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of the
Legislative Assembly of Manitoba

STANDING COMMITTEE
on
**INDUSTRIAL
RELATIONS**

31 Elizabeth II

Chairman
Mr. J. Storie
Constituency of Flin Flon



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS**

Saturday, 26 June, 1982

Time — 10:00 a.m.

CHAIRMAN — J. Storie.

BILLS NO. 57 and 58

MR. CHAIRMAN: The committee will come to order. We're here to consider bills referred to in the Industrial Relations Committee, Bill 57 and Bill 58 in particular. We have two groups wishing to make presentations to the committee. I would ask Mr. Martin and Mr. Walsh representing the Manitoba Federation of Labour to come forward and make their presentation at this time.

Mr. Martin.

MR. D. MARTIN: Thank you, Mr. Chairman. We don't have a written brief. We wanted to come here to make some verbal representation on Bill 57 and Bill 58.

First of all, I might say we welcome the changes to The Workers' Compensation Act and The Workplace Safety and Health Act. To be concise, we welcome the changes in terms of the word "shown" to "proven." However, I would like to take notice that we think the word "proven" should be explained in the definitions and as a suggestion, we would ask that "proven" in the definitions would say: "means that contrary possibilities are unequivocally ruled out."

We also welcome the inclusion of domestics under The Workers' Compensation Act and The Workplace Safety and Health Act. We have lobbied and asked in repeated briefs to the Legislature, to various governments, for that inclusion and we're very pleased that it is now going to come about.

In terms of the Act itself, we have another suggestion under Section 52.2(1) on medical reports. I bring your attention to the last line - "the worker adviser" - and we suggest "and/or a physician to assist the claimant." The reason for that, we feel that the medical reports should be accessible to the claimant's physician himself. Sometimes they had said that they do have access to that, but we think it should be in the Act so there would be no misunderstanding at all. We also think under 52.2(2) that the same thing should be included in the Act - "and/or a physician to assist the claimant."

We are hopeful that in the future, in addition, not only the adviser but anyone operating in an advocacy position, that his claimant can obtain the services of a union rep or a lawyer or any individual that they would have access to the medical files. This is coming about in other provinces and in particular in British Columbia, and we think that in order to do service to the claimant, it is absolute necessity to have the access, as I say, to the medical file to proceed with an appeal.

We are hopeful that the government will see fit to a complete review of The Workers' Compensation Act in the near future because we think that the Act itself needs some updating in a variety of ways. In particular, we are hopeful that under the Act and regulations, the clauses and the sections on rehabilitation will be more explicit and will operate in terms of assisting

people in rehabilitation more than they do at the present time. Mind you, we also understand it's a mixture of the Act, the regulations and board policy that will assist claimants in their rehabilitation itself.

We did take notice that the various sections that talk about "workman" really should be changed to "worker." It is a Workers Compensation Board and the whole Act should be changed in all those areas that it has "workmen" to "workers."

That completes our submission on the Act. As I say, we're very pleased with the changes, welcome them and look forward to assisting injured workers in the future very much more than what is happening now.

MR. CHAIRMAN: Are there any comments that anyone would like to make or questions of Mr. Martin?

Mr. Cowan.

HON. J. COWAN: I'd just like to thank Mr. Martin for taking the time on a Saturday morning when it's very pleasant out there to come down here and provide us with some comments on his own thoughts in regard to the changes which are being brought forward now, and to briefly comment on a few of the things which he suggested.

The first is the change in definitions to include "proven." It's my understanding that the various Interpretations Acts and the other procedures which are followed in developing legislation very clearly spell out the definitions of different words and by practice those are refined and we get an explicit definition over a period of time, so I don't at this time see a need to put "proven" into definitions. However, if we find that there is a difficulty with the wording without a definition of it in that section, then we're prepared to take a look at that, but at the present time I think it would be redundant and not necessary.

I was not aware of a problem in regard to physicians to assist claimants not having access to the medical files and I'm certainly prepared to review an amendment in that regard. If there's no objection here at the committee stage, perhaps we can bring it forward. It would be a very simple wording change and I'd like to hear from others if they think that is necessary. If there is a problem, certainly one would want to see it rectified as quickly as is possible.

The one comment which you made which I have to take some objection to is in respect to a person coming forward on behalf of a claimant in an adversarial position. We believe they're coming forward in a position of offering advice, experience and expertise and that's why we've changed the word from - let me rephrase that. We have not actually changed the legislation, because the legislation is always applied to workers' advisers in the proper section of the Act. What we have done is suggested that should be the common usage word as well, that these are people who are providing advice to workers and that takes some of the adversarial perceptions away from that position. We think that's important. We don't want the workers' compensation system be an adversarial system and would like to see the concept diminished as

much as possible.

In respect to overall access to files, that is a long-standing request on many parties, especially parties who have contact with the Workers Compensation Board from time to time on behalf of claimants. I think I can give you an undertaking to review that over the next number of months with different organizations and with the medical profession. I've had some preliminary talks in respect to opening up all the medical files with some members of the medical profession and there is a bit of hesitancy on the part of some doctors although I'm not so certain that is as widespread as it is commonly thought to be at the present time. So I'm optimistic that we will be able to reach an agreement with all the parties that will enable us to bring forward something in the near future, perhaps next year, although I certainly have learned not to put time limits on myself as a result of this whole exercise, but perhaps next year or the year after, or the year thereafter, or sometime in the near future amendments which will open up the files. I note the Opposition members are smiling at that somewhat and justifiably so.

You asked for a complete review of the Act and then sort of zeroed in on the rehabilitation problems which we are confronted with now. Not included in this amendment because it is not necessary to be struck by legislation is a committee which we are forming which will be designed to review rehabilitation procedures in the immediate. I hope to see that committee formed in the very near future and it will focus on those procedures at this time, bring back recommendations. If we find that committee which will be struck under Section 100 of The Workers' Compensation Act is a suitable mechanism for reviewing different aspects of the workers' compensation system, one might see it eventually pick up a review of the entire Act and I think that's probably well worth doing from time to time on a regular basis even. This Act is one that has to remain consistent with the circumstances of the day in which it is being implemented.

The remark you made about "workman" being changed to "worker" is one which was brought forward by Mr. Filmon in the House the other day. At that time, we indicated that we agree with him. In fact, when we were developing this Act, we asked Legislative Counsel in respect to the sections that we were bringing forward, could we change "workman" to "worker" and start the change in that way? You'll note that in some of the amendments that we're bringing forward, we mention "workman" as well. We specifically requested that be changed to "worker." He indicated to us at that time that would create a discrepancy in the Act which would make it difficult. We discussed it at some length internally and I think the proper course of action is to at a later time come forward with a whole series of those changes, clause by clause in the Act which will make the Act, as members opposite and as you and as we would like to see, more clearly reflect today's use of the words, "worker" and "workman." So we're looking at that; we just couldn't do it this time. We wanted to do it and we are prepared to take another look at it when we have more time to put all the amendments together.

MR. MARTIN: Just in response, Mr. Chairman, yes, to

the question. I would just bring your attention to 91(1), I think it's a misprint, but it says "work advisers." I believe it should be "worker advisers." We welcome, obviously, very much the worker advisers.

I would suggest, Mr. Chairman, however, it remains to be proven to us that it will not be an adversarial system as it has been in the past. When the companies quit making representation against workers that have been injured in their company, it will not be an adversarial system any more. Then when that stops, up until the point that they continue to send in submissions or claim to have evidence that a worker was not injured on the job or their illness was not contacted on the job, it will be an adversarial system.

I would hope that someday it won't be an adversarial system. Certainly, I'd like to have to society not in an adversarial system, but I believe that to think it won't be an adversarial system now or five years in the future is a bit Utopian, quite frankly. However, I wish you the best of luck to see that it's not such a system itself.

Obviously, there has to be a lot of people in terms of injured workers, both occupationally related and healthwise, and injuries that are going to have to be compensated from the past and in the future to take that adversarial nature out of the Compensation Board.

We consider The Compensation Act, the Compensation Board to be insurance for workers if they're injured or their health is detrimentally affected and they should have access to that insurance and we welcome it. Your changes in terms of the word "proven" - because we think that's a lot stronger - and we welcome the other changes in terms of the advisers. In spite of the Act, I will still call them advocates until it is proven otherwise to me.

MR. CHAIRMAN: Mr. Mercier:

MR. G. MERCIER: Mr. Martin, I'm sorry I wasn't here for your presentation. I was busy driving around the building trying to get into the grounds.

Mr. Martin, on the introduction of the bill and the short debate we had on it the other evening before it was passed into committee, the Minister described on one full page the change you've just referred to, the substitution of the word "proven" for "shown." In one area, he said he'd reviewed this change with Legislative Counsel and they informed me that the actual impact of the wording change will be minimal in legal terms.

He went on to say, at the same time, the clarification which is provided by the new wording will be significant for the injured worker who must have confidence in the process. He described - and he can correct me if I'm misinterpreting his remarks - overall the changes as being more one of perception than of substance. Because of the changes in the wording in that particular section and the expansion of the Workers Advocate Program, that I think the previous Minister introduced into workers' advisers as being more one of perception than of substance.

The fundamental objective of the Act, I think as you've just stated, to provide compensation to workers who are injured in the workplace is the fundamental principle of the Act. I ask the Minister, and I just raised

the question, if the objective that he's trying to accomplish could not be accomplished, perhaps if there is a problem, by better direction by management to employees of the Workers Compensation Board to get away from what you described as an adversarial system. Surely, the employees of the Workers Compensation Board should be there to assist workers in processing their claims; and I ask you, Sir, if this objective, which I'm sure everyone supports, could not be accomplished through direction to the staff of the Workers Compensation Board if indeed there are problems. Why do we need workers' advisers when there are people employed in the Workers Compensation Board who are there under the objective, the principle and the legislation to provide compensation to injured workers? Why do we have to go to this extreme of bringing in this new concept? I appreciate the previous Ministers who started it. Why do you have to provide a separate group to assist workers solely; that is, that it will be their sole responsibility when there are staff there who are employed to provide compensation to injured workers?

You indicated a concern about an adversarial system and I had mentioned that to the Minister; it shouldn't be an adversarial system particularly. I appreciate there has to be some material that has to be, in the words of the amendment, proven. Perhaps you'd like to comment on that.

MR. D. MARTIN: Yes, not to become too elaborate on the terms of the comment but the worker advisers, I would agree with you that ultimately I'd like to see the worker advisers work themselves out of a job, quite frankly; but at this point in time we know from our own experience in the labour movement that a lot of our representatives and our staff representatives and presidents of local unions spend a tremendous amount of time in reviewing files of workers who have had their claims nullified, that they were rejected by the Workers Compensation Board. In fact, my own office was just overburdened with workers' claims in terms of trying to assist workers on their claims before the Compensation Board.

I give you an example. A fellow by the name of Joe Mospanchuk, who we came across in terms of doing some work for the start-up of our Occupational Health Clinic, had gotten emphysema at a foundry in Winnipeg, a matter of I believe about seven years ago. His claim was continually rejected by the Workers Compensation Board because they said he could not prove that he had obtained emphysema at the work place; so he was living on a very minimal pension, his wife was helping support the family and they were next to destitute. The former Executive Secretary of the Manitoba Federation of Labour made representation and did a lot of research, operated as an advocate and went to the Compensation Board and fought the case and finally won it. It was an adversarial system though, I can assure you, because obviously he had been disclaimed until he got what I consider professional assistance as an advocate and won his claim for compensation. I believe \$45,000, as I recall, was the amount that he was awarded after all those years of waiting and waiting and waiting.

We can go through numerous cases. There's a lot of people out there today who have not got their com-

penetration benefits and should have their compensation benefits. They are not gold bricks; they are people that were injured on the job and healthwise. I would suggest to you, Mr. Mercier, that when the final impact of occupationally related illnesses comes to the forefront in terms of industry, business and such and the compensation claims, it's going to be tremendous, because we believe as the Federation of Labour that a tremendous amount of cancer out there is induced at the workplace through chemicals in the workplace. When those people start making their claims to the Compensation Board, they're going to be lined up knee-deep in terms of asking for widows' pensions and in terms of rehabilitation and such.

At this point in time, we see no way but to have advisers and advocates out there to assist those people in putting their claims forward. We found in the past that a lot of the employees, we believe, of the Compensation Board were doing their jobs and thought they were perceived to be doing their jobs, but in terms of an administrative way, it was an adversarial system; you had to prove that your injury was caused on the job or your health problem was caused on the job. We want it to be that the Compensation Board must prove you were not injured or your health problem was not induced on the job; in other words, the reverse onus. After all, it seems only fair to us that if you indeed did get injured or your health was detrimentally affected on the job that you should be the recipient of Workers Compensation insurance. It's a cheap insurance for employers and it's a good insurance for employees as long as you have access to it. If you don't have access, it's not much good to anybody in itself.

I can give you pages and pages if we had to, where companies in some way or other would inform the Compensation Board that Joe Blow claimed to have his back injured at work and he was seen shovelling snow out in his driveway. We have checked those out and found out that most of the time that was not true. They were not shovelling snow, but that held up that person's compensation benefits for sometimes months, sometimes years and sometimes never. That's why we believe that the workers' advisers is an absolutely necessary thing at this time. As I say, in the future I would hope that they will not be necessary, but at this point in time there are literally thousands out there who need the advisers.

MR. G. MERCIER: Just one short question. You don't believe that the same objective can be accomplished through direction by management and by the administration?

MR. D. MARTIN: I don't believe, at this point in time, that all of the previously injured workers can be assisted by the management and the employees of the Compensation Board because there's just too many of them at this point in time. So consequently advisers are needed and the advisers, certainly, I believe, are not going to take non bona fide cases forward, so they'll be a part of, I suppose you might say, the screening process too. If you haven't got a case, you haven't got a case to bring it forward.

In the future, maybe that will be the case that the Compensation Board can handle them all, but there's

such a backlog of people that have been denied benefits at this point in time that the advisers are absolutely necessary.

MR. CHAIRMAN: Are there any other comments? If not, we would like to thank you for making a presentation on behalf of the Manitoba Federation of Labour and for taking the time to come before us.

MR. D. MARTIN: Thank you.

MR. CHAIRMAN: I call on Mr. John Huta from the Injured Workers Association.
Mr. Huta.

MR. J. HUTA: Mr. Chairman, Mr. Minister, Honourable Members of the Committee, Ladies and Gentlemen, first of all, on behalf of the Injured Workers Association of Manitoba Inc. we wish to present a very short brief in relation to Bill 57.

We want to commend the Minister for the remarkable effort and time he has put into bettering the procedures and operations of The Workers Compensation Board. These are only a couple of comments out of many others which we would like to comment on, but because of the very short notice, we were not able to prepare a more comprehensive submission. We want to agree with what Mr. Martin has stated and we wholeheartedly support his submission.

Firstly, while we wholeheartedly agree that the worker's adviser should have access to the entire file at the WCB, including the medical file, we also feel the injured worker should have this prerogative, presuming the injured worker agrees that he or she will not use any of the material maliciously. We strongly feel the worker, being afforded the opportunity of reviewing his file, may be able to offer clarifying data that perhaps will enable the WCB to expedite the claim.

Secondly, while we completely concur with the appointment of an advisory committee under Section 100 of the Act, might we suggest that in composing this committee at least one injured worker be appointed to serve. We believe most other provinces have an injured worker in an executive advisory capacity and the benefits of such appointments need no explanation other than to state he or she knows the feeling of having disability without dollars.

Further, in regard to Mr. Mercier's comments regarding that there shouldn't be an advisory worker or whatever, if we don't have this advisory advisers, it has been a proven fact that the doctors have been motivated by the board. I didn't want to bring this up but I think that it will support Mr. Martin's statements in regard to having this advisory advisers. Also, by having these advisory advisers and other groups working on cases, it will give the worker that much more chance of being justly treated by the Workers Compensation Board. There has to be somebody to act as a watchdog over the Compensation Board system because we wouldn't want it to go back into the rot that it has been up until now.

We respectfully ask this committee for your consideration of the above before final appointments are made. Thank you.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I want to thank Mr. Huta and the Injured Workers Association of Manitoba for their comments today, as well as their comments over the past number of years, to all of us in respect to improvements to the Workers Compensation system. I think they should take some pride in seeing some of their suggestions come forward by way of amendment this time and in previous occasions as well.

I do apologize for the length of notice. However, he is probably well aware of the way in which the system works and sometimes this happens. I am looking forward though to continuing dialogue with the Injured Workers Association and other groups which have an interest in the Workers Compensation in the future, so that we can begin to look toward longer-term improvements as well.

We note from his comments that he feels strongly about complete access to medical files as well, and as I indicated to Mr. Martin of the Federation of Labour, we're prepared to look at that and discuss it with the parties and perhaps in the near future bring something forward. I'm certainly prepared to entertain his suggestion that an injured worker be appointed under Section 100 of the Act to serve on the advisory committee which will be reviewing rehabilitation procedures. I can't give him a definitive answer at this stage but I certainly have no philosophical objection to it right at the moment and would be pleased to discuss that with him further as we start to more clearly define who will be on that committee in the terms of reference of that committee. So I'm looking forward to those discussions.

The question that I would ask of Mr. Huta is in respect to his statement that medical files be open to access to the injured worker as long as the injured worker did not use those in a malicious or a frivolous way. I'd ask him how he would see controlling that process. In other words, as we have it now, members of the board can gain access to it, the worker's adviser can gain access to it, and their employees of a certain organization, and for that reason have some very clear guidelines given to them. If you open it up to each and every person - I'm not suggesting that we shouldn't - as a matter of fact I think it's probably an idea whose time is long overdue, I would then ask him how he ensures that it's not used for purposes other than the Workers Compensation Board case that the worker has before the board?

MR. J. HUTA: Up until now, there was no access to the medical files. I've been told by even medical doctors that they cannot go and see the file. No matter how they tried, they were not able to. But if we establish some kind of a form which the injured worker would sign so that he or she will not use that information outside the appeal procedure, I think that would have the onus on the worker to keep the information to himself, what he or she have obtained from their files. But if the doctor would give a claimant or his patient a copy of that report which he is submitting to the Compensation Board, I think that would also alleviate a lot of problems that we had been experiencing up until now.

I think if we could establish a form, for example, like the Ontario Compensation Board has, that the claimant signs that he will not divulge any of that informa-

tion outside that field system. If we gave it at least a try, see how it works and if it doesn't work, then perhaps we could look at some other avenue to better it.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: In dealing with the exchange on the idea of access to medical information, there is now a widely-accepted principle of access to personal information that is operative with respect to agencies that get information for credit reports. So what we're talking about is in accordance with a general principle that persons should have access to files containing personal information in order to correct - for example, it might say in a medical report that this person is having trouble with his left leg when it's the right leg. Now, that may seem strange, but we've had a case in Manitoba - thank God, it was about 20 years ago - where the wrong leg was amputated, so this can happen.

The other thing is that with respect to the point raised by the Minister of what protection there might exist against the malicious use by the worker of information concerning the worker himself or herself, the general law of the land, I think, protects against the malicious use. The only malicious use that one can think of would be against the doctor and the laws of libel would protect the doctor. So I think that one doesn't have to build in out of an abundance of caution some elaborate mechanism within the Act to protect against the malicious use by the worker of information concerning the worker himself or herself. I think the law of the land already looks after that.

MR. CHAIRMAN: Mr. Huta.

MR. J. HUTA: I've had opportunities of getting access to the federal medical files and myself, I just don't give a damn who knows about it. If it's pertaining to my claim, I don't care. If I want to divulge it, it's entirely my own body and health that I'm divulging. I'm not divulging about anybody else except my own. I think that has opened up many of the public's eyes in regard to that access to medical files.

Since the Federal Government opened up the access to the medical files, I can see that there's many claims that are going to come up and be treated and dealt with in a more justifiable way than it has been up until now that medical files have been confidential or privileged communication.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I just want to thank Mr. Huta again for his presentation and to say that I am of the general opinion that we should have greater access to those files on behalf of the claimant and look forward to working with his group and other groups to ensure that an effective mechanism is put in place to allow that to happen. That's going to take some discussions and perhaps a review of different systems, but we're perfectly prepared to look at the question and to approach it from a rather positive perspective as well.

MR. CHAIRMAN: If there are no further comments, on behalf of the committee, I'd like to thank you, Mr.

Huta, for making your presentation on behalf of the Injured Workers Association.

MR. J. HUTA: Thank you very much.

MR. CHAIRMAN: If there are no further briefs to be made to the committee, how shall we proceed? Page by page or clause by clause? Page by page.
Page 1, Bill 57—pass; Page 2 - Mr. Cowan.

HON. J. COWAN: On Page 2, Mr. Chairperson, there was a suggestion that we include the physician to assist claimants as an individual who would have access to the medical reports. I've discussed it with Legal Counsel just very briefly and with some members of the committee. At this time point in time it appears that if we were to make specific reference to a physician to assist claimants, given the definition of a physician to assist claimants in another section of the Act, we may be restricting the access to the files inordinately so.

It has been also brought to our attention that a worker's adviser in that instance could work with a physician to assist claimants and there is special provision made for that, so that the worker's adviser could sit down with a physician to assist claimants and they could inspect files according to my understanding of the Act right now.

So rather than make the amendments at this stage, which were requested, I think perhaps we should let the system work for a bit, see if that is indeed a problem and if there is a problem there, then we can bring the changes forward next time around. But we don't see the difficulty with access to the files as long as the worker's adviser is working with the physician to assist claimants.

By the way, the problem with the definition in the physicians to assist claimants which was discussed is one of restriction. We can't then appoint a chiropractor or an osteopath or a dentist or a nurse as a medical personnel to assist a claimant. We may want to look at that as well to broaden that section, so that we can include those sorts of specialized services for use of the claimant in the future.

So, I thank the Manitoba Federation of Labour for bringing that concern forward and will take it into consideration as we're reviewing the Act for changes further on down the line.

MR. CHAIRMAN: Page 2 - Mrs. Smith.

HON. M. SMITH: Mr. Chairperson, I would move that Section 5 of Bill 57 be amended (a) by adding thereto immediately after the word "shown" in the 2nd line thereof, the words and figures in the 1st line thereof and again; and (b) by adding thereto immediately after the word "therefor" in the 2nd line the words "in each case."

HON. J. COWAN: Very briefly, that was an oversight when we were drafting the amendments and the word "shown" is used twice and we had only allowed for change in the latter part of the presumption clause, so that the clause would now read "where the accident arises out of the employment, unless the contrary is proven, it shall be presumed that it occurred in the

course of employment, and where the accident occurs in the course of employment, unless the contrary is proven, it shall be presumed that it rose out of the employment, so it's just making the clause consistent within itself.

MR. CHAIRMAN: Is it the will of the committee to adopt the motion? Agreed? Page 2—pass; Page 3 - Mr. Mercier.

MR. G. MERCIER: With respect to the amendment to Section 10, Mr. Chairman, and related to that, could the Minister indicate the cost of this program?

HON. J. COWAN: This is the entire Workers Adviser Program? I think our figures for a full year's operation using 1982 dollars would be roughly in the order - and it's a very rough guess at this stage - of a half-a-million dollars.

MR. G. MERCIER: How many workers' advisers would that include or what number of staff?

HON. J. COWAN: In full operation, we would anticipate four workers' advisers in the City of Winnipeg, one in Brandon, one in Thompson, one in Flin Flon and clerical staff as well as a director of the program. That would be the full-blown program.

MR. CHAIRMAN: Page 3—pass; Page 4 - Mrs. Smith.

HON. M. SMITH: Yes, I would like to move, Mr. Chairman, that the proposed Subsection 91(1) of The Workers' Compensation Act as set out in Section 17 of Bill 57 be amended by striking out the word "work" in the 1st line thereof and substituting therefor the word "worker."

MR. CHAIRMAN: Is it agreed? (Agreed) The motion is adopted.

Page 4—pass; Page 5 - Mrs. Smith.

HON. M. SMITH: Yes, Mr. Chairperson, I move that Section 20 of Bill 57 be amended by striking out the word and figure "and 4" where it appears in the 1st line thereof and again in the 2nd line thereof and substituting therefor in each case the word and figures "4, 18 and 19."

MR. CHAIRMAN: Is it agreed? (Agreed) The motion is carried.

Page 5—pass. There is apparently a typographical error on Page 5.

HON. J. COWAN: In the 2nd line of the clause entitled "Costs related to worker advisers," there should be an extra "e" on the word "employees."

MR. CHAIRMAN: Is it agreed? Preamble—pass; Title—pass. Bill be reported.

We move on to consider Bill 58, An Act to Amend The Workplace Safety and Health Act. How shall we proceed, page by page?

Mr. Mercier.

MR. G. MERCIER: Are we into the bill, Mr. Chairman?

MR. CHAIRMAN: Yes.

MR. G. MERCIER: Mr. Chairman, I raised a number of concerns the other evening in debate on this bill and the more I think about my remarks, the more serious I become about them. I would like, as I said the other night, Mr. Chairman, because of this amendment there is given to the administration and the Minister extreme powers under The Workplace Safety and Health Act, one of which, for example, in Section 24 would allow a Safety and Health officer to, without a warrant and without prior notification, enter any place or premises in which he has reason to believe workers or self-employed persons are working or were working. Now that is a home, Mr. Chairman, because we are talking about domestics. We're talking about domestics who are employed more than 24 hours per week in a home. There are many - well, I shouldn't say many - there are certainly quite a number of situations where a domestic is employed in a single-parent family where there are young children for more than 24 hours or in situations where, because of ill health of a husband or wife, a domestic is employed for more than 24 hours.

What concerns me - the Attorney-General might even have a comment about this - Mr. Chairman, under the Charter of Rights in Section 8 everyone has a right to be secure against unreasonable search or seizure. We're talking in this bill, Mr. Chairman, about extreme powers of the administration in one example, without a warrant and without prior notification, to enter any place and that's enter a home. There are other powers of making regulations which could be made applicable with respect to a home which concern me, Mr. Chairman. If these powers were misused, it seems to me, Mr. Chairman, if we're going to make this amendment and we, in the Opposition, have not opposed other legislation which has already been passed by the Legislature with respect to vacations with pay for domestics and other Employment Standards Act amendments, but this one does concern me with the powers under this Act to enter a home, to make examinations and investigations in a home, etc. I think there should be some limitation on the use of those powers that are available to a Safety and Health officer, to the Minister or to the administration under this Act.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Mr. Mercier makes a good point that I think is going to be some cause of general concern with respect to a number of statutes that will have to be looked at, not just this one. I am, I may say, concerned about the extent of powers given. It will become a question, which is not yet clear, whether the provision itself is necessarily to be struck down because it's contrary to the Charter or whether a particular Act carried out is wrong because it's unreasonable. But I'd rather not wait when there undoubtedly will be some test cases. I would hope that the way in which we'll be able to approach the whole question is not piecemeal, statute by statute, because these kinds of powers are set out in this Act, or one would have to look again at some of the powers set out in even a new piece of legislation such as The Rent Review Act.

In light of the Charter and the experience with the Charter, I don't think that this concern, which is a very good concern, however, should stop the amendment, but it should alert us to the need to have a very good look at particularly powers of search and seizure. The thought that someone can, without a warrant and without prior notification, enter any place or premises and that could include a home, does boggle the imagination in terms of our traditions about the home. The fact that a home becomes a workplace, willy-nilly, not only because of a domestic, but because as the Minister pointed out in the House, the minute you bring in a plumber or an electrician, it's arguable that it becomes a workplace within the meaning of the Act and subject to the provision which is questioned.

So I would urge that we pass the particular amendment to give the kind of protection to domestics which we're attempting to give. We do, particularly following the report of the Special Task Force on provisions of the Charter in Manitoba statutes, take every step that we can to conform to the Charter both by word of statute and regulation and by practice.

MR. G. MERCIER: Mr. Chairman, I thank the Attorney-General for his remarks but I would like to know then from the Minister, if this amendment is passed, what does he intend to do with it. Does he intend to set regulations or standards in homes? What will he do with this amendment if it's passed?

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: Certainly, one would not at this stage, nor do I think in the future, wish to set regulations for the employment of domestics in a private home. As I indicated earlier in the debate on second reading, this really allows a domestic to bring a complaint forward which will then be investigated. As it is now, the domestic has no rights under the Act to bring a complaint forward. They are the only party that have no rights to bring a complaint forward under this particular Act and this Act will apply to that complaint because they are excluded. By the changes which you have before them, we will give them that right.

We certainly don't have an intention to have Safety and Health officers running around peeking in windows and opening up doors and undertaking those sorts of abuses of the Act. They haven't in the past, even although they had power to do so under different provisions of the Act. This was explained by the Attorney-General today and myself in the House. Once you bring electricity in your house, that's a work site; once you bring a plumber in your house, that's a work site; once you have a contractor come in your house, that's a work site and; if you have someone cutting the lawn outside, that becomes a work site. So there are many occasions where abuse could have been exhibited if in fact there was great potential for it and it has not been, so I would suggest that the record should allay the fears of Mr. Mercier somewhat in respect to possible abuses.

I am prepared to give a directive through the appropriate mechanisms to staff, to Safety and Health officers, advising them of the concerns that have been expressed here, concerns which we share as well, and very clearly stating that there are some sensitivities

which must be considered when dealing with domestics or carpenters in the private home or painters in a private home and just reinforce what I understand is an ongoing practice; that is to not unduly impose themselves on private homeowners in respect to this particular Act.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I, with respect, suggest that the reference to the comparative nature of having tradesmen work in your home is entirely different, because they are only there on a temporary basis for the duration of the time that they are doing their work and one expects in fact to have that work site accessible, for instance, to electrical inspectors, plumbing inspectors, who have the right to come in and approve it for meeting code requirements and so on. One does not expect, I submit, one has a domestic and I certainly don't, but I recognize there are people in the province who do, working on a more or less full-time basis in the home; that makes the home accessible at any given time to this kind of possibility of people coming in.

It seems to me that if the objective was only to allow domestics to bring a complaint against their employer for unsafe conditions, that there ought to have been consideration given to a far more restrictive sort of amendment that would have brought this in with a great number of subject to's, notwithstanding and other things that restricted the kinds of powers that were given. I recognize the Minister may have done this in haste and he acknowledged, I think, somewhat of that when he said he was bringing these at a late stage, but it seems to me that when so many very, very dangerous possibilities are brought up by this amendment, I'm not so sure that it should be hastily passed in the dying hours of the Session on this basis.

HON. J. COWAN: I just want to respond briefly to that. Bringing in an amendment in the late stages of the Session does not always imply that it was brought in in haste. In this instance, I can assure the member that it was brought in the late stages because we wanted to take a fair amount of time internally to review the impact of this amendment. We did so and that is why it is one of the later amendments to be brought in as a part of the package in respect to all of the changes regarding domestics, because we internally took a very long look at some of the difficulties which they suggest might be resulting from this amendment. Having made that internal review, we have come to the conclusion that this amendment can be brought forward in this way, given historical perspective, given directives from the Minister and given an overall policy in respect to the Act without creating the difficult situations which the member has expressed.

The question has to be: do we want to exclude domestics from the rights that every other worker enjoys in this province? If they're worried about undue powers on the part of the Safety and Health officer being expanded as a result of this amendment, they have to look at other legislation and put it in the proper context.

I just talked to Mr. Filmon about The Clean Envi-

ronment Act amendments and I have them before me now, which were brought in in 1980, and it says an environmental officer can enter any land or premises without consent of the owner or occupant thereof and seize hazardous materials, move property, wreck structures, drill holes and do all sorts of things which they supported and at the time we suggested - I can recall speaking in the House - that these were widespread powers, but certainly they were necessary given the context of the entire Act. So, a lot of Acts have that capacity for abuse if it is intended to abuse them. I don't believe that Mr. Filmon intended that Act to be abused when he brought it forward and I don't intend this Act to be abused when I bring it forward.

MR. G. FILMON: Mr. Chairman, I want to point out that I didn't bring that Act forward, in fact. . .

MR. J. COWAN: I'm sorry.

MR. G. FILMON: . . . and the person who did isn't here to defend himself, so we'll let the discussion rest at that.

If the Minister's intention is only to allow such entering onto premises and inspections, reviews and such violation of sort, of the privacy of a person's house based on complaints from a domestic, who is working in that house that is now becoming a workplace, it seems to me there could have been a clause brought forward that says all other provisions of the Act with respect to entering of premises, search, inspection and so on, can be exercised only on the basis of a complaint by a person working on those premises. It seems to me that you could have had that covering clause brought in if you did indeed review it and consider the possibilities.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, the Minister has referred to other situations in which a painter, a plumber, or a lawn mower has worked on a home or the land and it therefore becomes a workplace and subject to investigation. Has the Workplace Safety and Health administration ever investigated a home?

MR. CHAIRMAN: The Honourable Minister.

HON. J. COWAN: I cannot think of a specific instance where they have investigated a home. However, given the number of investigations which are ongoing, I certainly wouldn't rule out the possibility that such has happened.

MR. G. MERCIER: Mr. Chairman, a second question then. Is he aware of any complaints from domestics about conditions in a home under which they were working?

HON. J. COWAN: I have been advised by groups representing domestics that there are conditions which exist from time to time in a home, which would be in violation of the Act, yes.

MR. G. MERCIER: What sort of conditions?

HON. J. COWAN: Requiring a person to lift heavy objects, requiring a person to work in conditions which were not in keeping with the definition of the present Workplace Safety and Health Act, which talks about the general safety and health of workers and the protection of those workers from conditions arising out of their work.

MR. G. MERCIER: Mr. Chairman, surely there's another way of handling those kinds of complaints. If there is a complaint that a person is being, I suppose, compelled or forced to lift objects that are too heavy, that can be handled in a different sort of process than allowing an officer to go into the home and search, etc. There could be a simple process where a domestic makes the complaint, that complaint is communicated to the employer and some sort of discussion and settlement of the problem without allowing all of the rest of these powers to be there.

I would suggest to the Minister that he seriously consider not reporting this bill at this stage. I appreciate that he has said he would issue a directive but, Mr. Chairman, there may be future Ministers who may not have the same degree of common sense that the Minister is indicating as to how he is prepared to administer this power. There may be another government and we're passing a piece of legislation, which will exist in the laws of Manitoba until it is changed, and I don't think we should make that kind of blanket change in the law. I think the Minister really should consider not reporting this bill at this stage and give it some further consideration.

The legislation that's been passed at this Session has gone a long way to helping domestics who work more than 24 hours in a home. I would think that this is not one of their most pressing concerns, if indeed it is a concern of very many at all. I would urge the Minister, Mr. Chairman, to consider not reporting this bill at this stage and giving it further consideration and perhaps having given some further consideration to it, he might at the next Session come forward with a more reasonable amendment.

HON. J. COWAN: I would just ask Mr. Mercier if he would have any disagreement if we made the same provisions in this Act respecting a domestic employed over 24 hours in a private home that exist in the other Acts? Would he have the same concerns?

MR. G. MERCIER: Would you like to repeat that?

HON. J. COWAN: In some of the other Acts, we're talking about making the Act apply to a situation where a domestic is employed for over 24 hours or during a certain period of time; I think the period of one week. Would you have any objection if we put the same sort of qualification into The Workplace Safety and Health Act in that regard? Would you have the same concerns that you have now if that criteria was applied?

MR. G. MERCIER: Yes, Mr. Chairman, a domestic can be employed six hours a day, one day a week, and still be perhaps required to do something that is unreasonable. The Minister has referred to being compelled to lift things that are much too heavy and perhaps incur a

risk of injury. That can happen whether they work six hours a week or more than 24 hours a week, so that's not the concern. The concern is the powers that are given to the officers in the administration under the Act, no matter how many hours a week they work.

HON. J. COWAN: Now I'm feeling a bit singled out by Mr. Mercier, because if one looks at The Labour Relations Act and looks at the powers which are given to an inspector, one sees that inspector can at any time enter, inspect and examine any premises to which any such Act applies or relates, order any employer or employer manager or other person to produce documents; so we've got the labour relations officer out there being able to undertake these powers; we've got the environmental officer out there being able to undertake similar powers and all of a sudden now, because we want to apply The Workplace Safety and Health Act under similar circumstances and I believe I have offered him a compromise situation in respect to the 24-hour provision, he's saying that we are abusing the power of government. I just do not agree.

Actually, what he is saying is we are providing the potential for the abuse, to be more clear, and I have attempted to give him assurances that no government would undertake such abuse. No government would misuse this Act in that way without invoking upon itself extreme criticism and at great risk to itself. So I've tried to be as accommodating as possible in respect to clarifying this and bringing in the same criteria, which are being used in the other Acts in respect to the 24-hour provision, and trying to make this Act more in line with the others.

I share his concerns about the general wording of this Act and other Acts and the concerns which have been expressed by the Attorney-General; and we certainly have to be careful not to bring forward legislation which would in fact have the opposite effect to which one intended it to have. I don't think this is one of those instances.

One has to realize that if you have a person cutting your lawn right now, that a Workplace Safety and Health officer can come in and examine that site. If you have a person working in your garden right now, the same thing can happen, so there are potentials for abuse right now that exist and they are of concern; but there is no abuse that has been demonstrated to us to date on this and certainly if there was, we would take the appropriate action. I think I've gone a long way towards accommodating the concerns of the member by talking about a 24-hour provision, I think, which would have to be brought in at the report stage, about providing a directive to staff, which would then have to be repealed by another Minister and that Minister would have to do so, I think, at great risk to their own office, so therefore we would not want to do so readily. I think we've offered a series of safeguards.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I have a suggestion which the Minister may want to consider for future amendment or may want to consider now. It goes like this, if I can make it, that in connection with the particularly troublesome Section 24(a) of the existing legislation, it could include a proviso which probably is the kind of

directive that the Minister would want to give. But where the work site is a home, other than a home used for a commercial, industrial or business activity, no Safety or Health officer may enter without prior notification unless in the opinion of the officer a situation exists which is or may be dangerous.

You might want to consider that as your directive or for future amendment. It seems to me that probably takes out the element of unreasonableness.

HON. J. COWAN: I think one has to look at the perception of the element of unreasonableness in the instance of all the Acts. I'm certainly prepared to do so in the particular context of Acts which come into my area of responsibility. The suggestion which Mr. Penner makes, I believe, could be by regulation if that would satisfy the members opposite. There could be a specific regulation respecting inspections of homes where domestics are employed.

Now that would not be one of setting standards, which I don't think is necessary, because the general provisions of the Act apply anyway if this amendment is passed, but that could be one of clearly spelling out or it could be by an internal directive. I think both would be as effective at this stage.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: Thank you, Mr. Chairman. I'm a bit concerned when I hear the suggestions that the bill ought to be withdrawn and we not deal with this specific amendment.

We're talking about a situation whereby domestics are excluded protection under this piece of legislation and if we're talking about, as Mr. Mercier has, the potential of abuse by government. I think we also have to spend a few minutes just talking about the other side of it and the abuse that has existed for a number of years with respect to domestics not only in this area, but in other areas. It's been well documented by numerous reports, which I don't have with me at the moment, that domestic workers have been one specific area of workers, because of the type of work they're engaged in and because of the kind of people that are attracted to that type of work, that there has been a great deal of discrimination, a great deal of denial of rights that other people have.

We're talking in the main of people, basically, new immigrants to this country, that in many cases have difficulties due to that fact alone, the fact of not being able to understand the predominant languages in this country. So they're usually not aware of what rights they may have. In this case, until this amendment is passed, in this specific area they don't have any rights.

I think we have to look at that and think about as we're dealing with this amendment because on one hand we're talking about potential abuses that may exist if this amendment is passed. There's a whole number of safeguards, as the Minister has outlined with respect to the way that the administration will respond to those kinds of situations and there are other safeguards with respect to legislation, with respect to the courts, with respect to the Ombudsman. Of course, the final determining factor is that all governments are subject to election if it's deemed that they're not acting in a way that the general population

agrees with.

On the other hand, we're talking about people that don't have rights, that are in a difficult situation even where they do have specific rights to be able to take advantage of those rights. So I think that we have to look at that kind of balance and realize we're dealing with a particular area of the workplace and a particular group of workers who have not been privileged or allowed to have rights that other workers have and even where they do, have had difficulty being able to exercise those rights.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, thinking about the amendment the Minister offered, that might indeed be an improvement if you were to use that same definition. But he's referred to other Acts, the powers in other Acts and I don't think that's the question. There may very well be powers in other Acts where officers and inspectors have, by virtue of which officers and inspectors have, the right to enter homes. They may have been overlooked before in the Legislature when they've been passed and perhaps the Attorney-General's review will raise some questions about provisions in a number of other Acts that have been passed by the Legislature, Mr. Chairman.

I appreciate the concerns expressed by the Minister of Urban Affairs and we all recognize the problems that domestics have had in the past. I don't think we should be operating in this Legislature on the basis that we will give the administration, whoever the administration is, these powers. We hope they will be used reasonably.

I think that, Mr. Chairman, is the wrong approach. I think we should only be giving to government, whoever is in government, powers which are reasonable. We shouldn't be passing legislation and hoping that the government will exercise that power in a reasonable way. We're talking here about a person's home. I think if there's still some sanctity about the rights of a person in their home and I appreciate the fact that there might very well be some situations where domestics have a legitimate complaint perhaps about conditions under which they are asked or forced or compelled to work, but there should be a reasonable method of considering those complaints without calling upon all of the powers that are given under this Act.

So, Mr. Chairman, I would say to the Minister again that he really hasn't, in view of past practice, it would appear according to him that he's not aware of any investigations that have been carried out under this Act in a home. He doesn't appear to have much or any justification for requiring this amendment to be passed at this time in terms of complaints that he's aware of. So again, Mr. Chairman, I would suggest that he withdraw the Act, just review it, consider it and come up with a more reasonable method of dealing with this situation.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: Well, the member suggests that there is not a reason to bring this forward at the present time because there have not been complaints. There have not been complaints because complaints

weren't accepted under the law because domestics were excluded. One always has to realize that when you bring forward an amendment like this, or an Act to change to an Act like this, you create the situation where people better know their rights.

That's what we're talking about in this instance, the rights of domestic workers. Why should they be excluded from the Acts? Why should they be imposed upon in that arbitrary and discriminatory fashion? All we are saying here is that domestics are people, domestics are workers, domestics have rights like everybody else has rights. If the Safety and Health officer can go into a house because a painter is in there, should not a Safety and Health officer have the same powers because a domestic is in there? — (Interjection)— Now, the member says they never have. What I have said is that I'm not aware that they have, but that does not mean that over the last five years of the operation of the Act, that instance hasn't in some way been approached. — (Interjection)— Well, the member says we should know that and I think that is really an unfair demand on his part.

What we are saying is that, on principle, domestics have the same rights as every other person in this province when it comes to a series of Acts, this being one of those series of Acts. And damn it, that's important, they're people, they're human beings and if there is an urgency to correct injustice, and I believe it's an injustice that they are not in the Act at this time, then it is an urgency which we must confront and we have confronted and I think in a very disciplined way. We have listened to the concerns of Mr. Mercier and they are concerns which we have taken into consideration and are prepared to take into consideration.

Right now, I am attempting to pull together an amendment which would allow for the 24-hour proviso to be included in this particular amendment before you and that should in many ways allay the concerns. But to single out this Act, to single out this particular change and say that it is somehow out of the ordinary I think is unfair. It is part of a package, the package has all the same elements to it. An inspector under The Labour Act has certain powers and an inspector under The Workplace Safety and Health Act has certain powers. There are certain powers given to the Workers Compensation Board and you can go through almost every regulatory Act of the Legislature and find that in most instances there is a person that is designated and that there are powers that are designated to that person.

I do not wish to see any one segment of society excluded from rights which all other segments of society have any longer than is necessary. I wish that the member opposite when he was in a position to have brought forward this amendment would have done so. We would have supported him. I wish that this injustice had never been perpetrated in the first place. But the fact is that it is, that it has been, that they did not see fit to change it and that we do see fit to change it. We do see fit to provide to that group of persons and, as the Minister of Urban Affairs has indicated, a group of persons who have been sometimes abused in the past, probably no more nor no less than other groups from time to time, but the fact is that the abuse on that side of the equation has existed. I'm suggesting to you what we're doing here is bringing

forward an amendment which will enable domestics the same access to the law which other workers in this province have and there's nothing wrong with that.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: I'll allow Mr. Mercier to proceed me.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, just for the record, I'm not arguing for injustice for anyone; quite the contrary, I'm arguing for justice for everyone involved. I have said there may very well be some legitimate complaints that domestics have that should be dealt with. What I'm simply arguing for is a more reasonable way of dealing with them than giving all of these powers to the administration and officers under this Act. I'm just saying all of these powers that are in the Act should not be given to an officer with respect to a person's home, that they're not necessary and there is the possibility that they could be misused in the future. I'm not saying this Minister would misuse them but there is a possibility that they can be misused in the future. As a legislator and as legislators, we should not allow that to happen.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I think the point has to be made that they have those powers now. They have those powers in respect to any work which is ongoing at a private domicile. They had those powers given to them in 1977 when the entire Legislature voted in favour of this bill and that was part of the bill itself; they could go on to a private house at that time. Now what the member is bringing forward is a concern which we all share. The Attorney-General, myself and others have indicated that we want to take a look at that in the context of new developments in respect to the Constitution as well as in context with the general philosophy which I think we all share in respect to the sanctity of the private home.

MR. G. MERCIER: I just want to complete this because the Minister said they have these powers under other Acts. Mr. Chairman, I'm not bound by mistakes made in the past and no one here is. If there were mistakes made in the past with respect to giving certain powers to other officers and inspectors with respect to a person's home, then those should be corrected, not condoned and added to, Mr. Chairman. I hope the Minister appreciates that point.

MR. CHAIRMAN: Mrs. Smith.

HON. M. SMITH: Mr. Chairperson, I will be interested in the proposed amendment, but just speaking to the main concept of the needs of domestic workers for some kind of protection and access to a means of having their rights recognized, it seems to me, having been a part of groups that for coming on 30 years have been working to get recognized the unmet needs of people who are working domestically for pay, I see the movement of government now to give them some share of protection and rights as a long overdue move.

The inching ahead, if you like, of recognition of people who work in the home as workers and as people who have rights has been a slow and arduous struggle.

The groups of domestics who have approached us over the years to do something when we've been a part, say, of social groups that are working as advocates has been quite extensive. Certainly I have been approached on several occasions since we've become the government to see what we can do to extend to the domestic workers in Manitoba some kind of minimal protection. They, in fact, would welcome monitoring and a much more extensive role for the state or the administration than is being proposed. But I think they would agree and I think I would too that the sanctity of the home is not just a factor of the four walls. It has to do with the relationships in a family situation, that once a person is being paid to carry on some of the duties that are normally carried on in the home in caring for children or doing housework, there is a different relationship established and that therefore arguing the rights of the workers to have some protection against the sanctity of the home, I think, with due respect, is putting the argument in an inappropriate context.

I think the workers in the home tend to work in isolation from one another. They do, as one of my colleagues has said, tend to be very largely immigrant people with sometimes very shaky status in terms of their right to leave that kind of work and move into alternative employment. So they often find themselves in ignorance, perhaps of the local conditions, quite unprotected in terms of the basic sort of employment conditions and rights.

It seems to me the move proposed in this legislation is a very basic and fairly limited move to give them some kind of household protection. If there is an amendment that can be introduced to quell the fears of the members opposite, then I don't think I'd have any objection to it; but suggesting that there's been no demand by the group concerned or that there's been no problems, I think is a very insensitive approach to the issue.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Did the Member for St. Norbert or I deny that there was the possibility that domestics had been discriminated against and had not been given fair and due consideration in the past? There is the possibility and we acknowledge that in fact it may well have existed and that there may be instances of it. We do not want to see them deprived of the legitimate right to be included under The Workplace Safety and Health Act for protection and I believe that the whole focus of this is to allow them to bring a complaint under this Act, but this amendment goes well beyond that. In giving them certain rights, we're trampling on the other rights in order to redress that or correct the existing inequity. We want to ensure that is done without trampling on other rights; that's the whole principle of what we're arguing.

We will not accept being painted as being opposed to giving the domestics a right for due protection under The Workplace Safety and Health Act and I say to every one of the speakers who have said that, that they're trying to make this some sort of class warfare

and put us in a position of saying things and standing for things that we do not. I hope we'll correct that situation. The members opposite are being very selective in the manner in which they're trying to utilize the arguments that we're putting forward.

I say that arguments such as that just put forward by the Minister of Economic Development or those put forward by the Minister of Urban Affairs where he has said that people are unaware of their rights, who work as domestics, because they're newcomers, because of their language difficulties, Heavens, they won't know any more about their rights; we can write all the laws we want and if they don't understand the language, that won't help them. If they are newcomers and therefore by virtue of their being newcomers are not aware of the laws in Canada, that won't help them. We can write all the laws we want to.

Let's get down to the point of achieving an amendment to this Act that allows for the protection under The Workplace Safety and Health Act without opening up the possibility to overzealous inspectors and enforcement people of walking in unannounced, unrestricted access to a person's private home at 24 hours a day in order to achieve that. That is not what we're attempting to do, I submit, and I hope that's not what the Minister wants, because if it is, then we're going into a whole new set of possibilities that we don't want to encounter.

Let's not start to get philosophic about people who are being discriminated against and try to eliminate discrimination. We want to eliminate discrimination. That's why we argued against certain provisions of The New Rent Regulation Review Act, because it discriminates against a particular sector of society and takes away their rights retroactively in many instances, but let's get down to the point.

I believe the Attorney-General brought forth an amendment that would help. In fact, I could support that amendment if it were brought in as part of this in order to alleviate the possibility of unrestricted access, unannounced, 24 hours a day to a person's home. I think he had something that would work there. If the members opposite can take that back, caucus it and bring it forth as an amendment, we will be satisfied that they have some idea of the problem, but right now they're talking philosophically and I don't believe they understand the problem.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: Well, I think that we have to take a look at this entire debate on this bill and refresh our memories.

When I introduced it in the House for second reading, Mr. Mercier stood up and said that he had some concerns respecting the powers of the Safety and Health officer. At the same time, he said and he clearly differentiated this bill from the other amendments which came forward in respect to the inclusion of domestics under certain Acts, by saying that those bills did not have the same difficulty that this bill does indeed have. When, in fact, one reviews those bills carefully, one understands that the powers of an inspector under The Labour Relations Act are much the same as the powers of a Safety and Health officer in respect to this specific concern. So all those bills, in

fact, do provide the potential for difficult situations which have been addressed.

I think the concerns which both Mr. Filmon and Mr. Mercier brought forward are legitimate concerns. I think they're important concerns; I think they are concerns which we should take into consideration when drafting bills. I thank them for their suggestions, but to say that this Act is somehow different than the others which have been brought forward, I believe is a misunderstanding of the situation. So I want to make that very clear. This is part of the package and the results of this particular amendment are much similar to the other parts of the package.

We, at this time, indicated that we're prepared to look at two options. One would be the option in respect to making the bill more in line with the other bills, which talk about the employment of a domestic for more than 24 hours a week, and I've been given some hope that might in fact address some of the concerns. The other is to look at a directive or a regulation, which very clearly spells out the process which would be used in respect to the complaints by domestics.

The entire situation, and I address Mr. Filmon's comments specifically, is one of philosophy. It is a philosophical situation. It is one where we have to take into consideration the rights of different groups within society. He says that they do not want the rights of domestics to be denied and we agree. He says that they have not always been given fair consideration in the past and we agree. So what we have tried to do by a series of amendments to different Acts is allow domestics the opportunity to have fair and due consideration, to allow domestics the opportunity to have their rights reinforced just as every other individual has those very same rights, and that is the approach which we took when we developed the package. They have come forward with a concern and they say perhaps the package is too broad. We're prepared to take a look at that. By being prepared to take a look at that, I don't think we are in any way suggesting that the package would be abused. History proves that not to be the case.

I think the arguments which were put forward by Mr. Kostyra are very germane to this particular situation and would suggest that would not be the case in the future, but certainly we want to protect the rights of the homeowner as much as we want to protect the rights of the domestic. So we are prepared to accommodate as much as possible those concerns and then one has to act on the basis of good faith as well. I think if we approach it together, then there should be very little differences in respect to our support of this particular amendment.

One also has to understand how The Workplace Safety and Health Act works in most instances. It works on the basis, in a large part, of complaints being brought forward. Perhaps that's not the best system, but that's the way it happens, because we don't have a large inspection force out there right now and we rely in great part on the knowledge of workers as to their own rights and how to bring a complaint forward. That's why we have a large educational component to the division and this would allow the same process to be used in respect to domestics.

Certainly, as a Minister, if I heard that an inspector

was abusing the powers that had been given to him under the Act, I would take quick action. I know that Mr. Filmon or Mr. Mercier or anyone around this Table in the same position would assume their Ministerial responsibility in such a way. So I think there are a number of safeguards which are in place now, historical and otherwise, and that there are one of two safeguards, or perhaps both, that can be brought forward at either the report stage or by regulation afterwards, which will ensure that this Act is not unduly imposed by an energetic or an overly enthusiastic inspector and then it is a matter of keeping a watch on it to make certain that not only are the rights of the homeowner being addressed, but just as importantly the rights of the domestic are being addressed at the same time. I think we can do that, so I'm prepared to give an undertaking at this point at report stage to either bring forward an amendment or a very specific statement in respect to the concerns which have been expressed at the Table today and that will allow us an opportunity to debate it in a fuller fashion at that stage or at third reading stage.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTRYA: Thank you, Mr. Chairman. I just want to make a few comments and by doing so, I don't want to fan the flames of debate further as I seem to have done with my initial comments. I didn't intend by my comments to suggest cute motives to the members opposite. I did want to highlight the concerns and the injustices that I have seen existed for a number of years and I didn't by way of emphasis try to suggest that they were totally opposed to the general approach. I may have been a bit extreme on the one hand, but I just want to comment on the latter comments by Mr. Filmon because I think his comments border on the other extreme.

What he suggests, by virtue of this amendment, that we're going to create a situation where there's going to be a KGB type operation where inspectors are going to barge into people's homes in the middle of the night, I don't think is true. You know that isn't what's intended by the amendment, nor is it, as the Minister outlined, what exists where that kind of right of government exists in other Acts; that isn't the practice. I think, in fairness, that my emphasis may have been on one extreme; I think his certainly was on the other extreme and I don't think any of us want to be put in a situation where we're trying to correct injustices where people have been traditionally denied rights.

I mean, you're always trying to balance rights of various groups by legislation and we're certainly not intending, by giving a group that traditionally doesn't have rights, to infringe unduly on rights of another group; so I think that I'm looking forward to the amendment or amendments that the Minister will bring forward and I think will, as he indicated, be able to balance those two seemingly opposite - though I don't think really opposite - rights to be considered in the context of this bill in giving what all of us agree is long overdue protection for domestic workers.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, just briefly and I hope in conclusion, we would take the position, I think, that the amendment the Minister has talked about, to use the same definition of domestic that has been used in other amendments at this Session would be an improvement, but it would not solve the basic objection which we have in that the overall effect of the amendment is to give powers which have the potential to be abused by the administration of any government with respect to a person's private home with respect to access to that person's home, with respect to the establishment of standards in that person's home. We're just taking the position that there should be a more reasonable way of dealing with justifiable complaints by domestics.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I thank Mr. Mercier, Mr. Filmon and others as well for their comments. I think it's enabled us to maybe bring forward a better package at report stage. The difficulty which has been expressed is one that exists in all the Acts and I think that should be made clear. I don't think this Act should in any way be singled out as one that is out of the ordinary. That, if I can preempt Mr. Filmon's statement, does not make it right nor wrong. That is just recognition of an area which needs some consideration. It doesn't need consideration in 1982 that it didn't need in 1980. It doesn't need consideration in 1982 that it won't need in 1984, because I think it is probably one of the most basic problems that confronts any government. How do you provide the balance? How do you ensure that rights of all individuals are protected? That is important and that must be our prime objective as legislators in many instances; that is to protect the rights of different groups.

When Mr. Filmon was making his comments, he talked about how we may be attempting to put this in the context of different groups. He used a far more inflammatory word and because we'd all like to see this committee end its deliberations very quickly, I'm not going to use the same inflammatory statement, but what has to be acknowledged is discrimination exists today in that Act and its singled out against one particular group. I know that Mr. Mercier, Mr. Filmon, Ms Dolin, Ms Smith, Mr. Kostyra, the Chairperson and everyone in this room does not want to see that discrimination continue any longer than it need be. So let's assume that we're all working from the purest of motives.

We also acknowledge that when one extends any legislation, that one does create a potential for that legislation to be used in different ways and we are prepared at report stage to bring that back and to talk about that particular problem, but I want the record to be very clear that we are not moving away from the principle that domestics are entitled to the same rights as every other worker. As legislators in this room, we have the rights to The Workplace Safety and Health Act behind us and we have exercised them.

Remember when the Chambers were being tested by the Workplace Safety and Health Division because there were fumes in there which we felt may be detrimental to our health? I think Members of the Opposition raised the question. Members of the Opposition

said, "We have rights; we're workers." We said, "Yes, there are rights"; and the Workplace Safety and Health Division came in and tested the Chamber. Now certainly, that Chamber has unto itself a certain sanctity. We don't want Safety and Health officers barging into the Chamber at any time pulling out air foam machines and docimeters. Well, perhaps docimeters from time to time, they get sound levels; but seizing our notes as Mr. Mercier says, I can assure him they've been trying to read my notes for six months now and I'm just getting to the point where they can, but the fact is that they can come into a Chamber; they can come into this room. So if they can do that to protect our health and if they have used discretion in every instance in the past to do so, then they should be able to protect the health of domestics and they should use discretion, which I'm certain they will, in doing so.

They don't want to create conflict. They want to save health, save lives and that's what this amendment impowers them to do. I think they're a fine group of officers; I think that they use good judgment and I think they will continue to exhibit good judgment. If we're worried about the Minister abusing the powers of the Act in the future, not this Minister but another Minister, then I would suggest that another safeguard is the good judgment of the Safety and Health officers who understand that Act, use it well and use it to protect the health of workers and not to abuse the sanctity of any industry or any workplace or even the Chambers in which we work.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman, I just wanted to add to it that, again sticking with the assumption of the purest of motives on all sides, looking at the comparisons that the Minister has made, I stand to be corrected but I believe that most of the Acts with respect to search, seizure, inspection powers and so on, refer to during normal working hours or hours of operation. When you now bring in the "home," you're talking about a 24-hour possibility. You're talking about access upon people who, I think, one might consider to have more of a degree of vulnerability or unawareness of what their rights and authorities are, or other people's. I mean children being in the home when they arrive or a single parent who knows nothing about what's going on as opposed to a workplace in which you assume that they're coming upon business people, managers, supervisors, who have some understanding of powers of law, authority and so on.

I just say that it goes well beyond when you define this workplace as the home it goes far beyond what one would normally conjure up in terms of a workplace setting.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: No, it does not. It does not go beyond the other amendments which have been brought forward to which there has been no opposition voiced in this regard. If one looks at the powers of a labour relations officer, the powers are such that they can at any time, as they deem fit, undertake investigations. If one looks at the powers of The Clean

Environment Act, the same thing can apply. So I think that argument does not differentiate this amendment from the other amendments which are being brought forward.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I was just going to say if those powers are in other Acts, I don't think that takes away from the argument in this case. Because if they've been overlooked in those other Acts, then I think the same argument would be appropriate with respect to those pieces of legislation.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: The point I'm making is in direct reference to the point Mr. Filmon made and he said what is different about this Act is this, there's not that difference.

MR. CHAIRMAN: If there are no further comments, Page 1—pass; Preamble—pass; Title—pass. Bill be reported?

MR. MERCIER: No.

MR. CHAIRMAN: All those in favour of the motion? All those opposed? In my opinion the ayes have it. The motion is carried.

If there is no business before the committee, committee rise.