amendment and Pharmaceutical Amendment Act, being considered by the Standing Committee on Law Amendments.

The Union of Manitoba Municipalities represents 164 of the 202 municipalities in Manitoba, including all of the 106 rural municipalities, 13 local government districts, 23 villages, 19 towns and three cities. The mandate of our organization is to assist member municipalities in their endeavour to achieve strong and effective local government. To accomplish this goal, our organization acts on behalf of our members to bring about changes, whether through legislation or otherwise, that will enhance the strength and effectiveness of municipalities.

The UMM is in favour of the amendments which are contained in Bill 2. This legislation will establish the Drug Program Information Network which will record the dispersion of prescription drugs and will monitor the prescriptions in relation to the patient's drug-use history. The province has stated that the objectives of the legislation are to monitor any adverse drug interactions or fraudulent use of prescriptions. In addition, the new Pharmacare system will reduce the immediate

cost of prescriptions for consumers by applying the Pharmacare rebate at the same time the prescription is being purchased.

Municipal governments are becoming increasingly interested in health care issues as many municipal councillors are active on the boards of their local health care facilities. In addition, the UMM has been asked to participate and comment on the work of some of the various studies and task forces which are underway in the area of health care. Through these activities, we are gaining a better understanding of the challenges facing our health care system. We are therefore pleased that the province is taking steps to make our Pharmacare program more safe and efficient. The UMM is encouraged that the amendments were designed in co-operation with various stakeholder organizations and that the legislation appears to have the support of all parties in the Manitoba Legislature.

Thank you for your consideration of our comments.

Michelle Scott  
Union of Manitoba Municipalities  
Portage la Prairie, Manitoba.

#### **Bill 4—The Energy and Consequential Amendments Act**

Submission of the Manitoba Association for Rights and Liberties (MARL) to the Minister of Energy and Mines.

The Charter Rights and Legislative Review Committee of MARL reviews all bills submitted to the provincial legislature to see if they contain any provisions which may violate human rights or civil liberties.

MARL has identified two problems with this legislation which could be corrected with minor amendments.

The first is the powers of inspectors given under subsection 7(3). The Charter Rights and Legislative Review Committee of MARL has noticed that the government has a tendency in drafting legislation to give public officials the broadest powers of search and seizure that are likely to survive scrutiny under the Charter of

Rights. This is not desirable. Even the most innocuous powers can be abused. Legislation which allows public officials to enter on private property should be limited to those powers which are strictly necessary to allow the officials to perform their functions.

The power to enter private property given in subsection 7(3) is excessive in two respects. First, the inspector is given the power to enter any business premises without the requirement of having any reasonable grounds to do so. Secondly, the right to enter "any premises" on reasonable grounds should be restricted so that an inspector cannot enter a private dwelling with a warrant.

The power of an inspector under paragraph 73(3)(b) to remove a prescribed energy-giving product to another place for testing is excessive. Removal of a piece of equipment which a person needs to operate a business or household can cause significant financial loss or personal hardship. There is no restriction on how often a particular item may be removed or how long it may be retained.

As the section now stands, an inspector could remove a vital piece of machinery from a business at any time and hold it for weeks or months. Before conferring this kind of power on inspectors the government should experiment with less intrusive ways of achieving the objectives of the act.

Subsection 10(2), which makes an employee of a corporation who "acquiesces in or participates in the commission of an offence" by a corporation guilty of the offence, is unduly harsh. It may be reasonable to fix officers, directors and agents with this responsibility, but ordinary employees are in a more vulnerable position. They must often acquiesce or participate in whatever the corporation is doing, or lose their jobs.

We would like these concerns directed to the committee studying the bill so that they can consider appropriate amendments.

Donald Bailey, President  
Board of Directors  
Manitoba Association for Rights and Liberties