



# Legislative Assembly of Manitoba

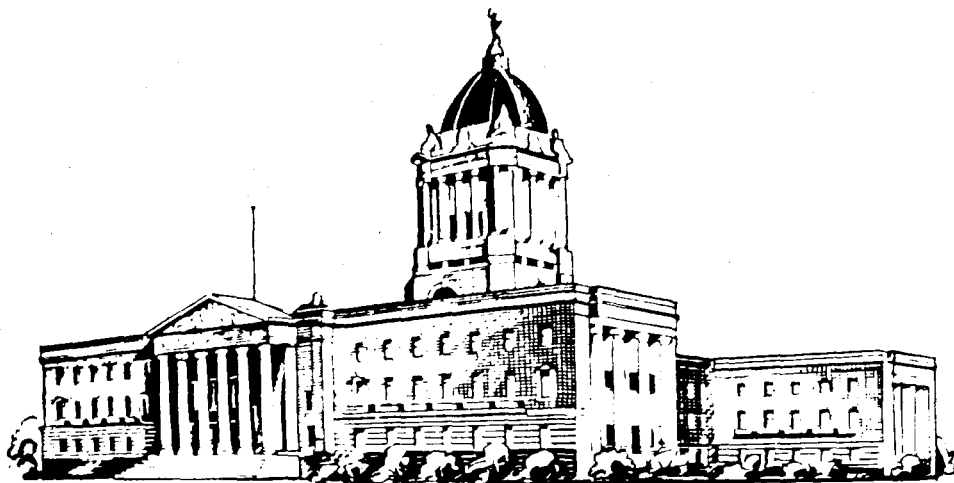
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STANDING COMMITTEE

ON

PRIVATE BILLS

Chairman  
Mr. D. James Walding  
Constituency of St. Vital



10:00 a.m., Tuesday, May 20, 1975.

PRIVATE BILLS COMMITTEE  
10:00 a. m. Tuesday, May 20, 1975

CHAIRMAN: Mr. D. James Walding

MR. CLERK: Gentlemen, if I may have your attention. Being your first meeting of this committee, your first item of business will be the election of a Chairman. Are there any nominations?

MR. TOUPIN: I nominate Mr. Jim Walding.

MR. CLERK: Mr. Walding. Are there any further nominations? Hearing none, I would ask Mr. Walding to take the Chair.

MR. CHAIRMAN: Order please. The first item of business is the setting of a quorum. There are 12 members; I am informed the quorum was 7 last time. Agreed the quorum be 7 for this session? (Agreed) So ordered.

The second item of business is a motion that we would like to get through extending the time for receiving petitions and receiving private bills. It is suggested that the time for receiving petitions be extended to the 3rd day of June and the time for receiving private bills be extended to the 10th day of June.

MR. BANMAN: So moved.

MR. CHAIRMAN: Moved by Mr. Banman, seconded . . .

MR. CHERNIACK: Mr. Chairman, if we finish our business in the Legislature before the 10th, then that's too bad. We don't have to keep sitting here just in order to accommodate the resolutions.

MR. CHAIRMAN: Is that agreed? (Agreed)

MR. CHERNIACK: I'm wondering, Mr. Chairman, could you outline the procedure for us, the usual procedure. Firstly I assume we have - could you give us the bills or the numbers of them, then the way in which we would handle them.

MR. CHAIRMAN: There are seven bills before the Committee this morning. I will read them.

Bill No. 10 - An Act to amend an Act to Incorporate the Co-operative Credit Society of Manitoba Ltd.

Bill No. 23 - An Act to Incorporate the St. Andrew's River Heights Foundation.

Bill No. 24 - University of Manitoba Students' Union Act.

Bill No. 25 - An Act to amend an Act to Incorporate the Investors Group.

Bill No. 32 - An Act for the Relief of Susan Thiessen.

Bill No. 35 - An Act to amend an Act to Incorporate the Commercial Club of Winnipeg.

Bill No. 38 - An Act respecting Guaranty Trust Company of Canada.

Would it meet the approval of the Committee if we called for representations by any member of the public wishing to do so and hear all of those before moving on to clause by clause consideration? Agreed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I was just wondering if . . . I think what we would want is that the people in support, that is the representatives of the petitioners, would remain here during the section by section consideration of the bills in case there's any specific detail. I think that is the practice. We could hear them now, hear both sides of any issue but then have those stay for the technical part of it. Probably it's not unreasonable since we should be through with the business this morning.

MR. CHAIRMAN: Agreed? (Agreed)

If there are any members of the public wishing to speak to any of the bills that I've listed, would you come forward to the microphone and give your name please and the bill that you wish to speak to.

MR. DOOLEY: Mr. Chairman, my name is Tom Dooley, I'm with the law firm of Scarth, Simonsen & Company and I'm here in connection with Bill 10, an Act to Incorporate the Co-operative Credit Society of Manitoba Ltd. I also have with me Mr. Ernest Henschel, the Director of Finance of the Co-operative Credit Society.

MR. CHAIRMAN: Thank you.

MR. HAIG: Mr. Chairman, my name is Graeme Haig. I'm here with respect to Bill No. 35, an Act to amend an Act to Incorporate the Commercial Club of Winnipeg.

MR. CHAIRMAN: Thank you.

MR. FREEDMAN: Mr. Chairman, my name is Martin Freedman and I am here regarding Bill 24, the University of Manitoba Students' Union Act. There are other representatives with me.

MR. CHAIRMAN: Thank you.

MR. HUNTER: Mr. Chairman, my name is G.R. Hunter and I am here in respect to Bill 25 being an Act to amend an Act to Incorporate the Investors' Group and with me is Mr. McDonald, the Vice-President of the Investors Group and Mr. Carl Bjarnason, the General Counsel.

MR. CHAIRMAN: Thank you.

MR. McMILLAN: Mr. Chairman, my name is Ian MacMillan and I'm with the law firm of Scarth Simonsen & Company. I'm here in connection with Bill 23, the Act to Incorporate the St. Andrew's River Heights Foundation and Mr. Jack McNairney is with me.

MR. CHAIRMAN: Thank you.

MR. FINEBLIT: Mr. Chairman, my name is Allan Fineblit and I'm with the law firm of Buchwald Asper and I'm here in connection with Bill 32, an Act for the Relief of Susan Thiessen.

MR. CHAIRMAN: Thank you.

MR. FRASER: Mr. Chairman, my name is Jim Fraser. I'm with the law firm of Pitblado and Hoskin and I'm here on behalf of Guaranty Trust for a bill respecting Guaranty Trust Company.

MR. CHAIRMAN: What was the name again, please?

MR. FRASER: Fraser

MR. CHAIRMAN: Thank you. If there is no one else, do you wish to take these in numerical order? (Agreed)

Mr. Dooley, please. Bill 10.

#### BILL NO. 10

MR. CHAIRMAN: Before you begin, Mr. Dooley, for the benefit of the Committee, we have a nil report from the law officer of the committee.

MR. CHERNIACK: Mr. Chairman, I wonder if members present are all aware of the meaning of a nil report?

MR. TALLIN: Perhaps I could read the first one, then they'll know. As required by Rule 110 of the Rules of the House, I now report that I have examined Bill 10, an Act to amend an Act to Incorporate Co-operative Credit Society of Manitoba Ltd. and have not noted any exceptional powers sought or any other provision of the bill requiring special consideration.

MR. CHAIRMAN: Proceed, please.

MR. DOOLEY: Mr. Chairman, gentlemen. On a technical point first. The title to the bill has a typographical error in it. The word "co-operative" has been left out of the title of the Co-operative Credit Society of Manitoba Limited and I would ask that at some time you deal with an amendment to that.

On the bill itself, Mr. Chairman, the sole purpose of the amendment is to increase the authorized capital of Co-operative Credit Society from its present level of \$10 million to \$30 million. In 1970 the authorized capital was increased from \$5 million to \$10 million. During the last five years there's been a phenomenal growth in the credit union movement in Manitoba that requires an increase at this stage and the Co-operative Credit Society feels by moving from 10 million to 30 million at this time that its needs will be taken care of for quite some time. The essential purpose of having a rather substantial authorized capital is twofold really. The Co-operative Credit Society requires members who are borrowing funds from the Co-operative Credit Society to purchase shares equal to 5 percent of the borrowings and at the present time, they are very close to the limit of issuing capital.

Secondly, the Canadian Co-operative Associations Act which also governs financial institutions, such as the Manitoba Central, requires a ratio of borrowings and deposits to issued share capital and reserves and at the present time the Co-operative Credit Society is very close to this limit too. So in order to expand, it requires the creation of this additional capital which is also under demand from members as just a fine investment because of the high rate it has been returning to its shareholders.

If there are any questions I'd be pleased to answer them now or later or Mr. Henschel, the Director of Finance, would be pleased to answer any technical questions.

MR. CHAIRMAN: Thank you. Are there any questions of Mr. Dooley? Hearing none, thank you, Mr. Dooley.

MR. DOOLEY: Thank you.

BILL NO. 23

MR. CHAIRMAN: Next is Bill No. 23. Mr. MacMillan please.

MR. MacMILLAN: Mr. Chairman, I'd be pleased to answer any questions that any members of your committee may have regarding this.

Just prior to the committee opening business, I was made aware of the fact that there is a motion to amend the title of the bill to read An Act to Incorporate the St. Andrew's River Heights Foundation to read "An Act to Incorporate the St. Andrew's River Heights Church Foundation." I think if it's the feeling of the committee that it's desirable to expand the title perhaps the Act might read, An Act to Incorporate the St. Andrew's River Heights United Church Foundation. In other words you're adding the word "church", perhaps you might add the word "united" as well.

MR. CHAIRMAN: Are there any questions for Mr. MacMillan? Mr. Cherniack.

MR. CHERNIACK: In the first place, Mr. MacMillan, I was the one who suggested the change in the name but I did not care about the name of the bill or the Act. It seemed to me that the Foundation's name itself should be designated that way. In other words it would be the St. Andrew's River Heights United Church Foundation which would mean an amendment in the title of the organization. That's in Section 1. Is that your understanding or it it only mine?

MR. MacMILLAN: No, that's my understanding as well.

MR. CHERNIACK: Oh, so it's not just the name of the bill itself or the name of the Act but rather it would be an amendment in Section 1 and I think 4, and possibly you could see where else it ought to be.

MR. MacMILLAN: I think the only amendments that would be required, Mr. Cherniack, would be to the title and to the section referred to, Section 1.

MR. CHERNIACK: And that's agreeable to you?

MR. MacMILLAN: That is agreeable.

MR. CHERNIACK: The other question I have, Mr. Chairman, is in regard to the rule against perpetuities which is, I understand, the only reason that this bill is brought here rather than through The Companies Act. I've already . . . if I may make a statement of introduction, I've attempted to find out as a lawyer just what that means. As a lawyer I ought to know but I find that some other lawyers that I've discussed it with don't know either and I thought I knew it and now I can see ramifications. I'm wondering firstly whether it's an imposition on Mr. MacMillan to ask him to clarify for us the purpose and effect of the rule against perpetuities knowing that it may be a very unfair question because I couldn't answer it adequately if I were asked. But I, for one, don't propose to oppose the section nor the bill. But I have suggested that the effect of this be studied by the Law Reform Commission or any other group and if, as a result, there would be a recommendation to do away with this exemption then I would think - and I put it for the record - that this Act and any others of a similar nature that might come under the review, I think, should be changed in the future. So that I pose that as a question to Mr. MacMillan whether he sees any danger to the Foundation if it did not have the exemption under the rule and I'm not suggesting it be taken out now because I honestly admit I don't understand all the ramifications.

MR. CHAIRMAN: Mr. MacMillan.

MR. MacMILLAN: Yes. The rule against perpetuities and accumulations is one that is steeped in the history of English law and became part of the law of Manitoba in 1870. The rule is complex and I think that any proposed foundation like ours is well advised to take the prudent course and to get a specific legislative exemption from the rule. The rule, as I understand it, is that capital may not normally be frozen for longer than what is known as a "life in being plus 21 years". Where there is no specific life in being then it becomes 21 years. The kind of problem specifically that might arise in dealing with the Foundation is if for example a sum of money was left in trust and the income was to be given to an individual and then at the end of - let's say that the provision went on to say at the end of the Vietnam War that capital is to be turned over to the Foundation - it's my view that that bequest would fail in Manitoba. It would be void from the beginning because of the rule against perpetuity.

The rule against accumulation is simply that as it would apply to the Foundation is the Foundation would not be entitled to accumulate income from a specific trust request for longer than 21 years from the date of death of the person who left it. The traditional approach I think of churches in our position has been to incorporate under a private act rather than under what is now Part C of The Companies Act. Westminster did that in 1968 as I think you know and

MR. MacMILLAN cont'd) . . . . specifically excluded the rule against perpetuities and accumulations. The DuVal Foundation which is not United, they did it in 1933. So I think there is some danger that if we don't have the exclusion the Foundation could suffer.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think I have two questions. The first one is: if you give money to, you bequeath or you gift money to any incorporated entity which does not have a normal, natural lifetime does then that alone not go against the rule of perpetuities legally? If you give it to the Imperial Oil. Then as long as it continues, I assume that the rule is -- (Interjection)-- Go ahead.

MR. MacMILLAN: It would depend on the terms of the gift and the nature of the gift.

MR. CHERNIACK: Right. Then the second question. Is it conceivable that with the rule being exempted that I may leave my capital to the Foundation in trust and on condition that one-half, the earnings on one-half thereof shall be paid to my heirs and the other half to go to the Foundation and if I, at some stage, don't have any more heirs then - I mean my descendants, that's the word I mean, not heirs - then it shall entirely go to the Foundation. Would that be possible?

MR. MacMILLAN: That is an arguable question in my opinion.

MR. CHERNIACK: So that that in essence is my concern that it would be possible for a person to go against the rule by giving his funds to a foundation such as this and therefore be able to continue . . . to freeze a trust, to have a trust for a long period of time, well beyond the 21 years, beyond the life in being. Is that a possibility?

MR. MacMILLAN: I'm not sure that I understand the question, Mr. Cherniack.

MR. CHERNIACK: Well as a testator I want to leave all my - I want to make sure that . . . let's be ridiculous, let's say all my male heirs or let's say all my descendants who are blond as long as there are such, that that would offend against the rule against perpetuity. However, if I give it to the Foundation in trust for that purpose or partially for that purpose and partially for the purpose of the trust, is it possible that I could then determine the nature of a long trust beyond the rule?

MR. MacMILLAN: I believe so.

MR. CHERNIACK: Well those are my concerns and that's why I thought they ought to be studied but I don't propose at this stage to develop any further . . .

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, considering that there has been a motion concerning the change of the name of the Foundation, I wonder if we could ask Mr. MacMillan to explain what the original proposal was in terms of the original name to see whether in fact such a title change is really required in terms of the requirements of the Foundation itself. Perhaps you could explain something of the original purpose.

MR. CHAIRMAN: Mr. MacMillan.

MR. MacMILLAN: It was contemplated that at some future time the United Church might amalgamate with some other church, and in that event it might have been necessary to come back to the Legislature for an amendment. But by using the broader title, simply the St. Andrew's River Heights Foundation, that that possibility might have been obviated. But as I have indicated to the Committee already, we have no objection, none whatever if it is the feeling of the Committee that in the interests of certainty that the name be changed to the St. Andrew's River Heights United Church Foundation. Interestingly, Westminster when it was incorporated was incorporated as the Westminster United Church Foundation but in any of its material and colloquially it's known as the Westminster Foundation and I think bequests are made to the Westminster Foundation; and of course the DuVal Foundation has no reference whatever to Knox United. So I think there are arguments either way. If the Committee feels strongly that the words "United Church" should appear there and the House feels that way, that's fine.

MR. CHAIRMAN: Are there any further questions for Mr. MacMillan? Hearing none, thank you. Perhaps we should have a report from Mr. Tallin at this time on this bill.

MR. TALLIN: The only matter that I raise in my report is Section 8 which would exempt I think the Foundation from the application of the rules against perpetuities and accumulations, which matter has already been raised by Mr. Cherniack.

BILL NO. 24

MR. CHAIRMAN: The next bill before the committee is 24. Would you give your report at this time, Mr. Tallin, please.

MR. TALLIN: Yes. The only matter which I wish to raise to the attention of the Committee is Section 15 which would permit minors to become officers of the corporation.

MR. CHAIRMAN: Mr. Freedman.

MR. FREEDMAN: Mr. Chairman, gentlemen. This bill is the result of approximately 10 years of work, discussion, meetings of representatives of the University of Manitoba Students' Union and of the University of Manitoba. The form in which you find it now has received the approval of the University of Manitoba and its legal advisers. And perhaps I could say that one of the reasons why the incorporation is sought by virtue of a private Act rather than by proceeding under The Companies Act is because there are some special situations that obtain at the University of Manitoba Students' Union that could not be satisfied by the Companies Act provisions.

One of them is the one referred to by Mr. Tallin in his report and that is that there are students at the university who have not reached the age of 18 but who may nevertheless be playing an active and important role in the affairs of the proposed corporation, the students' union itself. They ought not to be denied the opportunity to assume office. That's one example. There are two or three others which have motivated us to take this route rather than to apply for incorporation under The Companies Act.

I'd be pleased to answer any questions if members of the Committee have same.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I'd like to know what they are. Mr. Freedman has tantalized us by telling us that there are reasons.

MR. FREEDMAN: Well, two other reasons, Mr. Chairman. One is found in Section 17, 17(1), subsection (1) which is a limitation on the borrowing power, on the ability of the corporation to incur financial obligations without the consent of the Board of Governors of the University. That kind of limitation would not be found in the normal corporation incorporated under The Companies Act. This has been the subject of some lengthy discussion among representatives of the University and of the Students' Union and although the Students' Union seeks incorporation for several reasons, one of them being that it is a reflection and a recognition of the separate status of the autonomous status of the Students' Union, they've nevertheless agreed to accept some kind of limitation on borrowing power, on incurring financial obligations. That's one reason.

Another is of a technical nature but important in practical terms. Section 7 subsection (5) of the Act provides that notice of meetings of members of the corporation need not be given individually. If this Act passes, we will have one of the most successful - in terms of numbers, numbers of members - corporations probably in Manitoba's history. We will have about 18,000 members on incorporation and we wouldn't want to have to give individual notices of the meetings of members to all those persons, all the students at the University. That's another example of the kind of special clause that we thought was necessary here and that we couldn't do under The Companies Act. And you'll see that with three exceptions, The Companies Act is not applicable to this corporation. That's found in Section 19 of the bill.

MR. CHAIRMAN: Does that complete your questioning, Mr. Cherniack?

MR. CHERNIACK: No it doesn't, Mr. Chairman, I'm sorry. But firstly I'll go to Section 7(1) - Membership. Do I read it correctly that no individual may exclude himself? Oh! That's the end of it.

MR. FREEDMAN: No individual may exclude himself, yes.

MR. CHERNIACK: Where is that?

MR. FREEDMAN: No, you're quite right, you read it correctly. "So that no individual"

. . .

MR. CHERNIACK: "All individuals are bound to be members" . . .

MR. FREEDMAN: "All students" . . .

MR. CHERNIACK: "Students" of course - "unless they are part of a class" - which is not defined, is it? Like they'll say . . . a class would be some describable group.

MR. FREEDMAN: Faculty, the Summer Students' Association, the . . .

MR. CHERNIACK: Or all people whose name starts with "A"?

MR. FREEDMAN: Theoretically.

MR. CHERNIACK: Or all people who have the name so-and-so which might . . . But any individual is forced to be a member of the Students' Union . . .

MR. FREEDMAN: That's the effect of this and that is the way UMSU has been operating since 1919.

MR. CHERNIACK: But why . . .

MR. FREEDMAN: Well, without it there would be little likelihood that most students would voluntarily pay the \$40.00 some odd dollars that UMSU requires from each student in order to carry out its activities for the benefit of all students.

MR. CHERNIACK: Well, is that the only way they're forced to? Surely not, because now they're forced to, without an incorporation, because the University forces them to make payment.

MR. FREEDMAN: The University will not complete their registration unless the UMSU fee is paid.

MR. CHERNIACK: So this actually - and I'm saying this for Mr. Banman's benefit more than anybody else's - this actually says, you shall not have the choice to opt out as an individual, nor shall you - you must pay the fee. But in addition to paying the fee you are listed as a member, which really means that you have a closed shop where you can only be a student if you are a member, unless you are part of a group in which case you may I suppose say, I am part of a religious group that doesn't want to be a member or I am part of a faculty as you say or something like that. But no individual may say, I have the principle, I believe that I do not wish to belong to any association, it's against my principles and belief, not a religious belief but a personal belief. You are not permitting that exception to be made

MR. FREEDMAN: No, what we're doing is giving legal recognition to the reality that has existed for almost 60 years.

MR. CHERNIACK: No, the reality, as I understand it, is a compulsion to pay the fee.

MR. FREEDMAN: And become a member thereby . . .

MR. CHERNIACK: No. I'm sorry.

MR. FREEDMAN: Of the students' union.

MR. CHERNIACK: Do you say, Mr. Freedman, that it forces them to be a member if they are on the roll of members? And I say that is not the carrying out of what is legally so. I am saying there's a difference.

MR. FREEDMAN: I'm advised by the President of UMSU that upon payment of fees, one becomes enrolled as a member.

MR. CHERNIACK: But there is no legal organization now, is there?

MR. FREEDMAN: No.

MR. CHERNIACK: Therefore membership doesn't mean anything. I may unilaterally, as an officer, say you are a member, John Smith, but that doesn't make him a member of anything other than the fact that J as an officer have designated him as such. But now that there's a corporation, there is a compulsory membership as I see it.

MR. FREEDMAN: That is correct. Mr. Cherniack, what we are looking for and you've of course put your finger on it, is a compulsory payment of fees. I don't know and we haven't discussed this, it hasn't come up I must say in the 10 years we have been debating it, I don't know if there would be an objection to permit individuals to opt out provided they pay the fee.

MR. CHERNIACK: Mr. Freedman, I don't (Inaudible interjection) . . .

MR. FREEDMAN: Perhaps I could call the president of the Students' Union to deal with that from a practical aspect, Mr. Chairman. Would that be possible.

MR. CHAIRMAN: Please do.

MR. FREEDMAN: Miss Victoria Lehman who is the current president of the University of Manitoba Students' Union.

MISS LEHMAN: I hope you'll bear with me, I'm just recovering from oral surgery. The way it has worked so far it appears that when you have paid your dues you are considered a member. There has been no question of that. I think that this Act simply states that and I suppose that's pretty well all that can be said in regards to that. We're simply stating now something that has existed as Martin Freedman says, for many years. Is there any further question to that?

MR. CHERNIACK: No, I'd like to ask your lawyer whether membership carries with it any obligation other than . . .

MISS LEHMAN: No, you're not obligated to participate in any of the programs. But if

(MISS LEHMAN cont'd) . . . . you have paid the fees we confer membership upon you. These fees go towards our programming such as films and a certain amount of recreational activity. No member is required to take part in anything but they are conferred a sort of honorary membership upon them by virtue of paying the fees. That's more or less . . .

MR. CHERNIACK: You don't mean honorary membership.

MISS LEHMAN: No, I'm just being facetious actually.

MR. FREEDMAN: Mr. Chairman, there are no obligations upon members other than the payment of fees. It is, as I said earlier, theoretically possible that a class of students could be widely interpreted and if a group came and said, we do not wish to become members, we'll pay the fee on conscientious grounds, religious reasons, for some reason, it's possible I suppose that this could be interpreted widely enough - I say theoretically - with the consent of the Board of Governors.

MR. CHERNIACK: I don't see that here. Mr. Freedman, really I don't see it here. Unless you determine that an individual may be described as a class which I doubt.

MR. FREEDMAN: I think that's stretching it. Certainly it is not the intention that individual members or groups of individual members, who are not as a whole an association, a faculty, could opt out of this corporation.

MR. CHERNIACK: No.

MR. FREEDMAN: It is not intended.

MR. CHERNIACK: Mr. Chairman, if I may continue. I have made the point -- (Interjection)-- Sure.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: I think it is an important one. I assume, and I ask Mr. Freedman that while there is this obligation to pay the fee, I assume that a certain number of rights are also ascribed as a result of membership and therefore you have the right to vote in any election and change the structure of fees if the voting is such that they elect a new . . .

MR. FREEDMAN: If the voting was such . . .

MR. AXWORTHY: If it was such that they could do it, so it's a matter of obligation plus rights that that membership entails.

MR. FREEDMAN: Well, the obligation is limited to the payment of the fees. The rights are those that flow from membership in any corporation.

MR. AXWORTHY: So they could then change the constitutional structure, the membership, the fee structure, anything, as a result of . . .

MR. FREEDMAN: Quite right.

MR. CHERNIACK: Mr. Chairman, now that I've made the point so loudly that I don't think anybody present can doubt what we're doing, may I say I have no concern about it and I'm quite prepared to accept it as long as it's understood that there is no option to the individual to belong.

Having said that I'd like to move to the point raised by Mr. Tallin unless somebody else wants to pursue this point in relation to the membership.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I have one question on Section 7 that I would like answered and that is the question pertaining to notice. I understand the practical difficulties of trying to notify 18,000 students but I am a little concerned about the question of the nature of notice and I'm wondering if there shouldn't be some more permanently established requirement that notice of meeting do be given other than leaving it to the by-laws. Presumably an executive which, for whatever reasons, wanted to notify it by sending a message in a bottle down the Red River, I suppose could establish a by-law to that effect. And I just wondered if there shouldn't be at least some requirement of public notice being given as we write for example in The City of Winnipeg Act on zoning regulations. There is a requirement in that Act that a certain amount of time be given and it be published in the newspaper etc., and I'm wondering if not such a requirement shouldn't be placed in this Act as well just to protect the rights of students to notification of meetings; at least basic protection which obviously could be modified but such protection should be in there.

MR. FREEDMAN: Well since we have provided for notice in our by-laws and since notice is always given of meetings, I've got no objection to enshrining in the Act the kind of thing we have in the by-laws now which provides for notice to be posted in each university and college building and wherever that's located and in all buildings normally used by members of the Students' Union. I've got no objection to providing a 10 or a 14 day notice period in such manner



(MR. FREEDMAN (cont'd) . . . . as may be prescribed by by-laws if the Committee wishes. It's no problem to us at all.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Yes, Mr. Chairman. Further on this question of fees, as I read it there can be compulsory fees charged to non-members as well, that is students . . . or classes of students that are exempted may still be compelled to pay fees. Is that correct?

MR. FREEDMAN: That is correct.

MR. CHERNIACK: Thank you. Now I'm through with that at this point. I want to move to the question of a member not being of the full age of 18 years. I assume that officers - and are there directors or there must be an executive committee of some kind - do have, by law, certain civil liabilities or obligations personally. What happens to the case where you have people under 18 who make decisions of this nature and of such a nature that would normally make them personally liable. What happens in this case?

MR. FREEDMAN: Well I'm not certain that I know what you mean, Mr. Cherniack.

MR. CHERNIACK: Well take any corporation which has servants, that is employees, And if the employees are not paid, then normally on a bankruptcy the directors themselves become personally liable. I don't know, would that apply here?

MR. FREEDMAN: That wouldn't apply here because we have excluded the application of The Companies Act.

MR. CHERNIACK: So that there is no personal liability for any act done by - I'm talking about civil - any civil act done by a member of the executive or the officers . . . ?

MR. FREEDMAN: I certainly hope not. We have an express exception . . .

MR. CHERNIACK: Well then what about the question of, let's say, defamation in a newspaper?

MR. FREEDMAN: Well, but that would be an act done presumably not in his capacity as an officer. That's not an act done within the scope of an officer's duties to defame someone. He would be sued as any person would be in a personal capacity. And if you were a minor, a minor is liable for his torts.

MR. CHERNIACK: Yes, for his torts. And you can't visualize any contract that they may enter into.

MR. FREEDMAN: Not . . .

MR. CHERNIACK: Which would be, let's say, beyond the scope or in the name of . . .

MR. FREEDMAN: Well I can't offhand, no, and certainly we intend there to be an exemption from personal liability for acts done in good faith by members of council. We've taken this wording, I may say - that is the wording in Sections 13 and 14 which is the limitation on liability clause - out of the University of Manitoba Act which gives the same kind of limitation on liability regarding members of the Board of Governors.

MR. CHERNIACK: Do you know what percentage of the students are under 18?

MR. FREEDMAN: I asked earlier. Perhaps 500 or so out of 18,000. Not a great percentage.

MR. CHAIRMAN: Mr. McKellar.

MR. McKELLAR: Mr. Chairman, there's one point I'd like to ask. Are part-time students going to have to pay the fees the same as full time students?

MR. FREEDMAN: On a graduated scale as they do now.

MR. McKELLAR: That's evening classes included?

MR. FREEDMAN: Yes. Correct.

MR. McKELLAR: One other. Brandon University when they incorporated - the students' union I'm referring to - one of their clauses in the bill pertained to student housing. Are you going to be responsible for student housing out at the University?

MR. FREEDMAN: No, I have two comments. I don't believe Bill 30 which is what the bill was, was passed by the Legislature and so I don't know, and I haven't inquired into that bill recently. But I think that the answer to your question insofar as it relates to this organization is no, we're not.

MR. McKELLAR: Well, that bill was passed.

MR. FREEDMAN: It was passed eh?

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you, Mr. Freedman.

Bill No. 25. Is there a report Mr. Tallin please?

BILL NO. 25

MR. TALLIN: I'd like to bring the attention of the Committee to subsections 4(5) and 4(6) of an Act to Incorporate the Investors Group as set out in Section 2 of Bill 25 which would authorize supplementary Letters Patent to be issued under The Companies Act authorizing the company to issue interconvertible classes of common shares.

MR. CHAIRMAN: Mr. Hunter.

MR. BJARNASON: Mr. Chairman, my name is Carl Bjarnason. I'm the secretary of the Investors Group. I am accompanied by Mr. Donald McDonald who is our Executive Vice President and Mr. Hunter who is our outside legal counsel. With your permission I would like to give a very brief explanation of the bill.

Investors Group was originally named Investors Syndicate of Canada Ltd. and was incorporated in 1940 by special Act as an investment contract company. In 1964, the investment contract operations and assets were transferred to a new company, Investors Syndicate Ltd., which was incorporated by special Act. Since that time the Investors Group, originally Investors Syndicate of Canada, has been a financial holding company.

Bill 25 provides for a change in the capital structure of the holding company and doesn't affect in any way the capital structure of Investors Syndicate. As a special Act company, changes in our capital structure must of course be effected by special Act. The major overall effect of this bill will be that future increases in capital or reclassifications of shares may be effected by supplementary Letters under The Companies Act. For this limited purpose the company will be treated as an ordinary commercial company subject to requirements paralleling those in The Companies Act. This procedure will, we hope, relieve the Law Amendments Committee and the Legislature of performing what is basically an administrative function now performed in the case of ordinary commercial companies similar to the Investors Group by the Department of Corporate, Consumer and Internal Services.

With those preliminary comments I would comment very briefly on particular sections in the bill.

Subsection (1) of Section 4. The effect of this subsection is to increase the authorized capital of the company by one million dollars from \$41 million to \$42 million by the creation of an additional 10 million shares of the common stock and an additional 10 million shares of common stock Class A which is the non-voting stock which in both cases have a par value of five cents.

Subsection (5) of Section 4. This subsection provides that future increases in capital or reclassifications in shares may be effected by supplementary Letters Patent under The Companies Act. Clause (b) of subsection (5) makes specific reference to the creation of two interconvertible classes of common shares and two interconvertible classes of common stock Class A. Such a share structure will enable the company to pay tax paid dividends to shareholders who elect such an option. The Federal Income Tax Act provides for such dividends and a number of major Canadian companies have adopted similar provisions since 1971 when the Federal Act was amended to permit the payment of tax paid dividends. We understand as well that a number of Manitoba companies incorporated by Letters Patent have also created these types of shares.

With respect to subsection (6) this section details the necessary shareholder approvals which would be required before future increases in capital or reclassification of shares could be effected. These requirements are patterned on the existing requirements for companies incorporated under The Companies Act.

The enactment of Bill 25 will not grant to the company any unusual powers in the sense that many federally incorporated and provincially incorporated companies have a similar share structure. It will give the company the ability to increase capital or reclassify shares in much the same manner as commercial companies incorporated by Letters Patent under The Companies Act.

Those are my comments, Mr. Chairman, and we would be glad to answer any questions.

MR. CHAIRMAN: Are there any questions? Hearing none, thank you Mr. Bjarnason.

BILL NO. 32

MR. CHAIRMAN: Bill No. 32. Mr. Tallin.

MR. TALLIN: I would like to bring the attention of the Committee to Section 1 of Bill 32 which would authorize an action to be brought against one or both, two possible defendants in respect of an accident which was alleged to have occurred on or about June 5, 1971. The statutory period of limitations for such an action is now two years. At the time of the accident it was only one year however.

MR. CHAIRMAN: Mr. Fineblit please.

MR. FINEBLIT: Yes. This bill is the result of an individual's basic ignorance of the complex system of laws we have. Mrs. Thiessen was involved in a quite serious motor accident in June of 1971. She was in the hospital for a rather extended period and is still suffering permanent disabilities as a result of that accident. Mrs. Thiessen never had any contact with the law and is unsophisticated in the law as many people are and had no idea that there was any limitation and had been told by many people that bringing any kind of action to compensate herself for the damages which she suffered would only complicate her life and as such sort of let the matter drift until approximately two years after the accident. It was one year after the limitation period had expired that a brother of hers visited her from out of the province and when he heard that nothing had been done, he was rather shocked and suggested that she seek counsel which she did. She was advised that the only procedure available to her at that time was the procedure that we are now going through. There was some further delays in obtaining a sponsor for the bill. It eventually arrived at our law office and the bill was to be sponsored by Mr. Asper who is no longer with you and back with us I should point out, and Mr. Axworthy now has sponsored the bill. If there are any questions, I'd be happy to answer them or to respond to any comments.

MR. CHAIRMAN: Are there any questions? Mr. Cherniack.

MR. CHERNIACK: I wonder if I could ask a question of Mr. Tallin in the presence of Mr. Fineblit in case his answer provokes a question to Mr. Fineblit. The phraseology here, including in Section 1, the term "the very right and justice of the matter", is that considered to direct the court to take into account the adverse effect on any of the defendants in carrying on this defence such as the unavailability of witnesses or the lack of records that may turn out. Would the court take that into account as well in considering the "the very right and justice of the matter."

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I would think that the court in determining what they thought was just would take into consideration the rights of both parties to the action. But just how much weight they would give to them I'm afraid I couldn't say.

MR. FINEBLIT: Perhaps I might comment on that. For the members of the committee who aren't completely familiar with the procedure, what this bill merely does is entitle us to apply now to the courts to extend the limitation date. This bill does not extend the limitation date or does not make it possible for Mrs. Thiessen to bring an action. What she will be required to do now is apply to the court giving notice to all the parties involved, making a formal application to extend the limitation date. At that time the court would examine the matter on the merits - not on the merits of her claim, but on the merits of extending the limitation date. And the type of investigation that the court makes in those circumstances is exactly what Mr. Cherniack raised. They look basically to see if the rights of any of the parties have been prejudiced by such things as a witness having died; some evidence that was then available not being now available; some type of insurance coverage perhaps that one of the parties might have had no longer no longer being available; that's the type of investigation. If they are satisfied that there will be no prejudice resulting from the delay then they permit you to bring an action and you have to bring a second action at that point at which time the merits of the actual case are gone into and it's determined whether there's any liability, the nature of the liability and the extent of the liability.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: Thank you, Mr. Chairman. I would just like to ask Mr. Tallin if this type of a bill, and I understand that basically what we are doing is waiving the Statute of Limitations or permitting the court to decide on it, have we had this type of bill before the House before? We're not setting any precedent here.

MR. TALLIN: Oh yes, there have been some dozen, I would think, in the last 20 years, bills of this nature, extending limitation periods essentially. They started out extending limitation periods then the Legislature thought that they shouldn't extend it, they should allow somebody to make an in-depth study of whether or not it should be extended and from then on the bills were of this character where they directed the courts to give consideration as to whether or not the limitation period should be extended.

MR. BANMAN: This might not be a fair question, Mr. Chairman, but would you know how many were proceeded with by the courts?

MR. TALLIN: I'm afraid I couldn't tell you. Some were settled after the bill was allowed without an action actually being started but I think pretty well all of them had the limitation period extended. I couldn't say that all of them have but I think pretty well all of them. Perhaps one or two might not have had the period extended. There have been several bills before the House of the same nature where the Legislature didn't pass the bill, they turned it down.

MR. FINEBLIT: I think there have been - I know of at least one and I think there have been a couple actually that have not proceeded from this stage through the courts. The court has refused, after examining the merits, has decided that there's been some unfair prejudice to the party. In the one circumstance that I am familiar with a key witness was no longer available, had left the country, and as such they decided that it would be unfair to the parties involved to extend the limitation period.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Mr. Fineblit.

BILL NO. 35

MR. CHAIRMAN: Bill No. 35. Mr. Tallin.

MR. TALLIN: This is a nil report.

MR. CHAIRMAN: Mr. Haig.

MR. HAIG: Mr. Chairman, the purpose of this bill is to rectify problems that the club has had arising out of an order-in-council passed in 1911 whereby its name was changed from The Commercial Club of Winnipeg to the Carleton Club. The responsible people at that time being under the apprehension apparently that the company had been incorporated by Letters Patent. It was not. It was in fact incorporated by special Act and recorded as an Act of the Legislature to give effect to that change of name.

The other purpose of the bill, Mr. Chairman, is to remove from the company's Act of Incorporation limitations imposed on its borrowing powers and on the value of property, real property which it may own. The company's premises have been expropriated by the City of Winnipeg and the club is relocating and for the purpose of relocating must buy lands which are somewhat more expensive than those contemplated in 1906 when the limits were placed and requires borrowing powers of a somewhat greater nature. It was our feeling therefore that the Legislature was not particularly concerned with the value of property owned or the extent to which it is mortgaged or pledged by a private company incorporated in this fashion, and therefore it is proposed to delete those restrictions altogether from the company Act. That is the purpose of the bill which is before you.

MR. CHAIRMAN: Are there any questions? Hearing none, thank you Mr. Haig.

MR. HAIG: Thank you Mr. Chairman, gentlemen.

BILL NO. 38

MR. CHAIRMAN: Bill No. 38. Mr. Tallin.

MR. TALLIN: This is a nil report also.

MR. CHAIRMAN: Mr. Fraser please.

MR. FRASER: Mr. Chairman, the purpose of the bill primarily is to enable Guaranty Trust Company to deal with - obviously to deal with assets or obligations of Prudential, the assets of whom they purchased in 1963. The immediate reason it has come up now after 11 years is because there a large number of caveats filed around the province by Prudential which cannot be withdrawn since Prudential no longer exists. In order to let Guaranty Trust withdraw them we had to seek private legislation. That was the main purpose or the immediate reason for bringing it on at this time. If there are any questions of the Committee, I'd be pleased to answer them.

MR. CHAIRMAN: Mr. Cherniak.

MR. CHERNIACK: Mr. Chairman, I wanted to ask Mr. Fraser a question. Mr. Fraser, did you have occasion to read the comments that I made in introducing this bill in the House?

MR. FRASER: I'm afraid I didn't.

MR. CHERNIACK: Okay

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Mr. Fraser. Can we now go through the bills clause by clause or page by page?

MR. AXWORTHY: Page by page.

MR. CHAIRMAN: Bill No. 10. Mr. Axworthy.

MR. AXWORTHY: Before we proceed to the clause by clause, I'm wondering if we could just - if I could make a motion that the transcripts of these meetings be recorded and printed.

MR. CHERNIACK: They are being done.

MR. AXWORTHY: I know that they are being recorded but I think they have to make a motion at every committee that they also be transcribed and printed, otherwise it would just be kept on tape.

MR. CHAIRMAN: Moved by Mr. Axworthy that the proceedings be transcribed and printed. (Agreed)

Bill No. 10 with a correction. (Bill No. 10 was read section by section and passed) Bill be reported.

Bill No. 23. Section 1. Mr. Axworthy, since you're the mover of the bill, it has to be amended by someone else. Give it to another member of the committee. Mr. Cherniak.

MR. CHERNIACK: On behalf of Mr. Axworthy, I move that Section 1 of the Bill 23 be amended by adding thereto immediately after the word "Heights" the words "United Church". MOTION presented and carried.

(Section 1 to 10 and the preamble of Bill 23 were read and passed.)

MR. CHERNIACK: Mr. Chairman, I move that the title of Bill 23, an Act to Incorporate the St. Andrew's River Heights Foundation be amended by adding thereto immediately after the word "Heights" the words "United Church". (Agreed)

MR. CHAIRMAN: (The title of Bill 23 as amended was read and passed) Bill be reported.

Bill No. 24. Page by page? Mr. McKellar.

MR. MCKELLAR: Mr. Chairman, there was one question that was brought up when Mr. Freedman was giving his presentation was the fact that under-aged people can be members of the Corporation and are we setting a precedent here because - I was just wondering. We could have, you know - I think it's the first time in my 17 years here that I've heard a request for an under-age person to be elected as an officer of a corporation and I'm just wondering if we're really opening up the gates here.

MR. TALLIN: The only other precedent that I'm aware of is the Brandon College Students Union.

MR. MCKELLAR: They have the same permission. I see.

MR. CHAIRMAN: (Pages 1 and 2 of Bill No. 24 were read and passed.) Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I'd like if I could to move an amendment to Section 7(5) and it would read as follows: "That meetings of the members of the Corporation may be held on not less than ten days' notice but notice of meetings of members of the Corporation need not be given individually and may be given in such manner as is prescribed by the by-laws of the Corporation."

MR. CHAIRMAN: Do you have a copy of the amendment?

MR. AXWORTHY: Yes I do.

MR. CHAIRMAN: Mr. Cherniak.

MR. CHERNIACK: Mr. Chairman, I gather that that means that there shall be a minimum of ten days' notice.

MR. AXWORTHY: Yes.

MR. CHERNIACK: But the nature of the notice, Mr. Axworthy is not proposing to legislate on that.

MR. AXWORTHY: No, Mr. Chairman.

MR. CHERNIACK: It could be a bottle down the river.

MR. AXWORTHY: I suppose, yes, that's right. But then I still go back that there is a basic voting right by the members of the Corporation that they could then take whatever appropriate sanction if that were the case. But I do think that a timing is certainly required so that there wouldn't be any hasty meetings called. That's the purpose of the motion.

MR. CHAIRMAN: Are you in favour of the amendment? (Agreed) (page 3 of Bill 24, as amended, was read and passed.) Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I admit I haven't really read this thoroughly. I'm looking at Section 9(a) and come to the conclusion that this empowers, I believe, a discriminate way that could be used by the council in connection with the qualifications of members to any office. In other words, I think they have complete powers to provide for qualifications of members to be elected in any manner I suppose except that which may be contrary to natural justice whatever that means. I point that out only in passing.

Also under subsection (f) I assume there is no limitation as to the amount of the membership. Oh no, I'm sorry, that's subject to the approval of the Board of Governors. Okay.

MR. CHAIRMAN: (The remainder of Bill No. 24 was read.) Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, just before that final vote, I want to again bring to our attention that we are permitting compulsory membership and compulsory payment of fees with the exclusion only to classes rather than individuals. I'm voting for it.

MR. CHAIRMAN: (The remainder of Bill No. 24 was passed) Bill be reported.

-- (Interjection)--

MR. CHERNIACK: Yes, I want it to be clearly understood that that is being done so that in other cases we should not be told that it is offensive to any person's principles that an individual is forced to belong and to pay fees.

MR. CHAIRMAN: (Bill No. 25 was read and passed) Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'd like to make a few comments. Firstly, I omitted to but I subsequently privately asked Mr. Bjarnason if he had read my comments on second reading, and he had. And I asked him whether there was anything I said that was contrary to his understanding and he said no, it was in accord with his understanding which makes me feel that I have reported adequately.

Secondly, you may recall, Mr. Chairman, that when Mr. Sherman spoke on second reading he indicated two things. One, that he was relying to some extent on my stating that I felt that this bill was proper, that I saw nothing wrong with what was being done. And I asked him to disassociate my sponsorship from his decision as to whether or not this bill was proper. I didn't want to take responsibility for his decision but insisted that he make his own decision. Secondly, that he stated that it would give him and his colleagues - that at this Private Bills Committee, he would have an opportunity, along with his colleagues, to satisfy themselves that everything was in order.

MR. CHAIRMAN: Bill be reported. (Agreed)

(BILLS NOS. 32, 35 and 38 were read page by page and passed.) Bills be reported.

That completes the bills before the Committee. Is there anything else?

A MEMBER: Committee rise.

MR. CHAIRMAN: Committee rise.