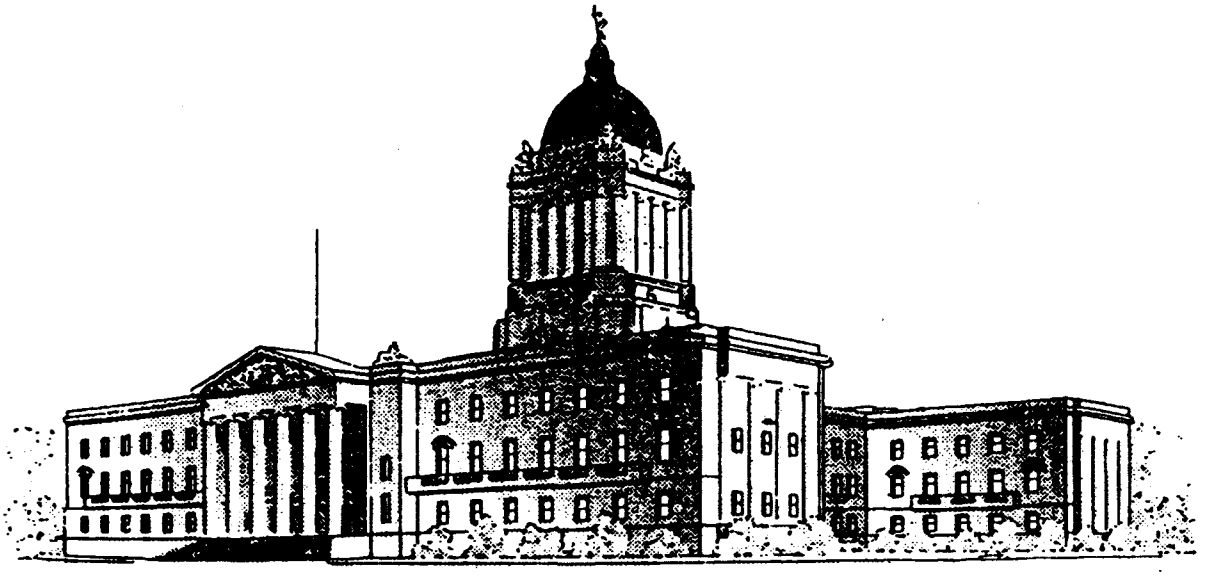
Fourth Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

Member	Constituency	Political Affiliation
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
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GAUDRY, Neil	St. Boniface	Lib.
GILLESHAMMER, Harold, Hon.	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
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TWEED, Mervin	Turtle Mountain	P.C.
VODREY, Rosemary, Hon.	Fort Garry	P.C.
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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, June 22, 1998

TIME – 7:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. McCrae, Hon. Mrs. McIntosh, Hon. Mr. Praznik

Mr. Ashton, Ms. Friesen, Messrs. Helwer, Laurendeau, Penner, Reid, Struthers, Tweed

Substitutions:

Mr. Dyck for Hon. Mrs. McIntosh

APPEARING:

Mr. Dave Chomiak, MLA for Kildonan
Mr. Gary Kowalski, MLA for The Maples
Ms. Diane McGifford, MLA for Osborne
Mr. Tim Sale, MLA for Crescentwood
Hon. Eric Stefanson, Minister of Finance

MATTERS UNDER DISCUSSION:

Bill 11–The Treasury Branches Repeal Act
Bill 13–The Prescription Drugs Cost Assistance Amendment Act
Bill 20–The Medical Amendment Act
Bill 30–The Pharmaceutical Amendment Act
Bill 31–The Regulated Health Professions Statutes Amendment Act
Bill 34–The Public Schools Amendment Act
Bill 35–The Mental Health and Consequential Amendments Act
Bill 47–The Brandon University Act
Bill 52–The Health Services Insurance Amendment Act
Bill 53–The Apprenticeship and Trades Qualifications Act
Bill 57–The Regional Health Authorities Amendment Act

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Mr. Chairperson: Will the Standing Committee on Law Amendments please come to order. Before the committee can proceed tonight, I understand we have to elect a new Vice-Chairperson.

Mr. Edward Helwer (Gimli): I would like to nominate the member for Turtle Mountain (Mr. Tweed).

Mr. Chairperson: The member for Turtle Mountain, Mr. Tweed, has been elected as Vice-Chair. Agreed? [agreed]

This evening the committee will be considering the following bills: Bill 11, The Treasury Branches Repeal Act; Bill 13, The Prescription Drugs Cost Assistance Amendment Act; Bill 20, The Medical Amendment Act; Bill 30, The Pharmaceutical Amendment Act; Bill 31, The Regulated Health Professions Statutes Amendment Act; Bill 34, The Public Schools Amendment Act; Bill 35, The Mental Health and Consequential Amendments Act; Bill 47, The Brandon University Act; Bill 52, The Health Services Insurance Amendment Act; Bill 53, The Apprenticeship and Trades Qualifications Act; and Bill 57, The Regional Health Authorities Amendment Act.

Now, does the committee want to determine beforehand how long we want to sit, or what is the wish of the committee? Just play it by ear? Is that agreed? We will ask the question later on then. When I see people fall asleep, I will ask the question.

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, I am just wondering about the order, since we are dealing with three different areas, basically, finance, education

and health. I am just throwing this out. It seems to me that we do not necessarily have to do it numerically. We could perhaps deal with the finance, then the education, and close with the health, because my assumption is that the health bills will be the most lengthy, but I just throw that out as an option.

Mr. Chairperson: Which ones did you prefer first, then? We have the finance bills first? Agreed? And the health bills next or education next, which is your preference? Education next. Okey-doke. We will then, as normal, set aside the title and the preamble of the bills, and we will proceed clause by clause then with The Treasury Branch Repeal Act.

I also want to ask the committee whether it is their will to deal with the bills in both languages simultaneously. [agreed]

Bill 11–The Treasury Branches Repeal Act

Mr. Chairperson: Could we then proceed to The Treasury Branches Repeal Act? We will set aside the preamble and the title and deal with Clause 1 and 2. Shall the items pass–pass; title–pass. Preamble. Could we just pass the preamble and the title and then you can have a statement?

An Honourable Member: No.

Mr. Chairperson: No.

Mr. Steve Ashton (Thompson): Mr. Chairperson, I just want to put on the record on behalf of our Finance critic and also the member for Elmwood (Mr. Maloway), both who have spoken against this bill, that we are against the repeal of this bill. We think it is particularly unfortunate at a time when the banking industry is on the verge of a dramatic change which we feel will harm Manitobans, the pending megamergers, which will involve four of the five largest banks.

I say to the Minister of Finance (Mr. Stefanson), instead of repealing the Treasury Branches, which, if one looks at the history of the development of credit unions, we have had always the various options, the alternatives to the banks. In fact, it was the NDP government, in the early 1980s, that helped restructure and refinance credit unions as an alternative to commercial banks.

We are at a point in time when the banks are pulling out of communities like Lynn Lake, which my colleague the member for Flin Flon (Mr. Jennissen) has pointed to. Now is not the time to be bringing in this kind of legislation. Now is the time to be taking a strong stand against what the banks are doing.

* (1940)

I look to the Minister of Finance, (Mr. Stefanson), because Manitobans, particularly in rural Manitoba and particularly, I would say, in the core area of the city will suffer. There will be banks closing their branches. There will be employees laid off. I believe we will end up with a less competitive banking system than the opposite, and I would look to the Minister of Finance to be taking a strong position and not taking away this, which was always put in place.

By the way, treasury branches are in place in a number of jurisdictions, including Alberta, going back to the old Social Credit. In a lot of ways, it is the old walk softly and carry a big stick. What we are suggesting to the minister is that we should still have something of a stick when it comes to dealing with the banks to try and get their attention. I know they are on a strong lobbying campaign right now.

I look to the Minister of Finance, and one of the reasons we are opposing this is that this is about the worst possible year to take this off the books. The energy the minister put on this bill would have been much better focused on fighting against the megamergers, fighting against banks ignoring Manitobans and our not having to spend time in legislative committees debating this issue. I say I am very disappointed in the minister, although I do hope from listening to Manitobans that he will do his duty as Minister of Finance and include the increasing number of people throughout the country who are saying that these mergers make no sense.

I want to just finish by saying that I actually agree 100 percent with the chair of the Bank of Nova Scotia, which is, by the way, the most internationally oriented bank of the five major banks, who has said that there

are much better ways of ensuring international competitiveness of our banking system than taking five banks and turning them into three, two of which obviously would have a significant advantage over the remaining bank and the quasi-banks that are in the system, including our credit union system.

Mr. Chairperson, we will be voting against this act both at committee and in the House because of those reasons.

Hon. Eric Stefanson (Minister of Finance): Mr. Chairman, very briefly, I think the member for Thompson sort of mixes two issues. We have already gone on record, as he knows, expressing concerns on behalf of Manitobans about the pending bank mergers, the issues that are important to Manitobans in terms of competitiveness, jobs, services in their community, the costs of those services, and so on. We will certainly be pursuing those issues with the federal government as that issue unfolds over the next few months.

I think, as he knows, this Treasury Branches Act was originally enacted back in 1974. He can test his memory and recall who the government of the day was. Nothing ever happened with it. At the Western Economic Opportunities Conference in 1973, all four western provinces were concerned about the apparent net outflow of capital from the western provinces and, as a result, enabling legislation for treasury branches was passed in Manitoba because of the perceived success of Alberta. But by 1976, 1977, interest in treasury branches had waned, and certainly Alberta is not necessarily a good model for what one would describe as a success story.

The decision not to proclaim the act was based on a couple of things, the fact that there was strenuous competition in Manitoba among chartered banks, trust companies, credit unions and caisse populaires and, as well, that the fact of the cost of building a system to compete with the sophisticated systems in the banking service industry would be very expensive and hard to justify the utilization of tax dollars in those areas.

So, as a result, Mr. Chairman, this legislation has been on the books, so to speak, since 1974, under two previous NDP administrations that chose not to do anything with the legislation. They obviously saw the wisdom of not proceeding with it and the lack of need to proceed with it. These same issues basically exist today. The same reasons that they never proceeded with it exist today, and it is the prudent thing to remove this legislation completely. Thank you.

Mr. Chairperson: We will proceed then from the start. Clauses 1 and 2–pass; title–pass; preamble–pass. Shall the bill be reported?

An Honourable Member: No.

An Honourable Member: Agreed.

Mr. Chairperson: On division?

Mr. Ashton: On division.

Mr. Chairperson: On division.

Bill 34–The Public Schools Amendment Act

Mr. Chairperson: We will deal next then with Bill 34, The Public Schools Amendment Act. Does the minister have an opening statement?

Hon. Linda McIntosh (Minister of Education and Training): No, Mr. Chairman.

Mr. Chairperson: Does the opposition critic have an opening statement?

Ms. Jean Friesen (Wolseley): No, Mr. Chair.

Mr. Chairperson: Thank you.

Ms. Friesen: I do not think my mike was on. I just want to say, no, I do not have an opening statement, but in terms of proceeding, we have in the past on education bills, and it seems to have worked out relatively well, had questions at the beginning, and then I will indicate to you where our voting might differ. Then we can just go more quickly clause through clause.

Mr. Chairperson: Is that agreed? [agreed]

Ms. Friesen: I did have some questions for the minister on Bill 34 on issues that arose out of the

presentation by Mr. Draper, the western regional director. He drew to our attention a resolution at MAST on this which had been voted down. I wondered if the minister had any comments on that, because essentially what is happening here is the government is presumably aware of that and is proceeding in a direction that the school trustees had indicated to her was not the direction they were ready for at this time. He did say no further action was taken at that time because no one imagined that the government intended these changes without consulting school divisions. So I wondered what consultation the minister had undertaken with school divisions on this and whether she had received any advice on this from at least one committee that she has that includes trustees and that does advise the minister.

Mrs. McIntosh: The member asks a very valid question, and it was raised by the trustee, that consultation on this had not been extensive. That is so. Regarding the amendment that was defeated at convention, it is, I guess, going back to my own experience as a trustee and indeed in conversation with individual trustees that a motion is often defeated because there is no policy that trustees have on it, not because they do not want that one, but because there is no agreement as to what they do want.

Having said that, there is a desire by government to have consistency and to have that across the board for municipalities and for school divisions. One of the member's questions earlier today about Transcona-Springfield, for example, being both rural and urban, the city boards had indicated that they were quite happy to go to four-year terms. Rural divisions did not make a motion that they were. They defeated a motion that would be a positive statement about that but had no substitute motion to put in its place. But in a division like Transcona-Springfield, the greatest consistency would come for them in having one rule that would apply for the whole division.

The one concern that was mentioned earlier today was that rural divisions might have a hard time getting trustees to run if they had to run for four years, but that they were willing to make a three-year commitment. But in fact, if you look at the statistics, you can see that 70 percent of all trustees are at least in their second term of office, and many are in a term beyond that. I know I still go to convention and still see the faces of rural trustees who were trustees when I was a trustee. That was some time ago. So they may not want to be running for more than three years, but 70 percent of them are. So it is our belief that it would be very difficult to ever get a clear consensus on this topic, because there was a time when school boards had staggered terms, some running two years, some running three years and alternating, and so on. There were numerous complaints from the people and from some trustees that was awkward. They were always seemingly going to the polls, always having an election, so we believe that once this is in place, it will achieve a more cost-effective, easier process for the people of Manitoba to select their elected officials at the municipal and school board levels. While the consultation was not extensive, we do believe that it is in the best interests of everyone.

Ms. Friesen: The presenter, Mr. Draper, raised another issue, and I wondered whether or not the minister had given any consideration to this. He said that school divisions encompass towns, villages, municipalities, sometimes two or three, sometimes, he said, as many as 10 or 12. Federal election officers cannot guarantee an accurate list of people who live on the border lines of divisions.

I wondered if the minister had given some thought to that and whether in fact that was the case, and if it were the case, what plans does the minister have to deal with that issue?

Mrs. McIntosh: That is a different issue and one that would undoubtedly be looked at addressing one way or the other whether or not these changes are made. These changes are not being made–that is not the prime reason for these changes. A common voters list is a popular concept that is being discussed across the country. Those discussions would take place separate and apart from this, whether or not this occurred.

Ms. Friesen: Yes, that is true, Mr. Chairman, but nevertheless the issue is coming up very quickly. It is an area of concern that I certainly was not familiar with, that people did not have confidence in that voters list on boundary issues. I know that we have raised in the Legislature concerns about the authenticity of the lists in the inner city where a great deal of enumeration did

not take place. So I guess the next step would be for the minister to give us some assurance that this issue, separate from the issue of the bill, will be taken forward to the government and that some action or some further representation by the government to the Canada elections authority takes place before the elections that are held, whether they are on a three-year or a four-year basis, next time.

* (1950)

Mrs. McIntosh: The member's concern is one of the reasons that the government is proceeding very carefully and cautiously on that issue. School divisions voters lists draw very heavily on the municipal lists in any event. At least, at this point they do, and where they do not draw upon the municipal lists, are developed by school divisions on their own. So I appreciate the member's concerns and certainly will make sure that in any discussions they are brought forward. Our desire, as is hers, is to ensure that voters lists, whether they be common or not, be accurate and timely for those who are going to vote and for those who are running for office.

Ms. Friesen: What I would like to indicate is that we intend to, as we have in other bills, vote against the sections that extend the period of office to four years, so I think in this bill that would include Section 3, Section 4. I think that is it, down to 4(4). So, if the Chairman would take that into account as he calls the bill, it would probably be helpful.

Mr. Chairperson: Thank you, Ms. Friesen. We will move then to clause by clause.

Clauses 1 and 2–pass; Clause 3.

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of Clause 3, please indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please indicate by saying nay.

An Honourable Member: Nay.

Mr. Chairperson: I declare the Yeas have it.

An Honourable Member: On division.

Mr. Chairperson: On division? Clause 3 will be passed on division.

Clause 4(1). Shall the item pass? The item is accordingly passed. No?

Some Honourable Members: No.

Mr. Chairperson: On division?

An Honourable Member: On division.

Mr. Chairperson: On division.

Clause 4(2). Shall the item pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: On division?

Some Honourable Members: On division.

Mr. Chairperson: On division.

Clause 4(3). Shall the item pass?

Some Honourable Members: Pass

An Honourable Member: No.

Mr. Chairperson: No. On division?

An Honourable Members: On division.

Mr. Chairperson: On division.

Clause 4(4). Shall the item pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Mr. Chairperson: On division?

An Honourable Member: On division.

Mr. Chairperson: On division.

Clause 4(5)–pass; Clause 5–pass; Clause 7. There is an amendment to Clause 7. Clause 6–pass.

Clause 7. Shall the item pass? There is an amendment to item No. 7.

Mrs. McIntosh: Yes, Mr. Chairman, I move

THAT section 7 of the Bill be struck out.

[French version]

Il est proposé que l'article 7 du projet de loi soit supprimé.

Motion presented.

Ms. Friesen: Could the minister explain the intent of that? I have got the bill in front of me, but I am not sure that everybody else does. The original Bill 56(1) says: a school board may by by-law provide for the payment of an annual indemnity, the chairman and to each trustee payable in such amount and at such times and under such conditions as are provided in the by-law.

The minister's original intention was to amend that. Now my assumption is that that remains in full.

Mrs. McIntosh: Thank you very much, Mr. Chairman. I was planning to give an explanation rather than just say that we would like to now take this out. Originally, when this was put in, it was thought that it was necessary to comply to make that consistent with The Municipal Act, et cetera, but what has come to light as they were drafting this is that all of this is subject to the federal income tax act, so that it is not required because the federal income tax act will be the deciding authority on this. So it is not needed; therefore, we will remove it. The income tax act will apply.

Mr. Chairperson: Amendment–pass. Item 7 as amended–pass. Clauses 8, 9, 10, 11(1), 11(2)–pass; Clauses 12 to 14–pass; preamble–pass; title–pass. Bill as amended be reported.

Bill 47–The Brandon University Act

Mr. Chairperson: The next bill is Bill 47, The Brandon University Act. Does the minister have an opening statement?

Hon. Linda McIntosh (Minister of Education and Training): No, Mr. Chairman. I do not.

Mr. Chairperson: No. Does the opposition critic have an opening statement?

* (2000)

Ms. Jean Friesen (Wolseley): Mr. Chairman, as the committee may remember, this bill has been before us before on Friday, and the committee agreed to delay consideration of the bill until we had looked at the proposed amendments from the Brandon Faculty Association. At the moment, I am looking for some discussion with the minister, but I do have three amendments that deal with some elements of the Brandon Faculty Association's concerns. But I wondered if the minister wanted an opportunity to comment on the faculty association's concerns at the beginning.

I think really they dealt with two types of issues; one is the belief of the faculty association that, essentially, a greater power was being given to the board, rather than to the senate; that is, the residual clauses of power being given to the board, rather than to the senate which they felt was a substantial change from previous legislation. Secondly, they had concerns about–and I am generalizing here–the absence of references to collective agreements in some of the responsibilities.

So I wondered if the minister had looked at, first of all, the principles on which they were basing these, and then secondly, on the actual amendments that they were

proposing and whether she had any intention of accepting any of the amendments.

Mrs. McIntosh: Mr. Chairman, no. I appreciate the desires that the president of the Brandon University Faculty Association had, but in reviewing the process that was gone through at the university of Brandon, I am persuaded that there was ample opportunity for internal discussion and dialogue. There was an internal consultation process at the university. The board, furthermore, has both senate and student representation on it and none of these motions to amend the draft act were prepared with any knowledge of those others.

So just taking a look at the process, those concerns that BUFA raised here were not raised apparently at the time with those on campus. So I think his proposals will result in a dramatic change in the balance of responsibilities between the senate and the board which would be inconsistent with Brandon University's past regulations and practices, as well as those of other university acts. The senate is not accountable for corporate or contract matters, so there has to be some ultimate authority and that rightly is the board of governors.

So I think there are many processes that are rightly left to the by-laws of the board and the senate, but legislation may not be the place for some of those. So I think that the bill, as drafted, is what we would prefer to see passed.

Ms. Friesen: Mr. Chairman, well, I have three areas where I would like to propose amendments, just to give you notification of them, 12(1), 12(2), and Section 24. They are not all of the amendments, by any means, that Brandon University faculty were proposing, but I think they deal with the substance of the issues that they were raising.

Mr. Chairperson: We will proceed then to deal with Bill 47, The Brandon University Amendment Act. We will set aside the title, the table of contents, and the preamble, and deal then with Clause 1 of the bill. Clause 1–pass; Clauses 2 to 11(2)–pass.

Clause 12(1).

Ms. Friesen: Mr. Chairman, I move, seconded by the member for Dauphin (Mr. Struthers), in both official languages,

THAT subsection 12(1) be amended by striking out everything after "for the university".

[French version]

Il est proposé que le paragraphe 12(1) du projet de loi soit amendé par suppression du passage qui suit "la direction générale de l'Université".

so that 12(1) would read "the board has overall responsibility for the university".

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment defeated. Clause 12(1)–pass.

Clause 12(2).

Ms. Friesen: I will be moving parts (a) and (b) of the pieces before you. So I move, seconded by the member for Dauphin (Mr. Struthers),

THAT subsection 12(2) be amended

(a) in the part preceding clause (a) , by adding ", subject to any collective agreements between the university and the employees or faculty," after "the board may";

(b) in Clause (o), by striking out "either" and "or on the board's own initiative after consultation with the senate,".

[French version]

Il est proposé que le paragraphe 12(2) du projet de loi soit amendé:

a) dans le passage précédant l'alinéa a), par adjonction, après "peut" de " , sous réserve des conventions collectives conclues, le cas échéant, entre l'Université et ses employés ou ses facultés ";

b) dans l'alinéa o), par substitution, à "soit sur la recommandation du Sénat, soit de sa propre initiative après avoir consulté le Sénat, ", de "sur la recommandation du Sénat,";

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment lost.

Clause 12(2)–pass; Clauses 12(3)-23–pass.

Clause 24.

Ms. Friesen: I move, seconded by the member for Dauphin (Mr. Struthers),

THAT Section 24 be amended by adding "and subject to the terms of any collective agreements between the university and its employees or faculty" after "under this Act".

[French version]

Il est proposé que l'article 24 soit amendé, dans le passage précédant l'alinéa a), par adjonction, après "de la présente loi", de "et sous réserve des conventions collectives conclues, le case échéant, entre l'"Université et ses employés ou ses facultés".

Motion presented.

Mr. Chairperson: Shall the item pass?

Some Honourable Members: Yes.

ome Honourable Members: No.

Mr. Chairperson: The amendment is accordingly lost.

Clause 24–pass; Clauses 25 to 33–pass; title–pass; preamble–pass; table of contents–pass. Bill be reported.

Mr. Chairperson: Could we have–this is the last education bill. Could we have order, please. I need to be able to hear the people who are dealing with the issues.

* (2010)

Bill 53–The Apprenticeship and Trades Qualifications Act

Mr. Chairperson: Does the minister wish to make an opening statement on Bill 53, The Apprenticeship and Trades Qualifications Act?

Hon. Linda McIntosh (Minister of Education and Training): Mr. Chairman, just a very brief comment. This bill is the result of very extensive consultation that took place over a very long period of time. There was first an apprenticeship task force that consulted widely and broadly with all known stakeholders. That task force reported back to government, and the report itself was sent out to again as many stakeholders as government could identify. The net result of all of this is before us today. It has received tremendous approval from apprentices themselves, the people who are currently preparing to become journeymen, and from employers and from all of those who could be identified. We are pleased and proud to present it to the House today as an important new thrust in training since the federal government withdrew from funding apprenticeship in Manitoba. Thank you.

Mr. Chairperson: I wonder whether I could ask the indulgence of committee members that it makes it fairly difficult to hear back here if we have a separate meeting going on at that end of the table. Would you please–I think the minister and the critic deserve your full attention. Thank you.

Ms. Jean Friesen (Wolseley): Mr. Chairman, again I have a number of questions on this bill. The general direction of it I think we are very hopeful about, but we did express some concerns in the House and I think indicated to the minister where we wanted to ask some

questions. I also have a number of amendments and I have just made them available to the deputy.

I am concerned, first of all, about, under Functions of the board, there is a very large responsibility being given to this board under Section 3(b)(i) "to advise the minister about the needs of the Manitoba labour market for skilled workers." That is an enormous responsibility. I am wondering what staff are going to be provided to the board to undertake that kind of a regular survey and to provide the kind of advice that the minister is going to have confidence in. It is the kind of thing obviously that the labour force development boards were expected to do and those never got off the ground in this province and, yet, the scale of activity that labour force development boards in other provinces have undertaken are exactly the kinds of things that the minister would be looking for here, I am sure. So can the minister tell me a little bit more about that particular proposal?

Mrs. McIntosh: I should indicate that I do have five amendments I would like to make. Three, I think, were distributed earlier to the member, and two arose out of the presentation we heard earlier this morning from the Manitoba Federation of Labour. I will provide the wording for those in a moment.

The member asks about what staff support, et cetera, will be in place. As we look at apprenticeship training, we have increased the amount of money available for apprenticeship training in Manitoba, in fact, have doubled it this year. We are adding seven staff members to the component that deals with apprenticeship in the province to assist with the smooth running of the program and support for some of the items that the member had referenced in her question.

Ms. Friesen: I am pleased to see the addition of seven staff, but I wonder how many of those are going to be devoted to essentially evaluating the labour market needs of Manitoba.

Mrs. McIntosh: The bulk of the information on the needs, the identified needs, will be coming from the TACs. It is going to be a bottom-up rather than a top-down process. They will be in the best position to know. We, of course, will be getting our regular reports from Industry, Trade and Tourism, et cetera, on emerging sectors, industry identified areas where there are shortages or future demands coming up. Those sources will continue to be valuable sources, but we do see the TACs as having good knowledge from their daily working in the field. We do want, as much as possible in all that we do here, to have a process that comes from the field up rather than from the top down. There is room for both, and we are all working together. I think we will be well-supplied with the information that is required in terms of labour market demand.

I should indicate as well, there was a reference made this morning that was not quite correct about the trade advisory committee meetings for carpentry and cabinet makers. Indeed, they have had many, many meetings just in the last two years alone. One, two, three, four, five, six, seven, eight, nine, 10, 11, 12, 13, 14, 15 meetings just since 1996. Anyway, I just thought I would provide that information while I am on the topic of TACs.

Ms. Friesen: One of the questions that was raised today was the limit on terms for the trade advisory committees and the difference between their terms and the board. I think two of the presenters made the point that the board terms of membership allowing for repeat appointments allowed for greater flexibility and for greater use of specialized knowledge. I wondered why the minister had not. There must have been a reason for separating, making a distinction between those terms of office and the trade advisory committees. Can the minister explain why that difference?

Mrs. McIntosh: I guess, in terms of availability of people, there are at least 200 members on our TACs, our trade advisory committees, you know. So there is a question of availability that is quite real, I believe, there. But, as well, we would like to see some opportunity to move in and out. If at the end of five years we feel that we have excellent people who are willing to continue, we can always change this. But I think at the same time it gives us impetus and the field as well to continue searching out people who might be interested in serving so that we do get a lot of people familiar with how TACs operate, and we also get a renewal, a renewing. We would like to proceed with the six years or two times three–like two terms in three years–and we believe it will be the best.

There was some concern mentioned earlier, as well, about how you might deal with a person who perhaps is a labour representative who then moves into management, but the criteria indicates you have to have an equal balance of labour and management. So if that happened, then by the very criteria of the committee, the member would no longer be eligible to serve in that capacity.

It would be the same as if a person, unfortunately, died and you would have to replace them because they had become deceased or so on. So the criteria, I think, will take care of that as they do with other things. If you no longer meet the criteria, you can no longer serve. Just as if I had developed a conflict of some–if I were a school trustee in my home division and then took on a job as a teacher in my home division, I would have to step down from the board. I am no longer eligible by the criteria of board membership.

So I think that will take care of itself. It is something we can watch, but I do not think it is going to be a problem. It is a good question.

Ms. Friesen: Section 15(1), Designation of trades, and it also applies to, I think, certification, and this wording appears elsewhere in the bill. Subject to the approval of the minister, the board may, by regulation, designate for the whole or any part of the province, a trade as a designated trade. Could the minister give me some indication of how she anticipates that section will be used? Just to clarify, my concerns are the ones that I was asking of presenters, as well, and I was looking for an explanation from the minister. It is for the whole or any part of the province, or it is the creation of designated trades or certified trades for only a part of the province. Are we talking about a suburb? How does the minister understand that this section will be used?

Mrs. McIntosh: Mr. Chairman, I was looking for a good example. I believe there is one that is currently in place that the member may be familiar with and refers to this type of thing. We currently have a program for aboriginal people in carpentry or construction work where they are building log cabins on the reserve or in their communities. They are considered apprenticed to do that specifically designed for their own communities in those remote locations, but they would not be certified to say come to a big suburban centre and build to code some of the demands in the construction industry elsewhere, but they certainly are well trained and able to provide the skills that are required for the type of housing in their communities and can receive (a) that training and (b) that recognition to do that and improve both their quality of life and the quality of those for whom they are building. So it would be that type of thing that we are referring to. I believe that the representative from the MFL, maybe not here, did indicate that there might be some cause to feel that sort of flexibility could be useful and appropriate.

* (2020)

We are not talking about this as a wholesale, everyday kind of occurrence, but we do know we already have some of those situations that have proven to be successful for particular communities of people. We do not wish to lose that ability, and so that is the reason that is there. That is an example of the type of thing we need.

Ms. Friesen: When I asked this question of the presenters, I think two of them made reference to remote communities. The aboriginal apprenticeship system, which I have seen some versions of the drafts of that, obviously, is not dealing with remoteness. It is dealing with specific types of communities. So my concern is that this section of the act may in fact be used very broadly, say an apprenticeship in a particular trade, a designated apprenticeship for communities under 500 people, or it might be used for a particular region of the province. That is why I am interested in getting on the record what the minister intends it to be used for. It seems to me very broad, any part of the province, particularly when the one example we are looking at in fact is a type of community–or two types of communities really, reserved communities and Metis communities–that extend throughout the province.

Mrs. McIntosh: I can indicate for starters that this is subject to the approval of the minister, and the minister and the government are conscious of the mandate here. This clause has been in the act, the current–I was going to say it is the old clause, but it is currently in wording, so it is not new. It is there. We wish to see it continue. It has not been subject to that kind of interpretation in the past. I do not see that it would be in the future, and

as I say, it is subject to the approval of the minister, and it would be on the advice and with the agreement of the tax and the board.

Ms. Friesen: Moving on through the bill, on Section 16, I note that the minister has an amendment on that which I think is similar in intent to ours, so we can look at that when we come to the amendment.

Section 17 deals–and this again was raised by the presenters, the termination of an agreement, 17(6): "A party to an apprenticeship agreement may terminate it without the consent of the other party and must immediately give written notice to the director." That was raised by presenters who believed that this did not give adequate protection to the employee. Does the minister have an amendment on that, or is there a particular reason that she wants to maintain that in the act?

Mrs. McIntosh: I should indicate, as the member knows, I had circulated earlier the three amendments we had decided on prior to coming in. That was Section 9, Clause 19(2)(c) and Section 24, et cetera. We, after the hearing this morning, feel that the presenter made a good point that we should accept Sections 16 and 17(1) changing "may" to "shall" in those two areas. On Section 17(6), we felt that the recommendation requiring mutual consent of an apprentice and an employer to terminate an agreement is something that needs to stay there for both parties' sake. For example, the present wording of the bill gives the apprentice greater authority to change jobs or opt out of apprenticeship. Mutual consent would apply, almost a kind of indentureship, where the apprentice would not be able to get out if the employer did not want him to, or vice versa, that you could have an apprentice who then was locked in against his will unable to break away if he or she found that it was not to his liking unless the employer agreed to let that apprentice go.

We do not think that is fair to the apprentice. The reverse problem is also true that an employer would be bound to continue with an apprentice, even if ghastly mistakes were being made, so we felt that mutual consent was something that would bind people. We feel the wording that we have got is the best wording. Employees should be able to leave, and we think the wording we have got here is best for both parties. Regulation and policy can cover circumstances of notification between the parties and the director.

Ms. Friesen: One of the other issues that was raised was the requirement for registration of an agreement. Presenters felt that this was not as clear, I think to put it mildly, as it was in the previous bill. Where, I think, in the previous bill it was required to be registered within 30 days, there was no requirement here, rather what there is–and I am on Section 24 now, Regulations by board, 24(a)(viii), the documentation of the progress of an apprentice through the training, and also I expect 24(b), regulations respecting approval, registration and termination. So my sense is the minister's response to those presenters was that these are going to be in regulations, that they are subject to the approval of the minister and hence will be regulations that will be published in the Gazette, unlike all the regulations under The apprenticeship bill unfortunately.

Am I interpreting that correctly?

Mrs. McIntosh: I hope I am answering the question that the member is seeking. These would still have to be gazetted. Is that the concern that the member had?

Ms. Friesen: That was part of it. I was drawing a distinction between regulations which are gazetted, which include under 24, which I think is a good thing. My other concern was, going from what people were raising this morning, that there is no minimum time by which an apprenticeship agreement has to be registered, whereas in an earlier bill there was a time. It had to be done within 30 days. Now it is being left to regulation, albeit regulations which are gazetted.

Mrs. McIntosh: In 16, the wording will be, hopefully, "shall enter into an apprenticeship agreement." So we are saying that which it must be. I think once we have had some experience in terms of playing it out in practice, we will have a better sense of what that time frame should be. It will be addressed in regulation, and it is our goal to have a reasonable time frame that gives enough time but does not drag the process out. We are not quite sure at this point how that is going to appear in regulation, but it is not our desire to have it be a prolonged period of time that we think that they need to move with proper speed to ensure that people are not left lingering.

Ms. Friesen: And does the minister anticipate that time will be any longer than the time under the previous act, that is the 30 days for registration.

Mrs. McIntosh: Right now the timing is 90 days, and that is, yes, which is a fair bit of time. If we can shorten that, it would be our choice to do so.

Ms. Friesen: I note the minister has a different time than I do and I will certainly check that in the bill. I understood one of the presenters today to say 30 days, so I am taking it from there rather than from the bill. So maybe, for my purposes, we should be precise and have the particular section.

Mrs. McIntosh: The current wording is, you will find it in 9(4) under the current act, and it says that the director shall, within 90 days, provide the applicant and his employer with an apprenticeship agreement for execution, and then, beyond that, shall, within 30 days after the execution thereof by all the parties, be filed with the director. So you are talking 90 plus 30. I think the 30 referenced was to the length of time to file it with the director. There are 90 days before that, and it would be our desire to try to shorten that period, but by how much, I think we will know with practice, and the regulation then can allow us the flexibility to bring it down a bit.

Ms. Friesen: Section 21(1) has a limited range of reasons for appeal. I wondered why the minister was limiting the reasons for appeal in the bill.

Mrs. McIntosh: Mr. Chairman, we feel that the grounds for appeal in 21(1) are wide enough to satisfy the recommendation with six specific grounds and the general provision in 21(1)(g) that any other decision as specified in the regulations is appealable. So that gives a pretty wide swath that we felt would cover the concern.

Ms. Friesen: Two final questions. One deals with the regulations under the trade advisory committees which will not be Gazetteable. This is something which we find is happening across a number of bills in the government. It seems to be a general policy. It is one that we do not like to see. We do not like the direction that that is going in. We prefer things to be as open and public as possible.

Is there a particular reason, in this case, why the minister would want to have some regulations not come under the minister and, hence, be in the Gazette?

* (2030)

Mrs. McIntosh: Mr. Chairman, the TACs serve as advisers to the board. So they would make recommendations as to regulations, but they would not themselves make the regulations. They would ask the board or recommend to the board, and the board would say okay, and then they will make the regulation according to what they have been advised.

Ms. Friesen: Finally, on appointment of board members, the minister is going to appoint five plus five, the employers and the employees, two representing the public interest and then the chairperson as well. Concerns have been raised with us about the advisability of having a chairperson who is acceptable to both sides and perhaps a process in place for that.

Did the minister give consideration to that, and is there a particular reason why she is reserving the right to add a chairperson of just the minister's choosing?

Mrs. McIntosh: Mr. Chairman, it was felt that government would be ultimately accountable for apprenticeship and should therefore appoint the Chair. The industry reps, being both sides of industry–when we say "industry" we are talking about both the people who manage and the people who work. They are the industry. Those people are generally chosen. It is informal, but the general way of choosing is that groups of names are suggested by industry. We have to then look at the mixes, which was mentioned this morning, if not twice, at least once, that we need to try to find rural, we need to try to find urban, we need to find male, we need to find female, we need to find a good diversity in terms of the types of skills.

They have to be knowledgeable about trades, but we do not want all the same trade, so we try to balance them off with as many in like categories as we can.. By the time we finish doing all of those things to try to get the best mix and the best pool of knowledge, the selection, as to a person whose commitment to apprenticeship, desire to do all of the things that government is pledged to be accountable for, the one

sole choice left, so to speak, would be that of the person who would chair the board.

I am not saying that the board could not select from amongst their number a chair because they probably could, and I believe the people we have on the board right now and in the past have been very good people. Any one of them probably could chair, but I think that ultimate accountability, that ability to communicate with comfort comes from being able to appoint the chair. Hence we decided to stay with that tradition of the government appointing the chair rather than switch over to some other method.

We also know, Mr. Chairman, through you to my critic, that oftentimes when ward members select their own chairs–I am speaking in a generic sense now, not particularly this board, but you see it all the time in school board elections, when every year they rotate their chairmanship that sometimes it does create divisiveness on a board if certain members have selected one person and others another. You have the little camps that were divided because some supported Joe and some supported Sally, and maybe they did not get their choice. So you get all of those little tensions that come from making people make choices other than working on the trades, making choices as to leadership which is not necessarily always in the best interest of building unity on a board. Sometimes it is but sometimes it is not.

Mr. Chairperson: Bill 53, The Apprenticeship and Trades Qualifications Act. We will set aside the title, the preamble, the table of contents. We will deal clause by clause with the bill.

Clauses 1 to 3–pass.

Clause 4(1), I understand that there is an amendment or a proposed amendment.

Ms. Friesen: Mr. Chair, I move, seconded by the member for Transcona (Mr. Reid), in both official languages

THAT clause 4(1)(d) be amended by adding ", who shall be appointed after the minister has made all appointments under clauses (a), (b) and (c), and has consulted with those appointees and received their suggestions for a chairperson" at the end of the clause.

[French version]

Il est proposé d'amender l'alinéa 4(1)d) du projet de loi par adjonction, avant le point final, de "nommé après que le ministre a effectué les nominations prévues aux alinéas a) à c) et a consulté les personnes nommées et reçu leurs suggestions en ce qui concerne la présidence".

I listened to the minister's discussion of this, and some aspects of it I think are helpful. We still think, after having listened to that, that it would still be helpful for the minister to have consulted with the parties who will be dealing with the chairperson and looking for leadership from that chair. So that is the intent of this amendment.

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment defeated.

An Honourable Member: On division.

Mr. Chairperson: On division. Clause 4(1)–pass; Clauses 4(2)-8–pass.

Clause 9, I understand the minister has an amendment.

Mrs. McIntosh: I move

THAT section 9 be amended by adding ", or for a trade or group of related trades that the board proposes to designate," after "group of designated trades".

[French version]

Il est proposé que l'article 9 du projet de loi soit amendé par substitution, à "ou un groupe de métiers désignés connexes", de ", un groupe de métiers

désignés connexes ou un métier ou un groupe de métiers qu'elle se propose de désigner".

Motion presented.

Mr. Chairperson: Amendment–pass; Clause 9 as amended–pass.

I want to go back to 4(1). I do not know if there is absolute clarity that the item without amendment be passed, 4(1). The amendment was defeated on division. Just so I am absolutely clear on that.

Clause 10–pass; Clause 11(1)-11(3)–pass.

Clause 11(4), there is an amendment.

Ms. Friesen: I move, seconded by the member for Transcona (Mr. Reid), in both official languages

THAT subsection 11(4) be struck out and the following substituted:

Limit on terms
11(4) After serving for six consecutive years, a member is not eligible to be appointed for a further term until at least three years have elapsed since the end of the member's last term.

[French version]

Il est proposé de remplacer le paragraphe 11(4) du projet de loi par ce qui suit :

Nombre de mandats
11(4) *Les membres qui occupent leur poste pendant six années consécutives ne peuvent recevoir un autre mandat que si une période minimale de trois ans s'est écoulée depuis la fin de leur dernier mandat.*

Mr. Chair, if I can just speak to that for a minute, this was something that was brought to our attention by presenters. The minister had an argument against it on the fact that she wanted some flexibility if people had changed their position or their function. That is certainly a concern, but we think that this is an enabling one. It does not require people to be reappointed, and it does bring it in line with the board. So we are proposing it as a helpful amendment.

Motion presented.

Mr. Chairperson: Shall the amendment be passed?

Some Honourable Members: Yes.

Some Honourable Members: No.

* (2040)

Mr. Chairperson: I declare the amendment defeated on division. Clause 11(4)–pass; Clauses 11(5)-15–pass; Clause 15(1)-15(2)–pass.

I understand the minister has an amendment on 16.

Mrs. McIntosh: Yes, thank you, Mr. Chairman. This amendment is being made in response to one of the presenters this morning who suggested a change that we feel makes sense. The new wording, we would propose, I move

THAT section 16 be struck out and the following substituted:

Apprenticeship agreements
16 A person who wishes to obtain a certificate of qualification in a designated trade, and an employer who undertakes to employ the person as an apprentice to learn the trade, shall enter into an apprenticeship agreement.

[French version]

Il est proposé de remplacer l'article 16 du projet de loi par ce qui suit :

Contrats d'apprentissage
16 *Concluent un contrat d'apprentissage la personne qui désire obtenir un certificat professionel relatif à un métier désigné et l'employeur qui s'engage à employer la personne à titre d'apprenti afin qu'elle apprenne le métier.*

The basic change there is "may" to "shall."

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Ms. Friesen: I just want to indicate that we had a similar amendment and we certainly support this one. I am glad to see the minister presenting it.

Mr. Chairperson: I declare the amendment passed. Clause 16 as amended–pass.

Clause 17(1), I understand there are amendments from both parties.

Mrs. McIntosh: I believe, here again, my critic and I may be bringing in the same kind of change, and that is that again, I move

THAT subsection 17(1) be amended by striking out "may" and substituting "shall, in accordance with the regulations,".

[French version]

Il est proposé d'amender le paragraphe 17(1) du projet de loi par substitution, à "peut demander au directeur", de "demande au directeur, en conformité avec les règlements,".

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is accordingly passed.

Ms. Friesen: Mr. Chairman, yes, that is in accordance with the issues that were raised today and we support that.

Mr. Chairperson: Clause 17(1) as amended–pass; Clause 17(2) to 17(5)–pass.

Clause 17(6), there is an amendment.

Ms. Friesen: I move, seconded by the member for Transcona (Mr. Reid),

THAT section 17(6) be struck out and the following substituted:

Termination of agreement
17(6) An apprenticeship agreement may be terminated

(a) by mutual agreement of the parties to the apprenticeship agreement; or

(b) by the director, where good and sufficient cause is shown to the director by one of the parties to the apprenticeship agreement.

[French version]

Il est proposé de remplacer le paragraphe 17(6) du projet de loi par ce qui suit:

Résiliation du contrat
17(6) *Le contrat d'apprentissage peut être résilié:*

a) soit avec le consentement mutuel des parties;

b) soit par le directeur, si l'une des parties lui présente des raisons valables à cette fin.

Motion presented.

Ms. Friesen: Mr. Chairman, this wording was suggested to us by one of the parties who presented today. The minister had, I think, some helpful points to make in her discussion of this, but for clarity and also because we do think still that the employees in particular might be at a disadvantage by the limited wording of the minister's 17(6), the original 17(6), we thought that this gave us greater comfort on the rights of employees.

Mrs. McIntosh: Mr. Chairman, I appreciate the member's motivation. We feel that our current wording would be better for both parties. I understand a concern would be for the apprentice. Here we need to, I believe, allow the apprentice to be able to leave without having to have agreement if it is required.

Mr. Chairperson: Thank you. Shall the amendment pass?

Some Honourable Members: No.

Mr. Chairperson: No. I declare the amendment defeated on division.

Clause 17(6)–pass; Clauses 17(7) to 19–pass; Clause 19(1)–pass.

Clause 19(2), I understand there is an amendment.

Mrs. McIntosh: I move

THAT clause 19(2)(c) be amended be adding "and is in compliance with the regulations" after "the trade".

[French version]

Il est proposé que l'alinéa 19(2)c) du projet de loi soit amendé par adjonction, après "métier", de "et d'observer les règlements".

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed. Clause 19(2) as amended–pass; Clauses 19(3) to 20(2)–pass.

Clause 21(1), I understand there is an amendment.

Ms. Friesen: I move, seconded by the member for Transcona (Mr. Reid),

THAT subsection 21(1) be struck out and the following substituted:

Appeals
21(1) A person affected by a decision or order of the director, may, within 30 days after the date of the making of the decision or order, appeal the decision or order.

[French version]

Il est proposé de remplacer le paragraphe 21(1) du projet de loi par ce qui suit:

Appel
21(1) *Toute personne qu'une décision ou qu'un ordre du directeur touche peut, dans les 30 jours suivant la décision ou l'ordre en question, en appeler.*

Motion presented.

* (2050)

Ms. Friesen: Mr. Chairman, the purpose of this is to ensure that a wide range of issues can be brought for appeal by persons who are affected by them. In discussion with the minister, she pointed to the openness of 21(1)(g), any other decision specified in the regulations, and I understand that goes some distance, but we believe that our amendment is much broader and more encompassing in both the issues and the people who could deal with it.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment defeated on division.

Clause 21(1)–pass; Clauses 21(2) to 23–pass.

I understand the minister has an amendment to 24.

Mrs. McIntosh: Mr. Chairman, I move

THAT section 24 be amended

(a) in clause (e), by striking out "or renewed";

(b) by striking out clause (f);

(c) by adding the following after clause (h):

(h.1) for the purpose of a compulsory certification trade,

(i) respecting the terms and conditions under which persons are authorized to practise in the trade, including, but not limited to, minimum hours of work in the trade and upgrading requirements,

(ii) governing periods of time for which authorizations to practise are valid, and

(iii) governing the circumstances under which the director may suspend or cancel the right to practise in the trade;

[French version]

Il est proposé que l'article 24 du projet de loi soit amendé:

a) dans l'alinéa e), par suppression de "ou de renouvellement";

b) par suppression de l'alinéa f);

c) par adjonction, après l'alinéa h), de ce qui suit:

h.1) en ce qui a trait aux métiers à reconnaissance professionnelle obligatoire:

(i) prendre des mesures concernant les conditions d'exercice des métiers et, notamment, fixer le nombre d'heures minimales de travail dans ces métiers et les exigences qui s'appliquent au recyclage professionnel,

(ii) régir les périodes de validité des permis d'exercice,

(iii) régir les circonstances dans lesquelles le directeur peut suspendre ou annuler le droit d'exercer les métiers;

Motion presented.

Mr. Chairperson: I want to ask the people out back there, who can they hear better? The people at that end of the table or the people at this end of the table? [interjection]

An Honourable Member: You are doing wonderful, Mr. Chairman.

Mr. Chairperson: Thank you.

An Honourable Member: We hear you clear as a day.

Mr. Chairperson: I hear you clear as days too, so I would ask that we maintain a bit more decorum around the table. Thank you.

Madam Minister, did you wish to comment on the amendment?

Mrs. McIntosh: Yes, Mr. Chairman. These amendments accomplish two purposes. First, Clause (a) of the motion deletes two redundant words from Clause 24(e) and Clause (b) of the motion. Clause (b) of the motion strikes out 24(f). These two components remove reference to compulsory certification. Secondly, Clause (c) is to consolidate in one new clause, Clause (h.1), the regulation making powers related to compulsory certification trades. I believe it makes it more clear and more workable. It does not in any way change the original intent.

Mr. Chairperson: Thank you. Amendment–pass. Shall the item as amended pass? I declare 24 passed as amended.

Now shall 25 to 29 pass? The items are accordingly passed. Title–pass; preamble–pass; table of contents–pass. Bill be reported as amended.

Ms. Friesen: Mr. Chairman, I just wanted to say, through you, a thank you to Legislative Counsel who, on our behalf, dealt with a number of amendments at very short notice, so I appreciate that. Thank you.

Mr. Chairperson: Thank you, Madam Minister.

Mrs. McIntosh: Thank you, Mr. Chairman.

Mr. Chairperson: Thank you to the committee.

I will now ask the Minister of Health to come forward. Should we take five minutes?

The committee recessed at 8:56 p.m.

After Recess

The committee resumed at 9 p.m.

* (2100)

Mr. Chairperson: Shall the committee come to order.

Committee Substitution

Mr. Edward Helwer (Gimli): Mr. Chairman, I move, with the leave of the committee, that the honourable member for Pembina (Mr. Dyck) replace the honourable member for Assiniboia (Mrs. McIntosh) as a member of the Standing Committee on Law Amendments, effective June 23 at 7:30 p.m., with the understanding that the same substitution will also be moved in the House to be properly recorded in the official records of the House.

Motion agreed to.

Bill 13–The Prescription Drugs Cost Assistance Amendment Act

Mr. Chairperson: Bill 13, The Prescription Drugs Cost Assistance Amendment Act. Does the honourable minister have an opening statement? [interjection] We will go in order.

Bill 13, the title and the preamble will be set aside as normal. We will deal then clause by clause.

Clauses 1 to 5–pass; title–pass; preamble–pass. Bill be reported.

Bill 20–The Medical Amendment Act

Mr. Chairperson: The title and the preamble will be set aside. Do you have an amendment here?

Hon. Darren Praznik (Minister of Health): Yes, I have an amendment.

Mr. Chairperson: Which section?

Mr. Praznik: Section 7, Mr. Chair.

Mr. Chairperson: Clauses 1 to 6–pass.

Clause 7, I understand the minister has an amendment.

Mr. Praznik: Yes, Mr. Chair. This amendment very simply adds the penalty clause for contravention of the health information or the information–the confidentiality provisions, which is consistent with The Personal Health Information Act. So I would move

THAT the proposed section 63, as set out in section 7 of the Bill, be amended as follows:

(a) by renumbering it as subsection 63(1);

(b) by striking out clause (c) and substituting the following:

(c) to a body that governs the practice of a health profession pursuant to an Act of the Legislature, or to The Manitoba Veterinary Medical Association established under The Veterinary Medical Act, to the extent the information is required for that body to carry out its mandate under the Act;

(c) by adding the following as subsection 63(2):

Offence
63(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on summary conviction, to a fine of not more than $50,000.

[French version]

Il est proposé que l'article 63, énoncé à l'article 7 du projet de loi, soit amendé:

a) par substitution, à son numéro, du numéro de paragraphe 63(1);

b) par substitution, à l'alinéa c), de ce qui suit:

c) à un organisme qui régit l'exercice d'une profession de la santé conformément à une loi de l'Assemblée législative ou à l'Association vétérinaire du Manitoba constituée en vertu de la Loi sur la médecine vétérinaire, dans la mesure où l'organisme en question a besoin des renseignements pour remplir ses fonctions en vertu de la loi applicable;

c) par adjonction, après le paragraphe 63(1), de ce qui suit:

Infraction
63(2) *Quiconque contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de*

culpabilité par procédure sommaire, une amende maximale de 50,000$.

Motion presented.

Mr. Praznik: Mr. Chair, this provision, as I have indicated, simply provides for a penalty for the breach of the confidentiality requirements under those statutes. It is consistent with The Personal Health Information Act penalty provisions and Bill 31 as well.

Mr. Chairperson: Amendment–pass; Clause 7, as amended–pass.

Clauses 8(1) to 12–pass; title–pass; preamble–pass. Bill as amended be reported.

Bill 30–The Pharmaceutical Amendment Act

Mr. Chairperson: The title and the preamble will be set aside. Clauses 1 to 3–pass; Clauses 4 to 12–pass; Clauses 13(1) to 14–pass; title–pass; preamble–pass. Bill be reported.

Bill 31–The Regulated Health Professions Statutes Amendment Act

Mr. Chairperson: We will set aside the preamble and the title. Clause 1–pass; Clauses 2 and 3–pass; Clauses 4 to 5(3)–pass; Clauses 6(1) to 7(1)–pass; Clauses 7(2) to 8(3)–pass; Clauses 9(1) to 10–pass; Clauses 11(1) to 12(3)–pass; Clauses 13(1) to 14(3)–pass; Clauses 15(1) to 16(3)–pass; Clause 17–pass; title–pass; preamble–pass. Bill be reported.

Bill 35–The Mental Health and Consequential Amendments Act

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

Hon. Darren Praznik (Minister of Health): Yes, Mr. Chair, I am going to be very, very brief. We have a number of amendments, I think nine in total to make. I have provided a copy of our proposed amendments to my critic earlier in the day, as we had discussed. I have also provided him an analysis of Mr. Yude Henteleff's submission to this Legislature which outlines, I think, and addresses all of the concerns that Mr. Henteleff had raised. I know there was a great deal of interest around that particular presentation. I have shared that with him as well.

I understand that he has one particular amendment in an area that I am raising where I think we are relatively close on wording, and I appreciate all of the efforts of members of this committee. We had many, many presenters. I should indicate that the nine amendments we are proposing all come, I understand, out of various presentations that were made to this committee on Friday. We had approximately 40 presentations, and many of them offered some very good advice on clarifying wording in ensuring that the bill would be more effective in its operation. I was pleased to have those.

We have analyzed the presentations with recommendations for amendment and today we are, as I said, prepared to advance nine particular amendments that I have shared with my critic.

Mr. Chairperson: Does the honourable critic have an opening statement?

Mr. Dave Chomiak (Kildonan): Yes. Thank you, Mr. Chairperson, and through you I would like to also thank all of the presenters on Friday as well as the minister for providing me with the departmental review of Mr. Henteleff's comments on Friday, as well as providing for us a notice of the amendments that the minister is proposing to introduce.

Just for the record, we are going to be proposing three amendments, one of which, as the minister has indicated, is very close in intent with one of the amendments introduced by the minister. As well, we will be proposing two other amendments during the course of clause-by-clause analysis.

This has been a very useful process, a very difficult process from all sides. We certainly appreciate the presentations that were put forward and the representation that was brought forward by all individuals, and by all members of the committee. I look forward to clause-by-clause analysis to deal with some of the specific issues.

* (2110)

Mr. Chairperson: The title and the preamble will be set aside, and the table of contents will also be set aside. We will deal then clause by clause starting on page 1 of the bill. Clause 1–pass. Clauses 2 to 26, shall the item pass?

Mr. Chomiak: Mr. Chairperson, Clause 2, do you mean subsection 2 through to subsection 26?

Mr. Chairperson: Yes, they are called clauses.

Mr. Chomiak: I recognize that. So you are saying page 4 through to page 20. I have an amendment.

Mr. Chairperson: Could you give me a list of your amendments, and then I can–at the appropriate place?

Clause 2–pass.

Clause 3.

Mr. Chomiak: Mr. Chairperson, I apologize for not providing the committee or the minister with copies earlier. They were prepared–and I want to thank Legislative Counsel–late in the afternoon. My problem, not the problem of the minister.

So I move, seconded by the member for Crescentwood (Mr. Sale),

THAT the following be added after section 3:

PART I.1
OFFICE OF MENTAL HEALTH
PATIENT ADVOCATE

Definition
3.1(1) In this Part, **"patient advocate"** means the Mental Health Patient Advocate appointed under subsection (2).

Appointment of patient advocate
3.1(2) The Lieutenant Governor in Council shall, on the recommendation of the Standing Committee of the Assembly on Privileges and Elections, appoint a patient advocate.

Officer of Legislature
3.1(3) The patient advocate is an officer of the Legislature and is not eligible to be nominated for, elected as, or sit as, a member of the Assembly.

Term of Office
3.1(4) The patient advocate shall hold office for three years from the date of appointment, unless he or she sooner resigns, dies or is removed from office.

Removal or suspension
3.1(5) The Lieutenant Governor in Council shall remove the patient advocate from office or suspend the patient advocate on a resolution of the Assembly carried by a vote of 2/3 of the members present in the Assembly.

Salary
3.1(6) The patient advocate shall be paid a salary fixed by the Lieutenant Governor in Council, which shall be charged to and paid out of the Consolidated Fund.

Expenses
3.1(7) The patient advocate shall be paid for travelling and out of pocket expenses incurred in the performance of duties.

Duties of patient advocate
3.1(8) The patient advocate shall

(a) review and investigate complaints that he or she receives relating to

(i) persons who receive or may be entitled to receive services, treatment or care or supervision under the Act, or

(ii) the services, treatment or care or supervision provided or available to persons under this Act;

(b) advise the minister on matters relating to

(i) persons who receive or may be entitled to receive services, treatment or care or supervision under the Act, or

(ii) the services, treatment or care or supervision provided or available to persons under this Act; and

(c) prepare and submit an annual report to the Speaker of the Assembly respecting the performance of the duties of the patient advocate.

Annual report to be tabled
3.1(9) The Speaker shall lay a copy of the report of the patient advocate before the Legislative Assembly within 15 days of receiving it if the Legislative Assembly is then in session, or if it is not then in session, within 15 days of the beginning of the next session.

[French version]

Il est proposé d'ajouter, après l'article 3, ce qui suit:

PARTIE 1.1

POSTE DE PROTECTEUR DES MALADES MENTAUX

Définition
3.1(1) *Dans la présente partie,* ***"protecteur des malades"*** *s'entend du protecteur des malades mentaux nommé en application du paragraphe (2).*

Nomination du protecteur des malades
3.1(2) *Sur la recommandation du Comité permanent des privilèges et élections de l'Assemblée, le lieutenant-gouverneur en conseil nomme un protecteur des malades.*

Fonctionnaire de l'Assemblée législative
3.1(3) *Le protecteur des malades est un haut fonctionnaire de l'Assemblée législative. Il ne peut être nommé ou élu député de l'Assemblée et ne peut siéger à ce titre.*

Mandat
3.1(4) *Sauf en cas de démission, de décès ou de destitution, le protecteur des malades occupe son poste pendant trois an à compter de la date de sa nomination.*

Destitution ou suspension
3.1(5) *Le lieutenant-gouverneur en conseil destitue le protecteur des malades de ses fonctions ou le suspend à la suite d'une résolution votée par l'Assemblée aux 2/3 des suffrages exprimés.*

Rémunération
3.1(6) *Le protecteur des malades reçoit la rémunération que fixe le lieutenant-gouverneur en conseil et qui est payée sur le Trésor.*

Frais
3.1(7) *Le Protecteur des malades a droit au remboursement des frais qu'il fait dans l'exercice de ses fonctions, qu'il s'agisse de frais de déplacement ou de frais divers.*

Fonctions du protecteur des malades
3.1(8) *Le protecteur des malades:*

a) étudie les plantes qu'il reçoit et procède à des enquêtes sur celles-ci relativement:

(i) aux persons qui reçoivent ou peuvent avoir le droit de recevoir des services, des traitements ou des soins et une surveillance en vertu de la présente loi,

(ii) aux services, aux traitements ou aux soins et à la surveillance fournis aux personnes ou auxquels celles-ci ont accès en vertu de la présente loi;

b) conseille le ministre relativement:

(i) aux personnes qui reçoivent ou qui ont le droit de recevoir des services, des traitements ou des soins et une surveillance en vertu de al présente loi;

(ii) aux services, aux traitements ou aux soins et à la surveillance fournis aux personnes ou auxquels celles-ci ont accès en vertu de la présente loi;

c) établit un rapport annuel relativement à l'exercice de ses fonctions et le présente au président de l'Assemblée.

Dépôt du rapport par le président de l'Assemblée
3.1(9) *Le président dépose une copie du rapport annuel du protecteur des malades auprès de l'Assemblée législative dans les 15 premiers jours de séance suivant sa réception.*

* (2120)

Mr. Chairperson: Mr. Chomiak, I have to advise the committee that this amendment is out of order as it causes government to spend money, and therefore the

committee cannot deal with this amendment. I would advise all committee members, when you are proposing amendments, make sure that you are not spending government money because the committee simply cannot deal with those kind of amendments.

Mr. Tim Sale (Crescentwood): Mr. Chairperson, I believe with the unanimous consent of the committee, that this amendment could be considered. It seems to me that would be both a very gracious and appropriate thing for the committee to do simply because, and I will be very brief, virtually every presentation that was made opposing the certificate of leave provisions, which are the mainly controversial portions of this act, were done on the basis of the concern that there was not adequate advocacy provided for in the act. I am relatively certain, although we will not know till the clause passes, that the government intends to force the provisions on certificate of leave through.

I think they would do a great deal to reassure the community if they would accept what I think is widely accepted in many areas of acts that deal with vulnerable persons, the need for a statutory advocacy function. So I would ask that the committee do the, I think, right and the gracious thing and allow this amendment to be debated, Mr. Chairperson.

Mr. Chairperson: Mr. Sale is absolutely correct that there is a provision that would allow, under unanimous consent of the committee, to deal with this amendment. So I would ask the committee whether there is unanimous consent.

Some Honourable Members: No.

Mr. Praznik: I appreciate the amendment moved by the member for Kildonan (Mr. Chomiak). It is certainly an area that is worthy of consideration. I do not for one moment want to simply just dismiss it out of hand. It is an area that throughout the committee presentations I have had a chance to give some consideration to. We should, though, put it in the context that currently within the operation of the system, there are already many organizations or individuals who advocate on behalf of–

An Honourable Member: None of them are rightful.

Mr. Praznik: Well, the member says none of them are rightful. The Canadian Mental Health Association plays that role. Individual family members play that role as well as other health care providers. What I am prepared to indicate to the committee today is that I am certainly prepared to look at this whole area. It is not an area that came to me as part of this particular statute that we have looked at before in great detail, although there was some discussion in the review process. It would take some effort to figure out exactly how we would set it up, how we would fund it, what the role and relationships would be.

So I would indicate to the committee today that although we are not prepared to accept this amendment, at this time it is certainly an area that I am prepared to explore further. If it is an area that cabinet feels we should endeavour to put into place, that there is a demonstrated need for this service, and although we had presenters say they would like to see it, we have not had examples necessarily brought to our attention where such a role could have been useful or would have had an effect on patient care. But I am prepared to explore that, so at this time we will not accept this amendment, but I am prepared to look at this, and, if there is a justification and a demonstrated justification for this, I would be prepared to come back at another time with an amendment to this act that would be thought out and have the resources in place within the budget to be able to address that issue.

Mr. Gary Kowalski (The Maples): Not being a member of the committee, of course I cannot bring forward an amendment, it is my understanding. But one way that this amendment might have been able to work, and please correct me if I am not accurate, is that we have the office of the Ombudsman. If we put an amendment that directed to the Ombudsman to do certain duties, we would not be asking for an expenditure of money from the government. If I had the power to put forward an amendment, that is how I would change what has been brought forward from the member for Kildonan (Mr. Chomiak), by asking the same things to be accomplished. Directing the Ombudsman to be that advocate I think would be a way to achieve the goals, the very laudable goals that the member for Kildonan has tried to achieve by bringing forward this amendment.

Mr. Praznik: Mr. Chair, an excellent suggestion, again one of the things that would require more exploration than we can do tonight. But I am advised that the Ombudsman's authority does extend into provincial government-run institutions and facilities such as Selkirk Mental Health Centre. The question is: does that extend to provincial hospitals where we have psychiatric facilities?

Certainly by way of policy, I would not have an objection to the advice of the Ombudsman in those particular areas, and, given the fact that many now have evolved into the regional health authorities, which are a provincial agency, it is even arguable that that authority extends, so I am certainly prepared to have a look at that and I appreciate the advice of the committee in this matter.

Ms. Diane McGifford (Osborne): Mr. Chair, I want to speak in support of the member for Kildonan's amendment and speak strongly for the importance of a patient advocate. I know the minister used the expression "demonstrated need" and certainly public presentation after public presentation suggested that the public feel that there is a demonstrated need for a patient advocate.

The member for Crescentwood (Mr. Sale) pointed out that the organizations and individuals that the minister listed are not rightful advocates, by which he means of course that they do not have the right to advocate. Of course, they can and do advocate but they do not have the right. This would be a person who has the right to advocate and therefore it is extremely important.

However, I gather from the minister's remarks he is not prepared to entertain this amendment this evening. We are, however, very pleased–I should speak for myself at this point and say I am very pleased that the minister has made a commitment on the record to look at this situation and to reconsider and perhaps amend the act himself at a later date to include a patient advocate, and we will certainly keep him to it.

Mr. Chairperson: I just want to remind committee members that once an amendment or an item has been ruled out of order, it is improper to speak to the item that is not on the agenda anymore, so I would–

An Honourable Member: Leave.

Mr. Chairperson: The minister says "leave," and that is why I allowed the comments to be made because I want to give leeway, but if parliamentary procedure were followed, I would have ruled it out of order and not allowed the discussion to take place. I just want you to know that.

Clause 3 to Clause 26.

Mr. Chomiak: Mr. Chairman, I have several questions within the context of these subsections. My first question is that under the subsection 15, that is 15(1) through 15–pardon me. Yes, it is 15(1). Under this subsection, do I understand it correctly and what will policy be with respect to a peace officer taking someone into custody? As I read this section, the peace officer can accompany the individual to the institution, and at that point can transfer their authority to another peace officer in the institution. If my reading is correct, does that therefore mean that the police can now accompany someone to the institution and give the accompaniment of that individual to another peace officer within the institution, presumably a security guard or some other individual, a person hired for that purpose? Is my understanding correct?

Mr. Praznik: Yes, Mr. Chair, I understand that is a change as to what was in the old act where it required that particular peace officer to remain here. Perhaps he has had the same concern expressed to him as I have from various police forces, that this was tying up a great deal of time by officers who had to remain at Health Sciences Centre or elsewhere. This would then allow a dedicated peace officer, whether it be a security so authorized as a peace officer, to then take charge of those who are waiting for examination. That will free the officer who is on duty for street service in essence to return to duty. So it is a much more practical way to manage this, and I know there have been complaints from the police services about time allotted to this particular function, so this will address that.

Mr. Chomiak: There is no definition in the definition section of the act as to what constitutes a peace officer. Do we have a definition or a description of what constitutes a peace officer for the purposes of this act?

Mr. Praznik: Mr. Chair, I believe it is covered in the definitions section of The Interpretation Act: peace officer includes (a) mayor, reeve, sheriff, deputy sheriff, sheriff's officer, and a justice of the peace; (b) a warden, deputy warden, instructor, keeper, jailer, and a guard of a penitentiary, jail, a detention home. It goes on: a police officer, police constable, constable, bailiff, bailiff's officer, and any other person employed for the preservation of the maintenance of the public peace or for the service or exclusion of civil process; (d) a member of the Royal Canadian Mounted Police or (e) a person appointed under any act for the enforcement of that act.

So it ultimately does have to be someone authorized by government. It could not just be a security officer appointed from a private firm. So, given the fact that these facilities are all public facilities operated by regional health authorities, part of their mandate will be to put in place an appropriate person to be appointed as a peace officer and to carry out that responsibility, but it allows for, I think, a much better flow of peace officers' time, police officers' time.

* (2130)

Mr. Chomiak: I do not disagree, and I thank you for the clarification. The minister is then saying that each institution will be responsible for the appointment of individuals designated as peace officers. Do I understand that correctly for purposes of maintenance of this act?

Mr. Praznik: Mr. Chair, it will depend obviously on which facility and the need for that appointment, because there may be times when the police officer who comes in with the person–it might be a very rare occurrence. So it becomes an administrative matter, but the appointment or designation of peace officer has to come through government ultimately, not through an individual facility. Those will be be arrangements that will have to be worked out.

Mr. Chomiak: That does have interesting implications insofar as traditionally execution of the act has been via a police officer. It then makes for an interesting scenario where execution of the act could be done by individual or individuals designated by the regional health authority or by the hospital, which would be a total change of regime. Now I do not know if that has been thought through, but that does make for an interesting change in policy.

Mr. Kowalski: As I understand that section, the peace officer still takes the person into custody. It is just in the safe custody of the person once they are delivered to the institution is my understanding. Speaking as a peace officer myself, I know that this is something that I congratulate the department for, but having said that, I still have some concerns about the application of this. I would have liked the wording somehow to be altered, because what I am concerned about, if, when you read the qualifications to be a peace officer, I can think of many instances where you bring someone into the hospital and the Health Sciences Centre, whatever, you know, on a very busy night, it is going to take a long time before they get the resident psychiatrist there, so you are looking sometimes four to six hours.

Now the hospital has budgetary concerns too. They may ask the police who, in their opinion, do not want to turn that patient over to someone who is incapable of looking after them safely. At one time actually I had a private member's bill drafted that I have never brought forward, and it specified a capable person, because I could see what could happen. If you had someone that has been violent out in the community, and then the hospital says: well, just leave him here with so-and-so. So-and-so could be someone or, as you read, it could be the reeve of the municipality in some rural hospital, someone who is not capable. So, again, I congratulate the drafters of this for helping remedy this. This is something that the police community has been looking forward to for some time; that and also in the following section, 15(2), where it says the physician conducting the examination can advise the peace officer that, well, there is no necessity for anyone to guard the patient, just leave him in that room

I have had doctors tell me that before this:. you do not have to stick around. I declined, and thank God I did because those people have become agitated and would have been a danger to themselves and others, even against the advice of a medical doctor at times in very busy emergency wards. So, although, as I said, this is a big step forward, I think there is room for improvement here. Just because someone is a peace officer as defined by the definition that the minister has

just read, an older reeve of a municipality is a peace officer, but is he capable of looking after a mental patient, so I am concerned.

Mr. Praznik: Mr. Chair, a practical matter of this is the old act authorized a peace officer, the same definition. Now it allows for that peace officer to turn the person over to another peace officer at the facility. I have just been informed that HSC was doing a pilot project in anticipation of this bill where it has worked quite well, where they have had a dedicated individual who has been authorized as a peace officer to take custody at the facility and thereby free up the officer, which probably means that that person will be there on site and deal with the kind of problem that the member has identified from his own experience where the psychiatrist says you can leave, and it turns out that it was perhaps the wrong decision. At least, under this regime, there would be someone there to deal with it. So it does allow for a little bit, I think, better use of time.

As I said, the definition of peace officer has always been in place, and I think it has been a rare moment if we had a reeve or somebody bring in a particular individual, none that anyone can recall. Practical matter is that it has been police officers who have carried this out.

Mr. Chairperson: Thank you very much. Item 3.

Mr. Chomiak: Mr. Chairperson, I would like to ask the minister, with respect to subsections 3 through to 26, whether there is any significant change in existing regime vis-a-vis voluntary versus involuntary, et cetera, in terms of patients. He might outline for us if in fact that is the case.

Mr. Praznik: My staff, who have worked through this both from the policy side and from the legislative drafting side, advise me that there would be no changes that would meet the qualifications outlined by the member.

Mr. Chomiak: Mr. Chairperson, just to alert the minister and the staff. As we go through this, because it is a rewrite of a pre-existing act, I would appreciate if we could be highlighted as to any significant change in terms of actual practice in principle vis-a-vis the previous act just so that we are made aware of that as we proceed through these subsections.

Mr. Praznik: If we could perhaps do this on a page-by-page basis.

An Honourable Member: Agreed.

Mr. Praznik: It will then give our staff just a chance to find–and that is an excellent suggestion.

Mr. Chairperson: Item 3–pass; Clauses 4(1) to 5(3)–pass; Clauses 6(1) to 6(3)–pass; Clauses 7 to 8(1)–pass; Clauses 8(2) to 9(1)–pass; Clauses 9(2) to 11(1)–pass; Clauses 11(2) to 12(1)–pass; Clauses 12(2) to 14–pass; Clauses 15(1) to 16(1)–pass; Clauses 16(2) to 17(1)–pass; Clauses 17(2) to 19–pass; Clauses 20(1) to 21(3)–pass; Clauses 21(4) to 23(2)–pass; Clauses 24(1) to 24(3)–pass; Clauses 25(1) to 25(2)–pass.

Clauses 26 to 27(2).

Mr. Praznik: Mr. Chair, I have an amendment to 27(6), I guess it is. We could pass that page and move on to the next.

Mr. Chairperson: Clauses 26 to 27(2)–pass.

Clauses 27(3) to 27(5). Shall the items pass?

Mr. Praznik: Mr. Chair, I would move

THAT section 27 be amended

(a) in subsection (5), by striking out everything after "the physician shall" and substituting "file with the medical director a statement of his or her opinion, with reasons, that the patient has regained the competence to make treatment decisions.";

(b) by adding the following after subsection (5):

Notice

27(6) On receiving a statement under subsection (5), the medical director shall, if satisfied that the physician's opinion is supported by the reasons given, cancel the certificate and notify the patient and the

person authorized to make treatment decisions on the patient's behalf under subsection 28(1) of the cancellation.

(c) by renumbering subsection (6) as subsection (7).

[French version]

Il est proposé que l'article 27 du projet de loi soit amendé :

a) dans le paragraphe (5), par substitution, au passage qui suit "dans l'affirmative,", de "il dépose auprès du directeur médical une déclaration contenant son avis motivé ";

b) par adjonction, après le paragraphe (5), de ce qui suit :

Avis
27(6) *S'il est convaincu que les motifs donnés appuient l'avis du médecin, le directeur médical doit, dès réception de la déclaration, annuler le certificat et en aviser le malade et la personne autorisée à prendre au nom de celui-ci des décisions liées au traitement en vertu du paragraphe 28(1).*

c) par substitution, au numéro de paragraphe (6), du numéro (7).

Motion presented.

Mr. Chairperson: Amendment–pass; Clauses 27(3) to 27(4)–pass; Clause 27(5) as amended–pass.

Mr. Praznik: Mr. Chair, just to go back a second as we are whipping through a large bill, I am advised that 28–

Mr. Chairperson: We are not there yet, Mr. Minister.

Clause 27(6) as amended–pass.

Clause 28(1).

Mr. Praznik: Mr. Chair, a new section to this act would be: "28(1)(b) if there is no proxy, the patient's committee of both property and personal care appointed under subsection 75(2);"

So that is a new addition.

* (2140)

Mr. Chairperson: Okay. Clause 28(1)–pass; Clauses 28(2) to 28(4)–pass.

Clause 28(5) to 28(7). Shall the item pass?

Mr. Praznik: No. Mr. Chair, 28(7), I have an amendment.

Mr. Chairperson: Well, then let us pass Clause 28(5) to 28(6)–pass.

Now, 28(7), an amendment.

Mr. Praznik: Mr. Chair, I would move

THAT subsection 28(7) be struck out and the following substituted:

Reasonable inquiries
28(7) If a physician acting on a treatment decision makes reasonable inquiries within a 72-hour period for persons entitled to make the decision, that physician is not liable for failure to request the decision from the person entitled to make the decision on the patient's behalf.

[French version]

Il est proposé de remplacer le paragraphe 28(7) du projet de loi par ce qui suit :

Recherches sérieuses
28(7) *Le médecin qui donne suite à une décision liée au traitement et qui fait des recherches sérieuses au cours d'une période de 72 heures afin de trouver la personne qui a le droit de prendre cette décision au nom du malade ne peut être tenu responsable d'avoir omis de demander à cette personne de prendre la décision en question.*

Motion presented.

Mr. Praznik: Mr. Chair, this is, I think, one of the suggestions Mr. Henteleff made in his presentation that

we thought we could accommodate and improve the wording on the act.

Mr. Chairperson: Amendment–pass; Clause 28(7) as amended–pass. Clause 28(8)–pass; Clauses 29(1) to 29(4)–pass; Clauses 29(5) to 30(1)–pass; Clauses 30(2) to 30(6)–pass.

Clause 31(1).

Mr. Praznik: Mr. Chair, I am just flagging for members of the committee that Section 31(1) is a new provision of the act. The whole Section 31 is a new provision.

Mr. Chairperson: Clauses 31(1) to 31(3)–pass; Clauses 32(1) to 33(1)–pass; Clauses 33(2) to 34(2)–pass; Clauses 34(3) to 34(7)–pass; Clauses 35(1) to 35(4)–pass; Clause 35(5)–pass; Clause 35(6). I am sorry, there is no 35(6) here. It is an addition?

Mr. Praznik: Mr. Chair, again, coming out of committee presentations, I would move

THAT the following is added after subsection 35(5):

No fee
35(6) No fee shall be charged in connection with a request for a correction made under this section.

[French version]

Il est proposé d'ajouter, après le paragraphe 35(5) du projet de loi; ce qui suit:

Droit
35(6) *Aucun droit n'est exigé relativement à la demande de correction du dossier médical.*

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is accordingly passed. That means that there will now be a 35(6) which will pass. Clauses 36(1) to 36(2)–pass; Clauses 36(3) to 36(5)–pass; Clauses 37(1) to 37(5)–pass.

Clause 38(1).

Mr. Praznik: Mr. Chair, my staff are just flagging with me that under Section 36 the confidentiality requirements have been updated to the new Personal Health Information Act.

Mr. Chairperson: Clauses 38(1) to 39–pass.

Clauses 40(1) to 40(4). Shall the item pass?

Mr. Chomiak: I have a question. Although this section, I believe, is present in the present act, do I understand it correctly that, when a person is incompetent to manage their property, the Public Trustee automatically receives the right of committeeship subject to the person's nearest relative applying to the court to change that particular order?

Mr. Praznik: Mr. Chair, I am advised that if incompetence is found and the appropriate order is signed by the physician under the act, then the Public Trustee is automatically appointed the committee until replaced by, I imagine, another order of a court that would identify a relative as the person to step in to manage the affairs. This way there would be at least a continuum of responsibility for the affairs of the individual.

Mr. Chomiak: So the policy reason is to have the continuity. I recognize the issue of the continuity, the legal issue, but do I understand it correctly that the nearest relative or some other individual who wishes to have a committeeship must apply to the Court of Queen's Bench to do so after the Public Trustee has already received the order of committeeship? Is that the correct understanding?

Mr. Praznik: Yes, Mr. Chair, I am advised that is the case.

Mr. Chomiak: I guess the policy issue I do not understand is–and I recognize that a physician is not responsible for these types of inquiries–why inquiries are not made in the initial instance to determine whether or not there was someone who could take over committeeship of the property so that the relatives do not have to go through the legal procedures to do so after the committeeship is already issued, a Public Trustee?

Mr. Praznik: Mr. Chair, it has been pointed out to me that under Section 40(2)(c), and I believe that is page 38, it says that the things that must be taken into account by the physician are the arrangements known to the physician and patient being made while competent for his management and whether or not decisions need be made on the patient's behalf about that property, so that if the physician is aware of that, then they have an obligation to inform the relatives of what has gone on, and then the relatives can take the appropriate steps to secure their authority. But what this does do is assume or does create the legal situation where, upon that person being committed for treatment, that immediately are found incompetent, that which I guess is the correct terminology, that then there is somebody to bear that responsibility while the other is being sorted out.

I am sure the member from constituency experience will note that sometimes there can be a void there and there can be a number of people who claim to have that right and a period of time we would not want to see a vacuum created, a legal vacuum, particularly if there was property that required immediate attention. So this is one way of ensuring that there is an automatic responsibility to the public trustee, and, if that person has signed that responsibility to someone else, they, as quickly as they can get to court to make their case and provide their documentation, will take over the affairs of that individual. So I cannot think of another way to ensure in every case that there is a legal responsibility that survives the recognition of the competency or lack of competency on the part of that individual.

Mr. Chomiak: I thank the minister for that explanation. Just before we go any further, is there leave to revert to subsection (2) for me to ask a question or two?

Mr. Chairperson: Proceed.

Mr. Chomiak: Thank you, and I thank the committee. I apologize. I had wanted to ask about the policy decision with respect to moving the mental age of competence down from 18 to 16, and I wondered if the minister might want to comment on that.

Mr. Praznik: I understand that that is consistent with the policy decisions that were made in The Health Care Directives Act as well as The Child and Family Services Act. So in both of those statutes we recognize legal competency at the age of 16. So it was felt to be consistent on a public policy basis that we do the same in this act as well.

Mr. Chomiak: Mr. Chairperson, have most other jurisdictions moved to that age as well? Is there any knowledge of that?

* (2150)

Mr. Praznik: I understand Ontario has. I am advised that Ontario has. I do not know if other jurisdictions have moved in that direction.

Mr. Chomiak: So effectively what the act will do is determine that someone who has reached the age of 16 will therefore have the right to make treatment decisions and all the related decisions and have their mental competence determined irrespective of their guardians. Is that correct?

Mr. Praznik: Mr. Chair, I understand that it is a presumption only, always in the absence of evidence to the contrary. So again, as has been pointed out to me, some 17-year-olds may not have capacity. So it is a presumption of having capacity that can be thwarted by evidence to the contrary. I just refer to the member, in the absence of evidence to the contrary, it shall be presumed that a person who is 16 years of age or more is mentally competent to make treatment decisions and to consent for the purpose of the act and that a person who is under 16 years of age is not mentally competent to make treatment decisions or to consent for the purposes of the act, but again it is a presumption, so evidence to the contrary. Certainly if one had a child or an individual who, I do not know what would be a good example, but if that individual was mentally ill, found incompetent on examination, then obviously there would be evidence to the contrary that they can make those treatment decisions.

Mr. Chomiak: I am just querying out loud, thinking out loud about the Young Offenders Act is actually, adulthood is at 18. The Vulnerable Persons Act–what is the cut-off age in The Vulnerable Persons Act? Do we know?

Mr. Praznik: Mr. Chair, my staff are looking; they believe it is 18. Again, on this point, it has been pointed out to me that in the vulnerable persons legislation there are other issues involved regarding ability because of retardation and other things that would be the case, but the recommendation of our committee that reviewed this act was that 16 was the age at which to make that presumption, lacking evidence to the contrary, and there was a consistency with The Health Care Directives Act, Child and Family Services, which deals with these. Perhaps it is part of a growing movement to recognize the ability of older youths to make decisions respecting their health and welfare.

Mr. Chomiak: The only reason I flag it and raise it and query around it is that I think the implications of this have been lost actually in the review of the total bill. This is relatively significant and, I would suggest, will require that any part of a public information campaign respecting this ought to be considered in this regard because it does have profound policy implications for individuals involved and not involved in the system and the decisions they make and the way they approach treatment, et cetera.

Mr. Praznik: Mr. Chair, the member's point is an excellent one, and I am having my staff note that to ensure that is something we flag in the publicity surrounding this legislation.

Mr. Chairperson: Clause 40(1) to 40(4)–pass; 41(1) to 42–pass.

Clause 43.

Mr. Praznik: Mr. Chair, I would move

THAT section 43 be amended

(a) by renumbering it as subsection 43(1);

(b) by striking out everything after "the physician shall" and substituting "file with the medical director a statement of his or her opinion, with reasons, that the patient has regained the competence to manage his or her property."; and

(c) by adding the following as subsection 43(2):

Notice
43(2) On receiving a statement under subsection (1), the medical director shall, if satisfied that the physician's opinion is supported by the reasons given, cancel the certificate and notify the patient, the patient's nearest relative and the Public Trustee of the cancellation.

[French version]

Il est proposé que l'article 43 du projet de loi soit amendé:

a) par substitution, à son numéro, du numéro de paragraphe 43(1);

b) par substitution, au passage qui suit "Dans l'affirmative,", de "il dépose auprès du directeur médical une déclaration contenant son avis motivé";

c) par adjonction, après le paragraphe (1), de ce qui suit:

Avis
43(2) *S'il est convaincu que les motifs donnés appuient l'avis du médecin, le directeur médical doit, dès réception de la déclaration, annuler le certificat et en aviser le malade, le parent le plus proche de celui-ci et le curateur public.*

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is accordingly passed. Shall the item as amended pass?

Some Honourable Members: Pass.

Mr. Chairperson: Clause 44(1) to 44(3)–pass.

Clauses 45(1) to 46(1).

Mr. Praznik: Just to flag for members opposite, Section 46, the whole leave certificate issue is, in fact, new, and I think we have heard many presentations on those changes, but I flag it.

Mr. Chairperson: Clause 46(1)–pass; 46(2)–pass.

Clause 46(3), there is an amendment.

Mr. Praznik: Mr. Chair, this is one of the amendments actually that came from Mr. Horst Peters out of his presentation here. I move

THAT the following be added after subsection 46(3):

Patient to be informed
46(3.1) The patient's attending psychiatrist shall inform the patient of his or her right to have a representative involved in the development of a treatment plan under Clause 3(a).

[French version]

Il est proposé d'ajouter, après le paragraphe 46(3) du projet de loi, ce qui suit:

Participation d'un représentant à l'élaboration du plan
46(3.1) *Le psychiatre traitant informe le malade du droit de celui-ci de permettre à un représentant de participer à l'élaboration du plan de traitement mentionné à l'alinéa (3)a).*

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is accordingly passed. Clause 46(3)–pass.

Mr. Sale: I want to just put briefly on the record the concern in regard to this section that I flagged earlier. I think a case can be made that certificate of leave provisions are probably an alternative that is an appropriate alternative for a very small number of people. The difficulty I have with this whole section is precisely what we did not do earlier, which was to provide a statutory officer who is an advocate for patients in the system. I am not convinced that the Ombudsman is the appropriate person, because in the area of mental health I think we need a person who is a competent advocate, that is, someone who has knowledge in the field.

I doubt that there are any people around this table or in this room or were in the room when the public hearings were held who have not had some experience with what would be, I think, I do not want to be negative, but what would be experienced as arbitrary, perhaps, insensitive treatment at the hands of the mental health system, an unwillingness to involve family, an unwillingness to share information, often an unwillingness to explain what is happening with various treatments, particularly if there are drugs. I would be surprised if any of us have not seen older people who have been so befuddled by the drugs that have been administered to them that they are sicker from their drugs than they are from the underlying disease, whatever it is, and I think we can all cite those kinds of examples.

So I know the government is going to force this section through, and part of me agrees that there are a very limited number of cases where this is appropriate. But I think all of us, if we did not weep externally, we certainly wept internally to hear the deep conflicts in the testimony before us last week. I do not have confidence that for all of the good intentions and all of the good words about community support services that the government has put in place the kind of exemplary system that would be a safeguard against the abuse of the types of provisions that are implied in a certificate of leave regimen. I know the government intends to do this properly, and I know the minister has no ill will in regard to these services, but I heard no one suggest that we had in place adequate services to say that we could fully support with social, community, socialization services the technical provisions of a certificate of leave regiment.

So I want to just flag for the record that I am uncomfortable with this whole section, not because I think there is no absolute need for it for a very small number, but for all the other reasons that I do not think there is sufficient protection provided for any users of this section whether they be in that very small group or whether the net gets expanded because the certificate of leave provision is there. Unfortunately, medical history and the treatment of people with difficult conditions is replete with examples of inappropriate treatment imposed on people who have no advocate, who are difficult, and we have all known such people.

So I simply want to say I am uncomfortable with this, and I recognize the government is going to force it through. But I would want to say that I hope the minister is absolutely sincere in saying that he will review the need for a formal empowered advocate, not an advocate that depends on the charity of government's

funding or the ability of the volunteer sector to maintain funding, an advocate that is accessible as a matter of right and not simply as a matter of privilege or as a consequence of where the person happens to find themselves ill. If it is in a city where such services exist, that is one thing, and if it is in a community where no such services exist, of course, that is another. So I simply wanted to express my concerns about this section.

* (2200)

Mr. Praznik: Mr. Chair, I would like to make an amendment to the next clause in the sequence. I would move–

Mr. Chairperson: I think I need to deal with one order of business before we get to that clause, and I am not quite sure on the procedure of this. I think we passed an amendment that amended 46(3), which adds a clause to 46(3). So I not sure whether I need to now ask committee whether we pass again 46(3)(1) as amended. Agreed? [agreed]

Now the next is 46(4).

Mr. Praznik: This again is a suggestion made by Mr. Horst Peters in his presentation. So I would move

THAT Clause 46(4)(d) be struck out and the following substituted:

(d) the treatment or care and supervision described in the leave certificate exist in the community and can and will be provided in the community.

[French version]

Il est proposé de remplacer l'alinéa 46(4)d) du projet de loi par ce qui suit:

d) que la traitement ou les soins et la surveillance mentionnés dans le certificat d'autorisation existent au sein de la collectivité, peuvent être assurés dan celle-ci et le seront dans les faits.

I understand this is somewhat close, a little different format, but somewhat similar to the amendment that Mr. Chomiak had proposed moving. But I would so move, Mr. Chair.

Motion presented.

Mr. Chomiak: I thank the minister also for providing me the advance copy of that. As I compare the wording in the minister's amendment to the wording that we had put in our amendment, it is virtually identical. To save the committee time, I concur in the amendment of the minister. The purpose, of course, as was indicated by the member for Crescentwood (Mr. Sale) and was indicated by all of the members that made presentations, was that the certificate of leave should not be a substitute for lack of care. The point of the certificate of leave is to provide the care in the community with flexibility, et cetera. So we have no problem with this amendment and will withdraw the amendment that we had proposed to introduce in this regard.

Mr. Praznik: I just want, for the record, to thank the member for Kildonan and indicate again that the purpose of this is to ensure that whatever treatment or care and supervision is described not only has to exist in the community but it also has to be able to be provided to that individual.

I would not want to be in a situation that for example an individual was required to stay in some sort of community facility while they were on the certificate of leave, the facility exists, but a bed was not available for two weeks. The leave certificate is issued, and the person just automatically is in breach of the certificate because the bed is not available.

I am advised, as a practical matter, that does not happen, or rarely happens. Who knows actually how these things get administered. But I think this makes very clear that those charges, the releasing psychiatrist, you have to actually call and make sure that the service that they are prescribing in the certificate, that that person will be able to leave and go into that upon the commencement of the certificate of leave.

We were very happy to be able to make this amendment, and I appreciate the support from the member for Kildonan.

Mr. Chairperson: Amendment–pass; Clause 46(4) as amended–pass.

Clauses 46(5)-46(7).

Mr. Chomiak: Some very significant points made by presenters in this regard that I think bear scrutiny and bear ultimate review, perhaps one of the reasons that recommendations were made for a review of this bill after it had been in practice for some time, we were struck by the presentations that refer to the fact that condition and treatment plan may change and that issuance of a particular treatment plan could result in someone being forced to be on the treatment plan for a period of six months without necessarily significant change.

The advantage of a co-ordinated, interactive, and aggressive community model like PACT that had been referenced on other occasions is that treatment plans can change without a person being in breach and therefore being forced back into the institution. But one of the points that was made, and it would be nice if there would be some kind of amendment or recommendation in this section of the act, about a possible change to treatment plan or change in drug. The drug status issue is quite significant, because individuals have testified that often a drug did not work, and it was difficult getting a change in prescription or a change in medication during an out-of-institution regime.

So, while we do not have amendments in that regard, we certainly would be derelict if we did not flag that as a major issue raised both at the hearings and something that ought to be considered in the administration of this act.

Mr. Praznik: Mr. Chair, just if I may, I have been trying to listen to the member and talk to my staff. We notice that under Section 47(1) and (2) there is the ability to have the plan reviewed, but, in listening to the member, it was flagged with me what happens that, if in that review, it is not a matter of cancelling the certificate of leave, but ensuring that it be amended. Just asking our legal counsel that that is an omission.

So what we will do, if we could leave this section, I am going to have the staff draft up an amendment on this point. I think it is an important one, although in practice that might, in fact, happen, let us ensure that it is within the law. If we can skip over this particular section, I imagine it would have to be Section 47(2) that would have to be amended to include the provision to either amend the existing certificate or cancel it. We will draft up the amendment.

I just say to the member I was proposing an amendment here that would change the notice notifying the patient to be in writing, not just orally. So, with the member's permission, we will have an appropriate amendment drafted up this section that will do both.

Mr. Chairperson: Mr. Minister, if I understand you correctly, we are going to leave then–are we going to deal with 46(4)? [interjection] That was amended, and now we are to 47(2). I think we are bit ahead of ourselves here. I think we need to deal with items 46(5) to 46(7). Shall the items pass? The items are accordingly passed.

Items 46(8) to 47(1)–pass. We will then leave item 47(2), and then we will deal with item 48(1).

Item 48(1)–pass; item 48(2) to 48(3)–pass; item 49(1) to 49(6).

Mr. Chomiak: Mr. Chairperson, a query of the minister. Are there any new criteria that are subject to the Mental Health Review Board as a result of this act, in general, or are there any new categories or criteria that come under the auspices of the Mental Health Review Board as a result of the amendments to the act?

Mr. Praznik: Mr. Chair, I am advised that Section 50(1), outlining the following applications that may be made, has been rewritten. Well, (c), I understand, was added, as was (e).

Mr. Chairperson: Item 49(1) to 49(6)–pass; item 49(7) to 49(8)–pass; item 50(1) to 50(2)–pass; items 50(3) to 52(4)–pass; items 53(1) to 54(2)–pass; items 55(1) to 56(1)–pass; items 56(2) to 58–pass.

Item 59(1) to 59(4).

Mr. Praznik: Mr. Chair, the order section is also a new one.

Mr. Chairperson: Item 59(1) to 59(4)–pass; item 60(1) to 60(2)–pass; item 60(3) to 60(7)–pass.

Mr. Praznik: Mr. Chair, just to flag, 60(4), 60(5), 60(6) and 60(7) are new provisions.

Mr. Chairperson: Clause 61(1) to 61(5)–pass; 61(6) to 62(3)–pass.

Clause 62(4).

Mr. Praznik: Mr. Chair, 61(7) is also a new provision for emergency orders.

Mr. Chairperson: Clauses 62(4) to 63(2)–pass; 63(3) to 63(6)–pass; 64(1) to 65–pass.

Clauses 66(1) to 67(1).

* (2210)

Mr. Praznik: Again, Mr. Chair, the Public Trustee intervening in an emergency, 64(1), is also a new provision.

Mr. Chairperson: Clauses 66(1) to 67(1)–pass; 67(2) to 67(5)–pass; 67(6) to 67(8)–pass; Clauses 68 and 69–pass.

Mr. Praznik: Mr. Chair, the Committee of Person Outside Manitoba, Sections 68 and 69, are also new.

Mr. Chair, in Sections 70 through 71, we have added the ability for a committee of both property and personal care, recognizing that they are two separate sets of issues.

Mr. Chairperson: Clauses 70 to 71(2)–pass; 71(3) to 72(1)–pass; 72(2) to 73–pass; 74 to 75(3)–pass; 75(4) to 75(8)–pass; 75(9) to 77(1)–pass; 77(2) to 79–pass.

Clauses 80(1) to 81(1).

Mr. Praznik: Just, again, to flag 76(1), 76(2) and 76(3) with respect to number of committees, joint committeeship, alternate committees are also new.

Mr. Chairperson: Clauses 80(1) to 81(1)–pass; 81(2) to 84(2)–pass; 85(1) to 85(3)–pass; 86(1) to 88–pass; 89 to 90(2)–pass; 91 to 93–pass; 94 to 96(2)–pass.

Clauses 97 to 101(1).

Mr. Praznik: Mr. Chair, Sections 94, 95, 96(1) and 96(2) are also additions or new sections.

Mr. Chomiak: Mr. Chairperson, I wonder if the minister can give me the policy reasons as to the inclusion of this particular section providing for the care by the committee of the person and using the less intrusive course of action.

Mr. Praznik: Mr. Chair, I am advised in the work that went on in this particular section that it was premised or based on the changes in this nature that have taken place under The Vulnerable Persons Living with a Mental Disability Act. It would kind of mirror and be in the same vein as that legislation.

Mr. Chairperson: Clauses 97 to 101(1)–pass; 101(2) to 102(1)–pass; Clauses 102(2) to 103(3)–pass; 104(1) to 105–pass; 106(1) to 107–pass; 108 to 110–pass; 111(1) to 113(2)–pass.

Clause 114(1).

Mr. Praznik: Mr. Chair, 109(1) has also been an alteration. The number has been raised to $5,000 from $2,500, and Section 110 was raised from $1,000 to $2,500.

Mr. Chairperson: Clause 114(1) to 114(2)–pass, Clause 115(1)–pass.

Clause 115(2), there is an amendment.

Mr. Praznik: Mr. Chair, I would move

THAT subsection 115(2) be struck out and the following substituted:

Authority of medical director
115(2) The medical director of a facility has responsibility for the provision and direction of psychiatric services for that facility, and may

(a) admit and detain mentally disordered persons for examination and treatment in the facility;

(b) consult with any medical and other experts that he or she considers advisable concerning patients in the facility;

(c) unless otherwise directed by the director, refuse to admit or detain any person as a voluntary patient;

(d) delegate to any suitably qualified person any of the medical director's powers, duties or functions under this Act.

[French version]

Il est proposé que le paragraphe 115(2) du projet de loi soit remplacé par ce qui suit :

Pouvoir du directeur médical
115(2) *Le directeur médical d'un établissement est responsable de la prestation et de la direction des services psychiatriques dans l'établissement en question et peut :*

a) y admettre et y détenir, aux fins d'examen et de traitement, des personnes ayant des troubles mentaux;

b) consulter les spécialistes qu'il estime indiqués, notamment dans le domaine de la médecine, au sujet des malades de l'établissement;

c) sauf ordre contraire du directeur, refuser d'admettre ou de détenir une personne à titre de malade en cure volontaire;

d) déléguer à toute personne compétente les attributions que lui confère la présente loi.

Motion presented.

Mr. Chomiak: Mr. Chairperson, in subsection 114(2), the authority of the director of psychiatric services, the powers are laid out. The difference in this section is that the director of psychiatric services is not always the medical director, I assume, because the definition section says medical director means the psychiatrist responsible, so that is why the additional powers have now been allocated to the medical director.

Mr. Praznik: Mr. Chair, exactly. The whole point was to make it much more clear.

Mr. Sale: I think it is the same question. I am not sure I heard my honourable colleague's question to the minister, Mr. Chair. I read medical director to be a psychiatrist, which means a medical doctor, and yet he or she can delegate any of the powers. Presumably, there are some powers that could only be delegated to another doctor, given that a doctor has certain powers that are reserved only to someone who is a qualified medical practitioner. So, when you are talking about delegating, are we talking about powers that here can be appropriately delegated to nonmedical personnel? Is that what we are looking at here?

Mr. Praznik: Mr. Chair, the duties have to be delegated to a person capable of fulfilling those responsibilities. If the medical requirements are there, I am advised that would have to be the case. [interjection] I am advised that the act is also very clear on what medical doctors and psychiatrists can and cannot do. So, if one would make the argument–and I appreciate the case the member is making–that if you have the power to delegate it to anyone, can they carry it out? Well, the act would prevent a nonpsychiatrist from doing work that the act says a psychiatrist has to do. So you could not delegate work that would require a psychiatrist to somebody who was not one. The act clearly defines those roles in other sections of the act.

Mr. Chairperson: Thank you very much. Shall the–Mr. Sale. Sorry about that.

Mr. Sale: Just to be absolutely clear, Mr. Chairperson, the term "suitably qualified" has some meaning in law then that protects the situation, because I would simply give the minister the analogy that in some of our largest hospitals there is no more a director of nursing. That position has been eliminated, and many of us, I think, have been concerned about the diminution of a role which used to have a very particular meaning. I was simply concerned here that "suitably qualified" did not have the kind of tight meaning that could prevent a similar kind of de-skilling of what I think is a very important function.

Mr. Chairperson: Thank you. Shall the amendment pass? The amendment is accordingly passed. Clause 115(2), as amended–pass.

Clauses 116 to 117(2)–pass; Clauses 118 to 120–pass; Clauses 121 to 125(1)–pass; Clause 125(2). I think there is an amendment on 125(1), right?

An Honourable Member: There is.

Mr. Chairperson: Then consider 124 passed.

Mr. Praznik: Mr. Chair, I would move

THAT section 125(1)(g) is amended by adding "accuracy," before "retention".

[French version]

Il est proposé d'amender l'alinéa 125(1)g) du projet de loi par adjonction, après "concernant", de "l'exactitude,".

Motion presented.

Mr. Chairperson: Item 125(1) as amended–pass. Now I want to go back to 121 to 124–pass. Just to do away with the confusion. Clause 125(2)–pass; Clauses 126(1) to 127–pass; Clauses 128 to 129–pass; 130 to 132(3)–pass; Clauses 132(4) to 134(4)–pass; Clauses 135 to 140–pass.

* (2220)

Mr. Chomiak: We are proposing an amendment. I move, seconded by the member for Osborne (Ms. McGifford),

THAT the Bill be amended

(a) by amending the centered heading before section 138 by adding "REVIEW," before"REPEAL"; and

(b) by adding the following before section 138:

Review of this Act

137.1 Within one year after this Act comes into force, the minister shall undertake a comprehensive review of the operation of the Act that involves public representations and shall, within 90 days after the review is undertaken or within such further time as the Legislative Assembly may allow, submit a report on the review to the Assembly.

[French version]

Il est proposé d'amender le projet de loi:

a) par adjonction, dans l'intertitre qui précède l'article 138, de "RÉVISION,", avant "ABROGATION";

b) par adjonction, avant l'article 138, de ce qui suit:

Révision

137.1 *Le ministre procède à une révision complète de la présente loi dans l'année qui suit son entrée en vigueur; à cette occasion, il permet au public de présenter des observations. De plus, il présente à l'Assemblée législative un rapport sur ses travaux dans un délai de 90 jours suivant leur début ou dans le délai supplémentaire que lui accorde l'Assemblée.*

Motion presented.

Mr. Chomiak: This recommendation came from a presentation that had been made. If one reflects on the difficult issues and the very difficult points made at the hearings, one may be inclined not to revisit this issue, but in fact that is probably the very reason for revisiting the issue. I think it behooves us, given the controversial nature and the difficult, difficult questions that flow from this act and the very real issues, that this is one very concrete example of an issue where the operations of the act ought to be formally reviewed for scrutiny and for possible change, improvement or maintaining the new status quo.

That is why we proposed this particular provision. It came as a result of presentation made. It seems like a reasonable request given the nature and the history of this act. It certainly would allow for an opportunity to both statistically and otherwise analyze the ramifications of this act after a year of operation, after the bill has been in effect, so on that basis we are making this proposal to the committee.

Mr. Praznik: Mr. Chair, I very much appreciate the desire of the member for Kildonan in having a review of the act. In talking with some of my people, I understand that they would feel that a one-year period would probably be too early in which to do that. I will indicate to him, particularly the concerns that we saw around some, around the certificate of leave provisions, that we will have opportunity to know in Estimates and the discussion of my area to discuss how many certificates of leave were issued, what has been our experience certainly in that area. I have no difficulty in endeavouring to have that discussion and provide that information when we reach Estimates next year, which will be somewhat less than a year. If we see some significant problems starting to arise, then certainly a more formal review of the act may require it. At this particular time, I do not think enshrining in legislation is necessary, but I appreciate where the member for Kildonan is coming from on this point.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment lost. By division?

An Honourable Member: On division.

Mr. Chairperson: On division? Agreed? Agreed. Clauses 135 to 140–pass. Now, we should revert to 47(2). Could I ask committee whether we want to, while we are waiting, deal with the other two bills that are still outstanding? Can we do that?

Mr. Praznik: Mr. Chair, as Minister of Health, perhaps a five-minute break for those who require some healthy lifestyle break or washroom.

Mr. Chairperson: Five minutes.

The committee recessed at 10:21 a.m.

After Recess

The committee resumed at 10:29 a.m.

Mr. Chairperson: I call the committee back to order.

Mr. Praznik: Mr. Chair, I am told that the amendment is done. It is just a matter of having it translated. So perhaps we could, while that is being done, go on to some other business and return to this.

Bill 52–The Health Services Insurance Amendment Act

Mr. Chairperson: Could we then go into Bill 52, The Health Services Insurance Amendment Act? Is that agreed? [agreed]

The title will be set aside and the preamble will be set aside as normal. Clauses 1 and 2(1).

Mr. Dave Chomiak (Kildonan): Mr. Chairperson, you have gone up to clause–oh, I see, you are on page 1. I have an amendment that I will be providing on the next page.

Mr. Chairperson: On which clause?

Mr. Chomiak: On Clause 2(5).

Mr. Chairperson: Clauses 1 and 2(1)–pass; Clause 2(2)-2(4)–pass.

2(5).

Mr. Chomiak: Mr. Chairperson, I move, seconded by the member for Thompson (Mr. Ashton),

THAT the proposed definition "surgical facility" in subsection 2(1), as set out in subsection 2(5) of the Bill, be amended by adding "is operated on a not-for-profit basis and" after "that".

[French version]

Il est proposé que la définition de "établissement chirurgical", énoncée u paragraphe 2(5) du projet de loi, soit amendée par adjonction, après "Établissement", de "à but non lucratif".

Motion presented.

Mr. Chomiak: Mr. Chairperson, this was a difficult amendment to make, because our intention was to

clarify that the funding for facilities be provided only to not-for-profit, under the auspices of this act, in keeping in mind with funding that is provided to not-for-profit health care institutions. We are trying to find some consistency so as not to introduce the profit element.

Now, I think this amendment captures the essence of what we are trying to do as well as the spirit of the medicare act in the entire system. Remember, Mr. Chairperson, we are dealing not with tangential services, we are dealing with core services as provided by the act. Further, the amendment that we had to introduce is such that we still do not want to change the goals of the act, which we support, namely not-charging provisions. So whether or not we accomplished that, I believe we did by virtue of the amendment.

We are prepared for any change or any proposal from the minister or the minister's staff to try to change it to achieve our goal, again, the goal being to ensure that we maintain the nonprofit nature of our health care system.

* (2230)

Hon. Darren Praznik (Minister of Health): I share in many ways that same goal. We are not here to amend this particular act to create profit centres in health care. The difficulty here is of course that the surgical facilities now being used, out-of-hospital surgical facilities now being used, for example, the Pan Am Clinic, are they not for profit or are they? I imagine they are, because they are privately owned, as a return on investment, et cetera. What we are attempting to do with this act, as the member has rightly flagged, is to end the practice of facility fees in order to comply with the Canada Health Act.

One of the practical difficulties is, over the next while, in doing so I do not want to lose, as Minister of Health, the number of surgeries that are being performed there today until we have the capacity to do them in our own facilities. So I do require some flexibility here in order to have a smooth transition. It is not our intention in any way to be getting into private hospitals, et cetera. That is not what we are intending to do here. In the interim, of course, I want to make sure we are maintaining. I do not want to do anything that is going to add to waiting lists for any particular area.

So, for a spell at least, we will require the continuation of some of those services in order not to add to waiting lists. If we were to pass this amendment today, we would result in an increase in waiting lists for a number of procedures. That is the real difficulty with it, because those facilities currently account for a certain amount of capacity, not a huge amount, but small. Still, they are capacity in the system.

What I will say to the member is that this bill does not by right establish their access to medical dollars. Just because one has a private health facility does not mean that they are entitled to have, if I read the act correctly, public money for the provision of services. It only happens if we, as the public trustee in essence, agree to purchase a certain amount of space in their facility. So ultimately, the check on this becomes policy of government.

So for a transition period at least, until we have done our reorganization in the Winnipeg system and have that capacity, we will still require some of that private capacity in order not to add to waiting lists. If we accept the amendment proposed by the New Democratic Party, it would mean, likely for a period of time at least, an increase in waiting lists for a number of procedures. So I am not prepared to accept the amendment on that basis, although I think we share the common goal. We both accept a common direction in where health care should be going. In no way have we on this side of the House drafted this in a manner that takes the control away from the public on where dollars will be spent.

But there is a practical need for the short term that must be met, and that is why I would urge the committee to reject this amendment, not necessarily out of principle, but simply out of a practical matter with which we had to deal. We do not want to add, in the short term at least, to our waiting list issues.

Mr. Chairperson: Shall the amendment pass?

Mr. Tim Sale (Crescentwood): Mr. Chairperson, I speak in support of the amendment. I hear nothing but

a wish to go home early tonight in the minister's speech. I do not hear any commitment to phase out for-profit facilities. This is a blanket act that allows any for-profit or not-for-profit facility to be recognized as a centre that can be reimbursed.

Mr. Praznik: Only if we choose to.

Mr. Sale: There is absolutely nothing preventing the government from doing what it so unwisely tried to do with home care, which was to privatize a system in part over time.

I understand the problem that the government has. It has a lack of capacity for all sorts of reasons, largely stemming from public policy. But if the minister thinks that the Pan Am Clinic is going to start receiving billings and be fully reimbursed by government and that it is going to somehow voluntarily go out of business at some point, surely he is naive, Mr. Chairperson.

So I speak in strong support of the amendment and against the minister's, I think, quite vague words. I see no commitment here to move away from for-profit outpatient services. If the minister is indeed supportive of the policy, then let him propose some sunset clause, some phase-in period during which it will be undertaken by government to make sure the supply of services in the not-for-profit sector in our health care system is adequate to the needs of the community. This is a very bad piece of this act, Mr. Chairperson.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Mr. Chairperson: I declare the amendment lost.

An Honourable Member: On division.

Mr. Chairperson: On division. Clause 2(5)–pass; Clauses 3(1)-6–pass.

Clauses 7(1)-8.

Mr. Chomiak: I have a question and I have an amendment that is I think related to my previous amendment but one less hope springs eternal. My question for the minister is: Can he clarify, and I know inadvertently even in his introduction there was some confusion, what precisely are the fees that the minister has designated that cannot be charged in a surgical facility? Because we have different types of fees. There is the traditional tray fees and there is the service fees and there are facility fees, et cetera. So could perhaps the minister clarify for the committee precisely what fees he is referring to in this act?

Mr. Praznik: Mr. Chair, the so-called facility fees that will not be chargeable are as follows: the use of an operating room and anaesthetic facilities including the necessary equipment and supplies, use of an emergency or examining room, necessary nursing services, laboratory, radiological and other diagnostic procedures together with the necessary interpretations, except where payment has been provided under the payments for insured medical services regulation under the act, for the purposes of maintaining health, preventing disease, and assisting in the diagnosis and treatment of any injury, illness, or disability, and services provided by persons who receive remuneration for those services from the hospital.

Mr. Chomiak: Yes, maybe the minister can clarify, but that sounds to me like regulation. Is the minister referring to regulations that are going to be proclaimed when the act is announced, when the act is proclaimed, when the act is ultimately passed?

Mr. Praznik: Ah, yes, Mr. Chair, the eyes and ears of a long-serving critic. Absolutely. That is the draft that is being prepared now for the regulations that will accompany the act.

Mr. Chomiak: Tray fees as we know them, the term "tray fees," will they be prohibited by virtue of these regulations?

Mr. Praznik: Mr. Chair, I am advised, as we work this through that the so-called tray fees, which are for certain supplies, et cetera, that it becomes more complicated because there are a number of physicians who provide these things in their clinics and charge for them in areas not normally covered. So if one gets into that area, then it becomes far more complicated, but the big part of these clinics have been really the facility fees for use of the surgery.

Mr. Chomiak: Yes, just for clarification, the typical story that we have all heard if not once a hundred times, is patient goes into facility, X number of months on waiting list for cataracts, but I will do it next week for $1,000 or $1,100. If we use the figure, is the minister saying that by virtue of this act that it will be prohibited from that facility to charge the $1,000 for that procedure unless the individual can get around it by virtue of saying that it is supplies and services, which is unlikely and goes back to traditional tray fees. Can it be basically be assumed that the thousand-dollar fee will no longer be charged?

Mr. Praznik: Mr. Chair, the member asks an excellent question. Yes, if there were supply issues in there that would not be covered by the proposed regulation, they can still be charged, but–important but here–if that facility is going to be able to do the procedures, they would now be illegal unless they were authorized by us in that facility. We would not be paying for the services. The scheme that we in essence use is that physicians doing them there would no longer be covered by medicare.

An Honourable Member: Right, they could still do it.

Mr. Praznik: Right, but they would not be covered by medicare which is the traditional power. Having said that, if they want to still do them, they have to negotiate an agreement if they are still going to be an insured service. They have to negotiate an agreement with us. So I can tell the member plain common sense because I know the member would certainly raise the point in the House. If a thousand or $1,100 facility fee became an $1,100 tray fee, I can tell the member we will not be negotiating with that facility for the use of their services.

* (2240)

Mr. Chomiak: One of the issues that we have raised with regard to this is the whole issue–and I know we can get into a long debate about this–but in theory the difficulty of moving surgeries from one facility to another and one facility effectively, by volume–we will use the word "creaming"–creaming the best. Is there going to be any kind of formula or ratio, because that is a very real problem? We certainly have seen that problem occur in the lab industry. The minister has a report, the Bass report, that indicated that certain private labs were "creaming" the best services to the detriment of public labs. Is there any kind of ratio or any kind of analysis or protection going to be provided to ensure that that does not happen?

Mr. Praznik: That is something we are going to work with the regional health authorities that are involved here, with, certainly, the Winnipeg Hospital Authority, because in essence that is work and dollars for work that, hopefully, will be able to be accommodated in their system over time. So I appreciate where the member is coming from. The dilemma, as I know he appreciates today, is that there is a certain volume, not a large volume, but a certain volume of work being done in these facilities. We are attempting to bring down waiting lists, reorganizing our surgery program in the a city of Winnipeg. For the next while, at least, I would not want to add to waiting lists by losing that capacity, but, obviously, as part of these agreements, there has to be some divvying up of that workload on a fair basis, so it is not just siphoning off the "cream," as the member would say. So we are giving some thought as to how we are doing that now, and that will be a task for our people over the summer with the Winnipeg Hospital Authority to put into place.

Mr. Chomiak: Final question, I believe. Does the minister have data and statistics with respect to the number of procedures that take place? If he does have that, would he be prepared to share that with the committee?

Mr. Praznik: I am going to have my staff see what we can gather to put together for the member.

Mr. Chomiak: I move, seconded by the member for Transcona (Mr. Reid),

THAT the proposed subsection 48(3), as set out in subsection 7(2) of the Bill, be struck out and the following substituted:

No charge for out-patient services
48(3) No person shall make any charge to an insured person for or in relation to providing out-patient services to the person in a surgical facility, whether or not that facility is operated on a not-for-profit basis or otherwise.

[French version]

Il est proposé que le paragraphe 48(3), énoncé au paragraphe 7(2) du projet de loi, soit remplacé par ce qui suit:

Interdiction de facturer les soins en consultation externe
48(3) *Il est interdit d'imposer des frais à l'assuré pour les soins en consultation externe qui lui sont fournis dans un établissement chirurgical ou pour les soins connexes, qu'il s'agisse ou non d'un établissement à but non lucratif ou autre.*

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Mr. Chairperson: I declare the amendment defeated on division.

Items 7(1) to 11–pass; items 12 to 13–pass; items 14 to 16(2)–pass; title-pass; preamble–pass. Bill be reported.

Clause 47(2) of Bill 35. I have been advised, Mr. Minister, that we have to go back to 47(1), so we will, with the permission of the committee, go back to 47(1).

Mr. Praznik: Mr. Chair, there are two changes that we, I think, had indication from the committee we wanted to meet. One was the one we were going to move with respect to having this notification in writing, which was important; it came out of presenters. And the second is to allow for the amendment of a certificate of leave in midcourse should treatment patterns change. This has resulted in a need, I am told, for three amendments.

The first one, and I would move

THAT subsection 47(1) be amended by striking out everything after "psychiatrist shall" and substituting the following:

(a) review the patient's condition to determine if the criteria set out in clauses 46(4)(a) and (b) continue to be met; or

(b) review the requirements for treatment or care and supervision contained in the leave certificate.

[French version]

Il est proposé que le paragraphe 47(1) du projet de loi soit remplacé par ce qui suit:

Examen du certificat d'autorisation
47(1) *À la demande du malade ou d'une personne qui s'occupe de ses soins ou de son traitement, le psychiatre traitant:*

a) examine l'état du malade afin de déterminer si les critères énoncés aux alinéas 46(4)a) et b) continuent d'être remplis;

b) examine les exigences du certificat d'autorisation applicables au traitement ou aux soins et à la surveillance.

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is accordingly passed.

Now are we dealing next with 47(2)?

Some Honourable Members: Yes.

Mr. Chairperson: Okay. Clause 47(1) as amended–pass. Now, Mr. Minister, with another amendment.

Mr. Praznik: I would move

THAT subsection 47(2) be amended by adding "in writing" after "notify the patient".

[French version]

Il est proposé d'amender le paragraphe 47(2) du projet de loi par adjonction, après "avise le malade", de "par écrit".

Motion presented.

Mr. Chairperson: Amendment–pass; Clause 47(2) as amended–pass. Shall the title pass?

An Honourable Member: No, no. One more amendment.

Mr. Chairperson: One more amendment? Okay. Which one? After 47(2).

* (2250)

Mr. Praznik: May I just indulge the committee for a moment? If Mr. Chomiak and I could have word just on this amendment?

Mr. Chair, I appreciate a moment with my critic, Mr. Chomiak. This is a rather complex area, and to ensure that we were all in agreement on how we should proceed, I think, was important before moving the amendment.

I would therefore move

THAT the following be added after subsection 47(2):

If requirements need amendment
47(3) If the psychiatrist determines that the requirements of the leave certificate should be amended, he or she shall amend the certificate and notify the patient, in writing, and the persons referred to in subsection 46(7) of the amendment.

[French version]

Il est proposé d'ajouter, après le paragraphe 47(2), ce qui suit:

Modification des exigences
47(3) *Le psychiatre qui détermine que les exigences du certificat d'autorisation doivent être modifiées modifie le certificat, en avise le patient par écrit et en avise les personnes mentionnées au paragraphe 46(7).*

Motion presented.

Mr. Chairperson: Shall the amendment pass? The amendment is–

Mr. Chomiak: Mr. Chairperson, I appreciate the minister moving on these amendments. The intent of this amendment, for the record, is to allow for purposes of amendment of the treatment plan for the individual who is on a certificate of leave. It is not an intention to further encumber the particular individual who is under a certificate of leave, and if, in fact, during this period of time the individual is deemed to be competent, the certificate could be annulled through another provision in the act. The minister did make that point, and I wanted to put on the record that point so that it is clear what the intentions of the Legislature are in regard to this amendment.

Mr. Praznik: Mr. Chair, for the record I will confirm that intention.

Mr. Chairperson: Thank you. Shall the amendment pass? The amendment is accordingly passed. Shall Clause 47(3) pass?

An Honourable Member: As amended.

Mr. Chairperson: Clause 47(3) will pass. Not as amended. We passed the amendment. Title–pass; preamble–pass; table of contents–pass. Bill as amended be reported.

Bill 57–The Regional Health Authorities Amendment Act

Mr. Chairperson: The title and the preamble shall be set aside. Clause 1–pass.

Hon. Darren Praznik (Minister of Health): Mr. Chair, I have an amendment to this bill that I think recognizes the concern of overriding principles of faith, and I shared this amendment with my critic the member for Kildonan (Mr. Chomiak) last week.

I would therefore move

THAT section 2 of the Bill be amended by adding the following after the proposed subsection 44.4(2):

Limitation
44.4(3) A resolution of the minister relating to health services to be provided by or through a health corporation that is owned or operated by a religious organization must not be inconsistent with the

fundamental religious principles of the religion or faith to which that health corporation adheres.

[French version]

Il est proposé d'amender l'article 2 du projet de loi par adjonction, après le paragraphe 44.4(2), de ce qui suit:

Restriction

44.4(3) *Le règlement qui émane du ministre à l'égard des services que fournit une personne morale dispensant des soins de santé qui appartient ou est exploitée par un organisme religieux, ou qui sont fournis par son entremise, ne doit pas aller à l'encontre des principes religieux fondamentaux de la religion ou de la croyance à laquelle la personne morale adhère.*

Motion presented.

Mr. Dave Chomiak (Kildonan): I want to indicate for the record that I appreciate the fact the minister shared this amendment with me during the hearings last Friday. We have looked at it closely. Now, this amendment, we do not think meets all of our needs and requirements. Having said that, we are voting against the bill, period, Mr. Chairperson. So I just want to put on the record the fact that we are still concerned that it appears to me that the notwithstanding clause still prevails over this aspect of the bill, as well as the fact that it is quite narrow in its interpretation to the issue. I appreciate this is a difficult issue, but it is narrow in its interpretation as to fundamental religious principles. It does not deal with the larger issue of the faith agreement that has been entered into. It is much narrower. On that basis, although I understand what the intention is of the minister, we still are against the application of this act.

Mr. Chairperson: Shall the amendment pass? The item is accordingly passed. Clause 2 as amended–pass; Clause 3–pass; title–pass; preamble–pass. Shall the bill be reported?

An Honourable Member: No.

Mr. Chairperson: Will be reported as amended on division.

Mr. Praznik: Mr. Chair, just on one other matter. For the record, all of the amendments made to the bills while I have been in the chair have been moved with respect to both the English and the French versions.

Mr. Chairperson: Thank you, we determined that before we started. Committee rise.

COMMITTEE ROSE AT: 10:56 p.m.