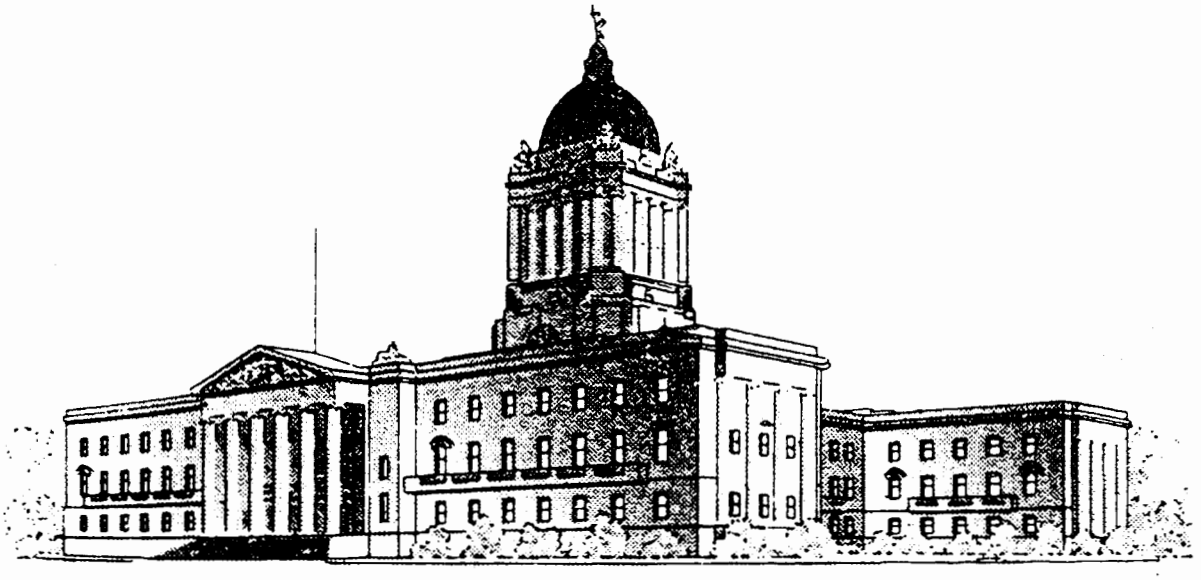
First Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Public Utilities and Natural Resources

Chairperson
Bonnie Korzeniowski
Constituency of St. James



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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES

Wednesday, July 26, 2000

TIME – 6:30 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)

VICE-CHAIRPERSON – Mr. Harry Schellenberg (Rossmere)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Lathlin

Mr. Aglugub, Ms. Cerilli, Mr. Dewar, Mrs. Driedger, Mr. Gilleshammer, Ms. Korzeniowski, Messrs. Loewen, Maloway, Penner (Emerson), Schellenberg

Substitutions:

Hon. Mr. Ashton for Hon. Mr. Lathlin

APPEARING:

Hon. MaryAnn Mihychuk, Minister of Industry, Trade and Mines
Hon. Jon Gerrard, MLA for River Heights
Hon. Dave Chomiak, Minister of Health
Mr. Harry Enns, MLA for Lakeside
Hon. Jean Friesen, Minister of Intergovernmental Affairs

MATTERS UNDER DISCUSSION:

Bill 31–The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act

Bill 7–The Protection for Persons in Care Act

Bill 29–The Health Sciences Centre Repeal and Consequential Amendments Act

Bill 37–The Miscellaneous Health Statutes Repeal Act

Bill 6–The Water Resources Conser-vation and Protection and Consequential Amendments Act

Bill 21–The Water Resources Administration Amendment Act

Bill 16–The City of Winnipeg Amend-ment Act (2)

Bill 14–The Provincial Railways Amendment Act

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Madam Chairperson: Good evening. Will the Standing Committee on Public Utilities and Natural Resources please come to order. This evening the Committee will be considering the following bills: Bill 6, The Water Resources Conservation and Protection and Consequential Amendments Act; Bill 7, The Protection for Persons in Care Act; Bill 14, The Provincial Railways Amendment Act; Bill 16, The City of Winnipeg Amendment Act (2); Bill 21, The Water Resources Administration Amendment Act; Bill 29, The Health Sciences Centre Repeal and Consequential Amendments Act; Bill 31, The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act; Bill 37, The Miscellaneous Health Statutes Repeal Act.

Does the Committee wish to indicate how late it is willing to sit this evening?

An Honourable Member: Until we are done.

Madam Chairperson: The Committee will sit until we are finished all the bills. The Committee has heard all presenters who were registered to speak to these bills. Is the Committee ready to proceed with clause-by-clause consideration of the bills? *[Agreed]* It has been suggested that we consider the bills before this committee in the following order–

Mr. Jack Penner (Emerson): I might make a suggestion, having been in your position for about eight years, I believe. There have been times when we have considered bills either in their entirety, if there were no amendments, or there have been times when we have considered bills page by page or clause by clause. I would suggest to the Chair that she might consider every bill separately and ask whether we want to go clause by clause or page by page on the Bill. Just a suggestion.

Ms. Marianne Cerilli (Radisson): I think that we can agree to that. I mean, generally, I think that we are going to be going page by page tonight. If there are some bills where we have a lot of amendments, we may have to.

Madam Chairperson: It has been suggested that the bills are considered in this following order: Bill 31, Bill 7, Bill 29, Bill 37, Bill 6. Bill 21, Bill 16, and Bill 14. Is that agreed? *[Agreed]*

Mr. John Loewen (Fort Whyte): We had some previous discussion with the Deputy House Leader regarding Bill 31. I am wondering if we could just take a brief recess to try and reach a conclusion with that discussion.

Madam Chairperson: Is it the will of the Committee to take a brief recess? *[Agreed]* Five-minute recess.

The Committee recessed at 6:37 p.m.

The Committee resumed at 6:42 p.m.

Mr. Loewen: It is unfortunate that the Member for Steinbach (Mr. Jim Penner) could not be here tonight. This committee was called at the last minute. He has been carrying this bill for this side. We have agreed that the Bill will carry through tonight, and we will address the issues either through another briefing that the Minister has agreed to provide us or through third reading. It is also a little unfortunate that Mr. Fry's comments are not available in writing. We will not have that to review until a later date, but hopefully the Minister will consider those comments in her deliberations before third reading as well, because I do think there were some valid points addressed by Mr. Fry.

I would also like to inform the Committee that due to a possible conflict of interest, I am going to withdraw from this discussion.

Madam Chairperson: Is it still the will of the Committee to proceed with the order starting with Bill 31? *[Agreed]*

Bill 31–The Electronic Commerce and Information, Consumer Protection Amendment and Manitoba Evidence Amendment Act

Madam Chairperson: Does the Minister responsible for Bill 31 have an opening statement?

Hon. MaryAnn Mihychuk (Minister of Industry, Trade and Mines): I would ask that the appropriate staff that helped construct the Bill, if it is okay with the Committee, to come forward and be available for any potential questions that the Committee may have. To expedite matters, I have a brief opening comment, and then I would like to introduce all the staff that worked on this comprehensive and leading-edge legislation. So that the Committee is not waiting, and I know we have a number of bills, I would like to just put a few remarks on the record.

This bill is a broad overview. In terms of a broad overview of this bill, I noted in my remarks on second reading that the purpose of this bill is to facilitate both electronic commerce, e-commerce, and electronic access to government in Manitoba. This legislation will increase the consumer protection for those who make purchases on line. I noted that generally our existing laws were developed for a paper-based

system which therefore do not translate readily to the electronic world.

In terms of the consumer legislation, those were the areas that the opposition critic had some questions. We will attempt to clarify those questions here in committee, and I have offered our services to provide more detailed clarification to any of the concerns that the Member may have. As well, there is an opportunity during concurrence to ask additional questions and third reading. I do not want it to be perceived that we do not want an opportunity for members to understand this fairly large, comprehensive legislation. So we will provide the information if anything comes up.

As we begin our detailed review, I want members to understand that in passing Bill 31, the Manitoba Legislative Assembly will be joining a growing number of parliamentary bodies throughout the world that have enacted similar measures. During the debate on second reading, the Member for Elmwood (Mr. Maloway) cited several countries that were in the process of passing bills. The momentum is growing so rapidly that I can report that since he spoke, the U.S. federal government in fact has passed its electronic signature act and had overwhelming bipartisan support, as demonstrated by the 426 to 4 vote in the House of Representatives. Just this month, Ireland has also joined the e-commerce legislation club.

I want to emphasize to members that, like the measures being passed elsewhere, this is historic legislation, but it will not instantly or magically transform Manitoba into a digital economy. This is enabling legislation. While providing clarity and guidance with respect to electronic contracts, Internet contracts and the use of electronic documents as evidence in courts, it sets a stage for the use of electronic means of communicating between government and citizens. The play does not begin until private citizens need recourse to use the provisions of the Act and government rolls out its electronic services.

I want to emphasize that much of the consumer protection legislation or that component of the Bill is to provide the assurance and the sense of security to consumers to encourage them to use e-commerce and become more active on the Net. We know that even last Christmas many consumers explored e-commerce by ordering goods. Unfortunately, there were a number of cases which were not able to deliver on the order, so I think there is a bit of consumer confidence that needs to be rebuilt. By providing the consumer protection legislation, we feel that that will strive to meet that confidence.

A recent article in the *Economist* reported on the growing number of jurisdictions moving towards electronic delivery of government services, recognizing that consumers are coming to expect 24-hour, seven-days-a-week availability, convenience, faster delivery, customer focus and personalization. The *Economist* says if such service became the norm in the public sector it would not just make life easier, it would fundamentally change the way that people view government itself.

Bill 31 then is an important first step that we can take to encourage the growth of electronic commerce in Manitoba's private sector and to move forward towards better government service for the public. Because Bill 31 has a number of components, we have brought several staff people with us to assist in answering the Committee's questions. At this time I would like to introduce the members of the team that put together the Bill.

To my left is David Werthman from Telecommunications Policy; Lynn Romeo from Legal Services; Mary McGunigal, Brian Jones, Legal Services and Justice; Gail Mildren, Frances Bidewell, Better Systems; Wayne Pishak, Better Systems; Linda Harlos, Consumer and Corporate Affairs; Aurele Robert and Alex Morton from Consumer and Corporate Affairs; and Jake Harms, who is the drafter from Legislative Counsel.

Madam Chairperson: We thank the Minister.

Does the critic from the Official Opposition have an opening statement?

* (18:50)

Mr. Harold Gilleshammer (Minnedosa): I think, as the Minister indicated, our critics will respond to this during the debate in the House.

Hon. Jon Gerrard (River Heights): I would like to make a brief comment, if I may, at the beginning, and my comment may lead into some questions after.

Madam Chairperson: Does Mr. Gerrard have leave? *[Agreed]*

Mr. Gerrard: My comment builds on some of the questions that Mr. Fry had raised earlier on in the Committee. His concern was in essence this: that the current practice with credit cards is that if a customer or consumer feels that they were not treated right, they will go to a credit card company and request reimbursement. The credit card company will then proceed to do this, and they will then deduct that reimbursement from the account of the company that has sold the product.

Now where the company has got a paper record, that is, the copy of the Visa slip that has gone through the Visa stamp, for example, that can be forwarded, the company then can make the case and in fact that deduction would be reversed. But this would not, at this stage, apply in the case of electronic transactions because of concerns (a) about the validity of electronic records, and (b) about the application of laws such as this one to companies which may be based not in Manitoba and operating in electronic world and there are questions about where they are operating, as it were, if they were operating in cyberspace.

Now it would appear that in order to have an electronic record authenticated, you would need to have several elements that are described in this law. One is an electronic signature. Number two is there would need to be sufficient details of what the contract was. Three, there would need to be some legal identifier of the seller, and four, there would have to be some assurance that the electronic data or information or record was stored in such a fashion that it could not be readily altered or that the original was brought forward.

That being the case that one of the concerns, as I understand it, that Mr. Fry raised was that while the Bill sets out, for example, on page 24 liability for unauthorized use of credit cards, it does not really spell out clearly what would be an acceptable and authorized electronic record in this circumstance, and it does not document that clearly enough so that there would not be a question with a company then going with an electronic record to a credit card company, in this instance, and saying we have a clear electronic document and that we should be reimbursed just as we are for a paper document.

Now I bring this up and expand a little bit on the concern that was raised because it relates to one of the concerns in this bill that it needs to be clear enough so that electronic commerce can be conducted easily and readily with sufficient certainty in terms of digital records not only as they are initially but as they are stored. So I think that there are some questions that I would ask the Minister later on around that.

Ms. Mihychuk: Just to respond to some of the issues raised by the Honourable Member and our delegation that came this afternoon. There are a number of states and jurisdictions that have the charge-back provision already existing. They include the federal U.S. government, California, New Jersey, Kansas, Maine, Maryland, New York, Oklahoma and Australia. In addition, the province of Alberta is right now in the process of drafting regulations with the charge-back provision identical to Manitoba's.

It is true that there can be fraudulent activities occurring with credit cards. We all know that. The practice is in existence right now both in paper copy, and even more vulnerable is when transactions are occurring over the telephone. We have confidence that the measures taken using Internet services will be more secure than those actually by phone because there will be a number of steps required to confirm your ordering or purchasing of a particular item.

The charge-back is quite limited. It relates to consumers who do not receive the items, so it is a fairly limited component. These types of charge-back provisions are available to consumers right now in the world that we live in. So, yes, it is a reality that there are fraudulent activities that occur with credit cards. We try and deal with those in the criminal system, and business is often, yes, held responsible through the financial institutions. We are given to understand that would probably be similar. The

Bill just provides another method. Companies have the option of opting for the use of credit cards on-line. So it is really the choice of the private sector to decide if they wish to include a transaction or not. So we feel fairly confident that the Bill actually provides clear steps for recognition of an individual making a purchase, that the charge back is quite limited and that it mimics what already exists in the paper world that we know and the transactions used by telephone.

Mr. Gerrard: Just a follow-up question. Your reference deals with the protection of consumers. Mr. Fry's question dealt with the protection of businesses who are operating on-line and wanted to be able to recover or to prevent credit card companies recovering from them where there was a proper transaction.

Ms. Mihychuk: To respond to that question, it is my understanding that a consumer's first responsibility is to go to the vendor of the item which they attempted to secure and get a refund from the company. After that, measures are available as is with other credit card activities or procedures through the Consumer and Corporate Affairs Branch or other legal measures. So the process would be the same as it is now.

Madam Chairperson: I would like to remind the members that there will be ample opportunity for questions and answers as we go through the clauses.

Mr. Gerrard: The concern basically dealt with the existing situation, which is that the paper record on a business, as Mr. Fry's, to credit card company relationship worked well in a paper document situation, but at this point was not working satisfactorily where it was an electronic document record situation. The question would be to you the applicability of the law to companies out in cyberspace, in this case credit card companies based elsewhere. Second, the protection not only of consumers, which is important, but the protection of businesses operating in Manitoba, which is very important if we are going to grow businesses in Manitoba working in this area.

* (19:00)

Ms. Mihychuk: It is interesting to note that, although all of this is in the cyberworld, the recent example of the love bug that was created, I believe, in the Philippines was actually tracked down. There is confidence that we will have an electronic record of the transaction. So it will not be untraceable. In fact, if you look at the documentation of an individual ordering tickets from Ticketmaster over the phone, it is much more tenuous than using the Internet because we can track the individual transaction and there will be a record of that transaction.

In terms of frivolous claims, there are provisions within the Act that will deal with those types of complaints. It is now the situation where small business or enterprises will be charged back by the credit card companies. That is something that is not dealt with in this provision but is a relationship, I understand, between the financial world and the business sector.

There was a question raised by Mr. Fry this afternoon about recognition of financial institutions and other jurisdictions. We have confidence that it will not be a significant problem, but if something did come up there would have to be other measures taken because they would be involved, for instance, two different nations: Canada and the United States. So other measures would have to be taken to satisfy the complaint.

Madam Chairperson: Are we ready to proceed? *[Agreed]*

During the consideration of a bill, the preamble, table of contents and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clause 1(1)–passed; clauses 1(2) and 1(3)–passed; clauses 2 to 6–passed; clauses 7 to 10–pass; clauses 11 and 12(1)–pass; clauses 12(2) to 12(4)–pass; clauses 12(5) and 13(1)–pass; clauses 13(2) and 14–pass; clause 15(1)–pass;

clauses 15(2) to 17(2)–pass. Shall clauses 18(1) to 18(3) pass?

Ms. Mihychuk: Madam Chairperson, I do have an amendment for clause 18(1).

I move

THAT the following be added after the proposed subclause 18(1)(d)(ii):

(iii) prescribing classes of documents for the purpose of clause 13(1)(a);

Motion presented.

Ms. Mihychuk: The purpose of the amendment is it adds the authority to prescribe classes of documents for the purposes of clause 13(1)(a). Clause 13(1)(a) requires that electronic signatures on a prescribed class of documents meet a reliability test. Under this provision these signatures must be reliable for the purposes of identifying the person who is required to sign the document and associating the signature with the document. As a result of a drafting oversight, the specific authority to prescribe this class of documents was omitted from section 18.

Madam Chairperson: The motion is in order. Amendment–pass; clauses 18(1) as amended–pass; clauses 18(2) and 18(3)–pass; clauses 19(1) to 19(23)–pass; clauses 21(1) to 21(3)–pass; clauses 21(4) and 22–pass; clauses 23(1) to 23(3)–pass; clauses 23(4) to 24–pass; clauses 25 to 26(2)–pass; clauses 27(1) to 28–pass; clauses 29(1) and 29(2)–pass; clause 30–pass; clause 31–pass; clauses 32 to 35–pass; clause 36–pass; clauses 37 and 38–pass; clauses 39 and 40–pass; preamble–pass; table of contents–pass; title–pass. Bill as amended be reported.

* (19:10)

Bill 7–The Protection for Persons in Care Act

Madam Chairperson: Does the Minister responsible for Bill 7 have an opening statement?

Hon. Dave Chomiak (Minister of Health): No, Madam Chairperson.

Madam Chairperson: Does the critic from the Official Opposition have an opening statement?

Mrs. Myrna Driedger (Charleswood): Madam Chairperson, I do have a brief statement to make. I am certainly pleased to indicate that we are supportive of this act, although I would like to indicate that, with the addition of some amendments that we will be proposing, I think that it will strengthen the Act. The amendments will come as no surprise to the Minister, because a number of those amendments come from his own private member's Bill 202 when he introduced it before. I know that he has taken the elements of the Bill and a lot of the wording, particularly in his private member's bill, from Alberta. In reviewing that bill, Alberta's bill, and the current bill, I think there was some merit to some of the clauses that are no longer in there. As we go through this, I will be presenting some amendments for discussion.

Certainly, I am a very strong supporter of any kind of an effort that is going to protect people from being abused. I would like to indicate, though, I think that if we look at some of the amendments that we are proposing, it will add more balance to the Bill, particularly against protection of malicious reporting.

Having worked in the health care system for several years, I would like to see that part strengthened. We will have some amendments that will address this. I think it is very important that there are enough checks and balances here so that this particular bill shows fairness to all parties involved, from the patient to the accused to the health facility that might be involved in this.

I do not believe that the Minister intended himself to be seen as judge and jury. I know that there were some concerns in Alberta about the power given to the Minister in such a bill. I know, too, that this bill is very personal and emotional for the Minister, and it arose out of some sensitive issues for him. I do fear the possible loss of objectivity in having to deal with these issues if one gets too close to it. I hope there is, as we are going through the Bill, a clear distinction in terms of the responsibilities of either the Minister, his designate, in addressing

these situations, and that we indeed do see fairness and balance in all elements of it.

At this point in time, I do not really have anything further to say as an introduction, but I do have a couple of general questions. I wonder if this would be the correct time to just ask a few general questions before going through the Bill clause by clause.

Madam Chairperson: Is it the leave of the Committee? *[Agreed]*

Mrs. Driedger: I wonder if the Minister could indicate for me, I know that in the Alberta definition of abuse, they did not include "mental," and when it came to adding the word "emotional," they defined it. I wonder if he might explain why that is not the same in the Manitoba bill.

Mr. Chomiak: With respect to the original formulation of the Bill, yes, it is true that I used the Alberta bill as my guide when there was a lack of a bill in Manitoba. When I brought the Bill forward two or three years ago on several occasions in this Legislature, the Bill was drafted based on the model that I was aware of with respect to Alberta. The abuse definition, as I understand it, that is now included in the Bill, was brought to my attention, by the drafters from the legal department, that it coincides with that in the vulnerable persons act, which coincides with Manitoba legislation, which is the general tenor that we tend to follow. We tend to follow a consistency with respect to statutory provisions and acts for that reason.

Mrs. Driedger: Probably one of the prevailing concerns about this bill is the protection of privacy of people within the health care system, particularly the patients. I wonder if the Minister could indicate what kind of public access to information this process would have. Is there enough protection for the patient in this at all points, during the investigation or after the investigation when there is certainly going to be a number of written documents that could be in a number of different locations?

Mr. Chomiak: Madam Chairperson, as I understand it, the information is going to be subject to FIPPA and FIA.

Mrs. Driedger: My final general question is: I wonder if the Minister could tell me what the role of the regional health authorities might be in relationship to this bill, if there is a role for them at all.

Mr. Chomiak: Insofar as the regional health authorities are basically charged with the responsibility of providing care in the health care system, it may be that the original line of authority may in fact be the RHAs.

* (19:20)

Madam Chairperson: I thank the Member and the Minister of Health.

During the consideration of the Bill, the preamble, the table of contents and the title are postponed until all other clauses have been considered in the proper order. If there is agreement from the committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clause 1–pass; clause 2. Shall the item pass?

Mrs. Driedger: I have an amendment to propose, and it would be the addition of a 2.2 on that particular page.

Madam Chairperson: It has been moved by Mrs. Driedger

THAT section 2 be renumbered as subsection 2(1) and the following be added as subsection 2(2):

Criminal records check
2(2) Every health facility must require every successful applicant for employment to provide a criminal record check dated not more than three months before the applicant begins working for the facility.

Mrs. Driedger: My reason for adding that particular amendment, I guess, is related to the fact that in a lot of community organizations where we do see vulnerable children or vulnerable people or teachers, for instance, are

required to have criminal record checks in instances, and I think that, in looking at The Protection for Persons in Care Act, I believe it is probably a reasonable expectation that people be able to provide a criminal records check.

This particularly could be helpful in a situation where somebody, I think, has been accused of an abuse, charged with an abuse, fired from a facility perhaps but is still working in the health care system and then that person goes on to apply for another job. If he chooses not to use his past place of work as a reference, nobody may every find out that he has a criminal record of abusing a patient, and the only way they might find that out is if they were required to provide a criminal records check. So I think this would enhance the situation for a patient and would provide some degree of security perhaps for the health facility in having this particular situation occur prior to either a volunteer or a successful applicant for employment.

Madam Chairperson: This motion is in order.

Mr. Chomiak: Madam Chairperson, with respect to the particular amendment, I understand that this amendment is in place in Alberta and that there has been some criticism of the particular provision provided in the Act. On a review of this particular issue, I am not sure if it might not cause us more difficulty at this point than it actually solves with respect to this particular amendment insofar as first off, it only applies presumably the way it is written, to future employees. Secondly, insofar as we have not discussed it with facilities in all of the regions in general. Thirdly, it may not be sufficient to capture, and how does one determine if one has a criminal record for, say, a traffic violation whether or not that would provide a hindrance to employment of an individual by virtue of having a mandatory requirement that they have a criminal record check?

So, for example, if someone were to have, supposing it was a criminal code violation along the lines of 0.08 and that could be used against them in terms of their employment in a particular institution for any kind of a position, does that disqualify them from being an employee and make them capable, for example, of providing abuse?

While I appreciate what purpose the Member is trying to accommodate, I am not certain that, at this point, given what I have been advised that it has been fairly criticized in terms of the Alberta experience and given that it–it is interesting because it would certainly be a significant change in the way perhaps employers–it would be a mandatory requirement that all employers must do a criminal record check of every employee. It would impose an interesting additional requirement on employing facilities. It would exclude a lot of employees, a lot of individuals. For example, it would exclude people that are not employees that deal with patients on a regular basis, and that would mean people that go into the facility, like doctors or like other health care professionals, so it would not capture anyone anyway.

So, while I appreciate the intent, I am not certain at this point whether it would serve to further the overall passage of the Bill.

Mrs. Driedger: When I was at Child Find, we all had to have criminal record checks. I realize that you have to be caught to have a check in the first place, and we knew there were probably a lot of people that perhaps were pedophiles out there that were working with kids. They have just never been caught. So I realize the gaps in looking at criminal record checks.

I guess I would like to ask the Minister, though, in the situation of a person, then, if this were not in place, and you had somebody, let us say there was a nurse's aide that was physically abusive to a patient, caught, charged, released from their job, go to another personal care home, if that is where they were working, and they do not use their past place of work as a reference, how would anybody, then, know that this was an abuser of a vulnerable person, because he could, over his next career, work in many, many facilities, and there is no way of tracking him then, without his having been caught, accused and having a criminal record, because you do not normally check criminal records on employees? How do we protect those vulnerable people in those situations?

Mr. Chomiak: Madam Chairperson, firstly, it would require the individual to have been convicted of that kind of offence which, in my experience, is extremely rare. In fact, I am not familiar with any cases in the recent past in that regard. It is true that, if the person were to go and lie about their past, if they had been convicted of a particular offence and then went to another institution and applied, that could occur.

On the other hand, it is using a fairly aggressive tool to deal with the situation, and I am not certain that we could–again, these things are all balanced, and I could just see further amendments that say, well, it should not be just every–first off, I could just see us having to go back to all the facilities and say, well, now you are going to be required to do this. I will just see the Bill that will come to the Health Department with respect to this, firstly. Secondly, I could just see various groups and organizations coming and saying: Well, if we are going to be forced to do this, what about all the professions and groups who do this? So, all in all, while it is laudable, I think for furtherance of the Bill, I am still not inclined to necessarily go along with that.

Mrs. Driedger: Just to indicate, it was not my intent that the hospitals or any of the health facilities pay for this, that each person be responsible, as it is in non-profit organizations. You go to the police department, whether it is city or RCMP, and you pay, and they do it. So you are responsible to pay your $10 or $20, whatever they charge you, and you are expected to have that document when you apply for your job.

Hon. Jon Gerrard (River Heights): I would just make a brief comment on this matter. I think that the intent of your amendment, as I understand it, is to ensure that somebody who has been convicted of abuse would not be employed in a health care facility in a position where they would be directly responsible for patient care.

It seems to me that that is the critical objective that one wants to prevent. It may be possible for the Minister, perhaps not in this act, to consult with people in the Department and people in the health care facility as to what might be the simplest way to ensure that for future people who are hired who are involved in direct patient care and to look at those who have been convicted of abuse without necessarily having a total catch of anybody who has any type of clinical criminal record of any sort.

Mr. Chomiak: Madam Chairperson, I think that is a very useful suggestion from the Member for River Heights. I appreciate it.

Madam Chairperson: Is the Committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: The question before the Committee is as follows:

It has been moved by Mrs. Driedger

THAT section 2 be renumbered as subsection 2(1) and the following be added as subsection 2(2):

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

Criminal records check
2(2) *Every health facility must require every successful applicant for employment to provide a criminal record check dated not more than three months before the applicant begins working for the facility.*

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Agreed.

Some Honourable Members: No.

* (19:30)

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it.

* * *

Madam Chairperson: Clause 2–pass; clauses 3(1), 3(2), 4, 5(1) and 5(2).

Mrs. Driedger: I have several amendments on this page, Madam Chairperson.

Madam Chairperson: It has been moved by Mrs. Driedger

THAT subsection 3(1) be amended by striking out "who has a reasonable basis to believe that a patient is, or is likely to be, abused" and substituting "who believes on reasonable and probable grounds that a patient is being abused, or has been abused and needs protection,".

The motion is in order.

Mrs. Driedger: I would like to comment on my reasons for making this amendment. In the Bill, as it stands right now, it indicates that somebody has to report on a reasonable basis if they think a patient is likely to be abused, and that one sort of struck me as a little bit difficult to prove, so I phoned a police contact of mine and I asked him, in terms of police departments looking at something like that, how they would react to a situation where you are expected to report if something is likely to be abused. My police contact informs me that that is a very much a personal opinion, very subjective, based on what, is actually his first comment. He said that is such a difficult piece to address when you put it into an act like this, and his question was certainly that it might be a difficult part to address. I also feel that it would make it stronger if the clause actually had included in it who believes on reasonable and probable grounds.

I think the general public is much more aware of the wording. They see it on TV all the time or in the movies, reasonable and probable grounds. I realize that it probably does not mean much difference from reasonable basis, but to the general public in interpreting this, I think they would have a better understanding of the wording and of the expectation if we actually made this to seem a little bit stronger to the public, particularly the public that is going to be working in health care. I think they might read that a little bit more carefully. It might help a bit in reducing any type of malicious reporting. I do have some concern about malicious reporting. I think the onus of proof needs to be stronger, and I think this particular clause with the amendment would then have a much stronger onus of proof. This is one particular clause that I have to say I do struggle with it as it stands, because I do not think it is strong enough. I do not think it is a deterrent enough in itself, and I would just like to see the wording be a little bit stronger when the people from the general public read it, not a lawyer who reads it, because I think that the general public might interpret it differently.

Mr. Chomiak: I thank the Member for those comments. Let me sum up a couple of things. Firstly, I am advised and, in fact, for my own training, I am aware of the fact that reasonable basis and reasonable probable grounds are interchangeable. The reason that those particular words were used, again, was the same wording as in The Vulnerable Persons Act that was passed by our Legislature, as well as The Child and Family Services Act. So the wording was put in to be consistent with other Manitoba acts and to make the legislation consistent. So that is the first couple of issues.

I disagree with the Member, and I know what her intention is. I disagree with her analysis. By my reading of her amendment, the only time you could report abuse is if the person had already been abused. The provision put in there, it says "likely to be abused," and while I realize that that is very objective and may sometimes be a difficult to formulate, it was put in deliberately as a preventative measure. The example would be if someone had threatened another patient, that would not be a reportable under your particular amendment, but that might be grounds for an employee or some other individual to say you know what, there is a potential here for abuse of this patient, so it would be a preventative and unanticipatory action.

So, based on the fact that the wording is similar to other Manitoba acts that have been passed by the Legislature and consistent with Manitoba practice, and based on the fact that I think the present wording is better for protection of patients rather than the wording that is offered by the Member, and while I appreciate the fact that she has thought this through and discussed it with other individuals, I would be disinclined to accept the amendment.

Madam Chairperson: Is the Committee ready for the question?

Mrs. Driedger: Could you clarify for me whether the question is just on this particular amendment?

Madam Chairperson: Yes. The question before the Committee is as follows:

It has been moved by Mrs. Driedger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT subsection 3(1) be amended by striking out "who has a reasonable basis to believe that a patient is, or is likely to be, abused" and substituting "who believes on reasonable and probable grounds that a patient is being abused, or has been abused and needs protection,".

* (19:40)

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Agreed.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Mrs. Driedger: I also have another amendment to 3(1).

Madam Chairperson: It has been moved by Mrs. Driedger

THAT subsection 3(1) be amended by striking out "or the minister's delegate" and substituting ", the minister's delegate or a law enforcement authority".

The motion is in order.

Mrs. Driedger: I could not understand why that was not included in there. Certainly, everybody has an opportunity to do that if they suspect abuse. To deliberately leave that out just seems a bit out of order. I would think that a person who is suspecting abuse may not necessarily be comfortable in coming to the Government but may feel much more comfortable in taking their report to the police.

Mr. Chomiak: Madam Chairperson, I again thank the Member for the amendment. People have that right, right now. So you do not have to designate that in legislation, firstly. Secondly, the individuals who drafted the bill for us did canvass the Alberta experience. That was one of the issues from the several years it has been in practice in Alberta that they were criticized for, and the criticism was that people actually became confused in terms of where the focus of attention should be. You have the right anyway; that possibility exists anyway. At any time during the process it can go to a law enforcement agency anyway, even if you go, but part of the idea was to have a one-entry kind of system in a single kind of stream of system that people had access to, we are aware of and could proceed down.

So it is superfluous in terms of wording, and frankly, they have that right anyway. While I appreciate the Member's comment, because of the advice of the drafters who had discussed it

with the Alberta people, they had suggested that that was one of the problems in Alberta, that there was some criticism about that. We determined not to put that in.

Madam Chairperson: Is the Committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: It has been moved by Mrs. Driedger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT subsection 3(1) be amended by striking out "or the minister's delegate" and substituting ", the minister's delegate or a law enforcement authority". The motion is in order. Is it the pleasure of the Committee to adopt the amendment?

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Madam Chairperson: Clauses 3(1), 3(2), 4, 5(1) and 5(2)–pass. Shall clauses 5(3), 6(1), 6(2), 6(3), 6(4) and 6(5) pass?

Mrs. Driedger: I have an amendment, and I would like to add another clause, which would be number 5(4).

Madam Chairperson: Clause 5(3)–pass.

It has been moved by Mrs. Driedger that the following be added after subsection 5(3):

Notice to others
5(4) As soon as practicable after appointing an investigator to investigate a report of abuse, the minister shall notify

(a) the health facility in which the suspected abuse is occurring or has occurred; and

(b) the person suspected of the abuse, unless in the minister's opinion notifying the person might jeopardize the safety of a patient or hamper the investigation; that the investigation is to be conducted.

The motion is in order.

Mrs. Driedger: In trying to address the issue of what I perceive to be some imbalance in this, I felt that it was only fair in the process that the health facility and the person suspected of the abuse be also notified. Certainly, one cannot get caught up in just addressing the issue of the patient and not looking at what might be fair and balanced in looking at the fairness to the others. We are saying in No. 2 that the health facility has a duty to protect patients from care and yet in this whole process, I did not readily find any statement that said the health facility would be notified. Also, I feel that the person suspected of the abuse is innocent until proven guilty. In this case, while this person very well might be guilty, that person needs to be notified that there is an investigation ongoing too, and as it indicates, that by doing so it might jeopardize the safety of the patient or hamper the investigation, then one would not go down this route, but for fairness and balance, I think this is only proper to notify these people.

Mr. Chomiak: Just in theory, as I was discussing it with individuals, there does not seem to be a major problem with this. There are one or two points that we want to check out. I

wonder if we could have the opportunity to perhaps bring back the amendment in the report stage and consider it at that point because we have to check out one or two things and in particular compare it with other acts for consistency. In principle, there does not seem to be a problem. There are one or two problems that I have that I want to discuss with the legal drafters, which may or may not amount to anything. So perhaps if we could pass through this, and we can ensure that the matter will come back at the report stage.

Mr. Gerrard: Just a comment on this particular point. The comment would be that because you were including reporting of where there is likely to be or there is possibility of being abuse, I think it becomes quite important that the people do not get tagged prematurely on vague grounds. The prior clause, "if, after inquiry, the minister finds there are reasonable grounds to believe," probably satisfies that requirement. I think that there is a precaution that is important here that we do not have requirements for notification at the first hint that there might possibly be something happening. You are going to have people being named and records being kept when there may be just a remote suspicion that there is a potential problem.

Mr. Chomiak: In principle, I do not see a problem with this. One of my hesitancies that we are talking about is we could perhaps put in "the Minister may notify." I know that it is not mandatory, but at least that is the precedent, but it does allow for flexibility in cases. That is the concern. We have unique circumstances that we cannot foresee that might force us to move on issues that for some reason or another, and I have not thought of an example yet, we may not want to notify. That is why I thank the Member for that. I still think we want to have a chance to think this through and look through possible difficulties and bring it back at report stage.

* (19:50)

Mrs. Driedger: I just want to indicate too that this notice is given to others as soon as practicable after appointing an investigator. The preliminary investigation by the Minister has already been done, and the Minister has determined that there is enough information here to go further and appoint an investigator. So there is some reasonable basis for this, and that is why, I think, at some point in this process, perhaps this is not exactly the right point, but we are at the point where an investigator has been brought on board. I think, in a fair and balanced approach, you do have an obligation to notify somebody that might be being investigated, or particularly the health facility, especially when you are expecting them in clause 2 to have a duty to protect the person. I do not think you can be waiting anymore if you have already predetermined here that there is some concern. I would think they, for sure, do need to be notified.

Mr. Chomiak: I am not arguing with the Member on the point. I am agreeing with the Member on the point. I am just saying out of prudence and caution that I think we ought to have a chance to reflect whether or not, and I agree in principle, I have indicated that, there might be instances, and my experience in these matters indicates there might be instances that may not want to have this mandatory situation. I do not have any instances that come to mind but just out of an abundance of caution, I think I agree with the sentiments, and I think there is agreement with that sentiment, but I think an opportunity to examine it and come back at the report stage and then we could consider it.

Mrs. Driedger: If the situation is that if I leave it in here and we vote against it and we can still bring it back at report stage, I might be more comfortable if we did then withdraw it so that it is not obviously defeated here and brought back in report stage.

Madam Chairperson: In order to withdraw an amendment, the mover requires unanimous consent of the Committee. Is there unanimous consent? *[Agreed]* The motion is then withdrawn.

Shall clauses 6(1), 6(2), 6(3), 6(4) and 6(5) pass?

Mr. Gerrard: I have a question to the Minister about clause 6(2)(b). The concern relates to the powers given to the investigator.

Madam Chairperson: Could we just pass clause 6(1)?

Mr. Gerrard: Sure.

Madam Chairperson: Clause 6(1)–pass.

Mr. Gerrard: My point now is on 6(2). My concern is that the powers given by the investigator to demand access to any information, including potentially confidential personal health information, without any prerequisite other than the investigator's own opinion that the information might relate in some fashion to the matter being investigated, I just think that there maybe needs to be some look at this clause in terms of the privacy rights of individuals, in the context of health information records.

Mr. Chomiak: A couple of things. I am advised that this particular provision is present in other acts of the Legislature. The second thing is I think it is obviously an accepted fact that the person, at this point, who is an investigator, is a person who is experienced in investigation and obviously would have to have the confidence and the professional ability to be involved in those kinds of investigations. I am generally advised that that is generally the fashion that it is similar to that contained in other acts. Does the Member have any other advice?

Mr. Gerrard: I just raise this as a caution because I think that one does not want to set up the circumstance where you can have investigators who should be going after targeted information, but not on a fishing expedition about health information more broadly, because of the requirement to maintain privacy and confidentiality of health records.

Mr. Chomiak: I think that is fair caution. I am also advised that investigators would have to be under statutory obligation in confidentiality with the Health Department in order to undertake that task in the first place. That might cover off that particular aspect.

Mrs. Driedger: A question for the Minister. Having been a nursing supervisor for a number of years, we were very protective of anybody coming near patients, whether they were lawyers who came to see a patient immediately in emergency or the media. If I was working in the hospital and a person came in and said I am here to investigate, what proof does the investigator have to show to nurses that he has authority to look at that particular information? I know that in every situation this person is going to be made to produce something. I know that even a doctor coming to a ward, if he does not normally work there, does not just automatically get access to the charts. I have to wonder. It is not built into here. Does he have to show some proof of who he is? Is it a letter from the Minister? Does he also have to have with him a letter from the patient authorizing him to access this particular information about them?

Mr. Chomiak: First off, there is a provision in section 6(1), that indicates they must provide identification. That is in the Act. Secondly, the provision that they required authority from the patient, I do not think–first off, let us face it, without even being overly optimistic, these are not going to be common occurrences. Secondly, there is an education role that we have to undertake. This would be a very important part of the whole process. The education role will be more important than the Act itself. That is a fairly comprehensive aspect of this that we will have to undertake.

Secondly, requiring patient authorization would not be, I think, applicable, for example, if the patient is incompetent. In many cases that would be the case. I do not think that would actually apply in the Act. The fact that they have statutory authority to provide, they must provide identification. The fact that there will be education in this matter, and the fact that it will be a relatively rare occurrence, I think would generally cover that off.

Madam Chairperson: Clause 6(2)–pass; clauses 6(3), 6(4) and 6(5)–pass; Shall clauses 7(1), 7(2), 8(1), 8(2), and 8(3) pass?

Mrs. Driedger: I have an amendment.

Madam Chairperson: Clauses 7(1) and 7(2)–pass.

It has been moved by Mrs. Driedger

THAT the following be added after section 7:

Reporting to law enforcement authority
Reporting of offence

7(1) If the Minister or investigator finds out that there are reasonable grounds to believe that a patient is being or has been abused by conduct

that, in the Minister's or investigator's opinion, could constitute criminal activity, he or she must disclose it to a law enforcement authority.

* (20:00)

Mrs. Driedger: I would ask the Minister why this might not have been included. Certainly, in the instance of child abuse, a person has an obligation to report it to the police, do they not? In looking at this, if there is a report of an offence against the Criminal Code, is there not an obligation to report it to the police?

Mr. Chomiak: I am just advised by the legal people that there is a duty that it must be reported to an agency but there is not a duty that it has to be reported to a law enforcement agency. The legal people have reviewed that, just for a point of clarification. The Member can continue.

Mrs. Driedger: I guess I am just wondering if that is not a prudent thing to do.

Mr. Chomiak: Obviously we have that right. The Minister has that right to do it at any time, in any event. This is a mandatory requirement that it must be reported to the criminal authorities. Actually, in this instance, I think, in most cases it would be. From my experience in matters of this kind, I am not certain that making it a mandatory reporting requirement is necessarily required. One would assume that in 99.9 percent of the cases, the 99.19 percent of the cases where that occurs, that in fact would happen. There might be the 0.1 percent of the cases when one might not want to report, necessarily, to the criminal–and let me give you an example just off the top of my head. An example would be if a mentally incompetent person under this act were to abuse another person, that would require the Minister, if there were an investigation, to have to report it to a criminal agency, even knowing that at the criminal agency that a criminal charge would not be forthcoming because of the fact that a mentally incompetent person could not form the criminal intent.

In most cases, let us face it, if there is a criminal offence, the responsible person would obviously report it to the law enforcement agencies. I am not sure making it absolutely mandatory necessarily strengthens the Act.

It has also been pointed out to me and it is another interesting point–I do not mean to further complicate the matter, but under section 7 (2), it says: "When making a report, the investigator shall try, to the fullest practical extent, to involve the patient and to determine and accommodate the patient's wishes." I suppose there might be the odd instance and the odd case when the patient may not want the matter reported to criminal authorities. I cannot think of that instance, but that might be possible. So I think we might be safer not putting that mandatory reporting provision in, knowing that no matter who is minister, who is the responsible investigator, they are clearly not going to not consult the appropriate law enforcement authorities unless there is a very good reason not to do so.

Mrs. Driedger: I guess I will just end it. My concern would be certainly, in this instance, no matter who the Minister in that position is going to be, the final word of the Minister is final, you know, judge and jury. I am not sure that that is necessarily where we want to go, particularly in the area where it has been determined that it is a Criminal Code offence. I am wondering if there is not the larger obligation by the Minister to make that report.

Mr. Chomiak: I do not actually see the logic of that particular argument, as far as the Minister has responsibility to do so. The Minister has that option available to him or to her. In terms of the judge-and-jury aspect, there are aspects of this. It still requires a balance of judgment and a judgment factor to determine whether or not it is a criminal offence in the first place. So that does not change the reasoning in that regard. The Minister has to determine, well, is this a criminal offence? Are these reasonable, probable grounds? It still has to determine if it constitutes criminal activity, which means you still have to make the same kind of judgment regardless. So I do not think it changes the onus in terms of the ability to make that kind of a judgment.

Madam Chairperson: Is the Committee ready for the question? It has been moved by Mrs. Driedger

THAT the following be added after section 7:

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

Reporting to law enforcement authority Reporting of offence

7(1) If the Minister or investigator finds out that there are reasonable grounds to believe that a patient is being or has been abused by conduct that, in the Minister's or investigator's opinion, could constitute criminal activity, he or she must disclose it to a law enforcement authority.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All those in favour of the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Madam Chairperson: Clauses 8(1), 8(2) and 8(3)–pass; clauses 9(1), 9(2), 9(3) and 10–pass.

Mrs. Driedger: I wonder if there is leave to go back to 5(2).

Madam Chairperson: I would like to remind members of the Committee who may want to move any amendments that they must wait until we reach the relevant clause in the consideration of the Bill. Is there unanimous consent to revert to clause 5(2)? *[Agreed]*

It has been moved by Mrs. Driedger

THAT subsection 5(2) be amended by adding "who meets the selection criteria prescribed by regulation" after "investigator".

The motion is in order.

* (20:10)

Mrs. Driedger: Just to indicate that I think it is really important somewhere that there be criteria identifying who meets the specified criteria to be an investigator, otherwise this is wide open to a minister, any time that this act is in place, to appoint whomever. There really, I think, needs to be some control in terms of who that investigator is and I think it needs to be spelled out, because I think these situations are going to be complex in many instances. One must understand the nuances of health care, and I do not necessarily believe that you can just pick anybody that does not have a certain ability to understand the health care system, to understand problem-solving, to have the types of skills necessary to investigate in order that there be absolute fairness. I think it is critically important that there be some indication somewhere of the criteria for an investigator.

Mr. Chomiak: I have been advised by the drafters that there is no precedent in Manitoba for this type of criteria. I might also suggest that, as prescribed by regulation, it is just as open to defined or non-defined criteria as regulation could say, as per the Minister determines is in the best interests of the health care system of Manitoba and that regulation can be changed by Order-in-Council anytime. So it does not necessarily meet the criteria. There are also some legal arguments that I am familiar with that I do not want to get into that might cause difficulty if specific criteria were laid out, would then open up particular matters to review based on certain determinations like technicalities.

So, on the basis that there is no precedent for this and on the basis that one must presume, and it is clear that the investigators will have to be competent individuals, we have investigators right across the health care system, in every fashion and manner throughout regulatory

bodies and throughout the health care system. I am not inclined to accept this amendment.

Mrs. Driedger: Could the Minister clarify for me then, his investigator could be his special assistant, it could be his legislative assistant, it could be one of his colleagues sitting across the table from me? Is it that wide open? Because then the Minister is setting himself up to have total control of this situation with nobody having an ability to ask the questions or to be sure that it is balanced and fair.

Mr. Chomiak: Or could choose members of the opposition or someone else, perhaps, to undertake these investigations. In point of fact, Madam Chairperson, it is clear that whoever undertakes the investigations will have to be trained and competent people. There are procedures that we are putting in place to have the appropriate individuals undertake those kinds of investigations. I mean, if one suggests here that the choice of investigators is something that is conducive to abuse by a particular minister, I do not foresee that as a difficulty at all.

Mrs. Driedger: Well, I guess I am not prepared to be naïve, to think that, you know, this could not be taken advantage of. I think it is critically important. You are dealing here with an accusation of abuse against somebody.

If the investigator was not qualified at all, how do all of the rest of us know, how does the health facility know, how does the patient know that this is a qualified person? We then have to take the Minister's word for it. I think that is really getting to the point of the Minister having way more control than any minister should have in this situation.

He could pick or she could pick anybody to become the investigator. It may be a person very poorly qualified. For the Minister to say, well, trust me, I will pick a good person, I do not think is objective or fair or balanced and really open to some challenge.

Mr. Chomiak: I am also advised that this particular provision of this kind of wording with respect to an investigator was the same wording that was used by the Member's party when they drafted The RHA Act in terms of investigators. I gave the benefit of the doubt to the former government that the investigators they chose under The RHA Act would be competent people. I will give the benefit of the doubt to our government or preceding governments that they will choose competent investigators under this particular act insofar as the wording is similar to what was in The RHA Act.

Mrs. Driedger: Well, I guess I am not that willing to give a benefit of a doubt in a situation like this. I really would encourage the Minister to pave a new path here. Set a precedent. I do not think that is asking for too much. Considering where this bill has come from I do not know that it is that big a deal to cut a new path here. Let us do something that makes sense for the people that are involved in this situation so that there is fairness and balance and the perception of it is there too, because perception is so important. I do not think the Minister necessarily wants to be perceived as judge and jury, but having this situation come very, very close to the Minister would seem to me not to be as prudent. I would wonder that the Minister would want to be that close to it.

An Honourable Member: Question.

Madam Chairperson: Is the Committee ready for the question?

Some Honourable Members: Question.

Madam Chairperson: It has been moved by Mrs. Driedger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT subsection 5(2) be amended by adding "who meets the selection criteria prescribed by regulation" after "investigator".

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

Madam Chairperson: Clause 5(2)–pass; clauses 11(1), 11(2), 12(1), 12(2) and 13–pass; clauses 11(1), 11(2) and 12(1)–pass.

It has been moved by Mrs. Driedger

THAT the following be added after subsection 12(1):

Offence of making false report
12(1.1) A person who knowingly makes a false report of abuse of a patient under this Act is guilty of an offence and is liable on summary conviction to a fine of not more than $10,000.

The motion is in order.

Mrs. Driedger: I think it is only fair that, if a person who knows of a situation and does not report it is liable to a fine of not more than $10,000, the same should apply to somebody who knowingly makes a false report. If this does not go in here, then this is a very imbalanced act, because it should be the same for whether it is 12(1)(a) or–you know, this to me is significant. You do not want to have malicious reporting, and what prevents somebody from doing it sometimes other than knowing there is a big fine?

* (20:20)

Mr. Chomiak: Madam Chairperson, I do not really have an objection, in principle, to including this. I cannot think generally of a problem with the inclusion of this with respect to–but you notice I am talking slowly, and as I am talking slowly, I am trying to think at the same time, which I know might be a problem. But I am trying to think of an example or a reason why it should not be in the Act, and I cannot really offhand.

I do not have a problem with principle in this. I just want to think this through a bit. If the Member would not mind, if we could have unanimous consent to withdraw and bring back at report stage, again, just to have a second thought at it to see whether there is any instance or difficulty with putting this in. I do not think so, but I just want to have a double-think on it. So if the Member would not mind withdrawing, if we could have unanimous consent, we can bring it back at report stage, and subject to someone from the legal department giving me a good reason, I do not think there is a problem with us putting this amendment in as well.

Mrs. Driedger: I would be prepared to withdraw it and bring it back at a later time.

Madam Chairperson: Mrs. Driedger wishes to withdraw the amendment proposed to clause 12(1) Is there unanimous consent of the Committee to withdraw the amendment? *[Agreed]* The amendment is withdrawn.

Clauses 12(2) and 13–pass; clauses 14 to 16–pass.

It has been moved by Mrs. Driedger

THAT the following be added after section 16:

Review after 3 years
16.1 Within three years after this Act comes into force, the minister must undertake a comprehensive review of it, and must, within one year after the review is undertaken or within such further time as the Legislative Assembly allows, submit a report on the review to the Assembly.

Mrs. Driedger: I think this particular amendment is very important, particularly in view of the power given to the Minister in this particular act. I think it is important that all of us have an opportunity to assess how this act is going, to review the decisions made and the actions taken

by the Minister, and to have an opportunity to be sure that there is fairness and balance in this being carried out through this particular act.

Mr. Chomiak: Madam Chairperson, first off, the Legislature reviews acts all the time. I am not at all certain we need to actually put this in the Act. I do not want to be argumentative at this point, but the Member keeps referencing the immense power of the Minister in this act. Look, this act is to protect patients. This act is to do something that is not present in Manitoba now and has been lacking in Manitoba. This act is not an act to provide power to the Minister. It is to provide power and ability for patients to have the access and the ability to remedy complaints that has not been present in Manitoba before.

I just wanted to point that out, that the Act is designed to protect patients. I hope the Act never has to be used in Manitoba. Acts are regularly reviewed by the Legislature, and the Legislature has the statutory authority to regularly review and amend acts on a regular basis, so I am not particularly in favour of that amendment.

Mrs. Driedger: I understand that this particular clause was put into the Children's Advocate act. I do not think it is unreasonable to ask for it. I understand in the Alberta situation questions of the power bestowed upon the Minister by this act has been questioned. I think it is extremely important that this absolutely does occur. I would be uncomfortable as a minister to be tied in so closely to some of these decisions without the perception of some objectivity or certainly to get away from some of the perceptions of micromanagement that might come from this too. I would think it would be prudent on the part of the Minister. I have nothing against protecting patients from abuse.

There is also the flip side of that. That is the protection of the health facility and the accused in a balanced way too, because there has to be fairness seen by them as well. I think this is very prudent, to have such a clause put in there. I am surprised that the Minister would not want to if he is so committed to the protection of patients' rights and to be sure that patients are protected from abuse. There should be no fear of reviewing this in three years.

Madam Chairperson: Is the Committee ready for the question? The question before the Committee is as follows: It has been moved by Mrs. Driedger–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT the following be added after section 16:

Review after 3 years

16.1 *Within three years after this Act comes into force, the minister must undertake a comprehensive review of it, and must, within one year after the review is undertaken or within such further time as the Legislative Assembly allows, submit a report on the review to the Assembly.*

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All of those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All of those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

Clauses 17 and 18–pass; preamble–pass; table of contents–pass; title–pass. Bill be reported.

Bill 29–The Health Sciences Centre Repeal and Consequential Amendments Act

Madam Chairperson: Does the Minister responsible for Bill 29 have an opening statement?

Hon. Dave Chomiak (Minister of Health): No.

Madam Chairperson: Does the critic from the Official Opposition have an opening statement?

Mrs. Myrna Driedger (Charleswood): Just to say that this is certainly an administrative matter following along with the process that had already put in place. It really is a culmination of the process. We look forward to passage of the bill.

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions, or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 and 2–pass; clauses 3, 4, and 5–pass; preamble–pass; title–pass. Bill be reported.

* (20:30)

Bill 37–The Miscellaneous Health Statutes Repeal Act

Madam Chairperson: Does the Minister responsible for Bill 37 have an opening statement?

An Honourable Member: No.

Madam Chairperson: Does the critic from the Official Opposition have an opening statement?

Mrs. Myrna Driedger (Charleswood): Only to say, Madam Chairperson, again this is a culmination of a process that had been put into place some time ago. It really is an administrative matter. We are prepared to pass this bill.

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; preamble–pass; title–pass. Bill be reported.

Hon. Dave Chomiak (Minister of Health): I just want to thank the Committee for their co-operation and Ms. McLaren and Ms. Berry for all their work and assistance and their future work.

Bill 6–The Water Resources Conservation and Protection and Consequential Amendments Act

Madam Chairperson: Does the Minister responsible for Bill 6 have an opening statement?

Hon. Oscar Lathlin (Minister of Conservation): Yes, I would like to say a few things about Bill 6. I want to offer the following with respect to Bill 6, The Water Resources Conservation and Protection and Consequential Amendments Act.

Manitobans, like all Canadians, are becoming increasingly concerned about freshwater issues such as water quality, floods, droughts and growing demands for potable drinking water. While many people see the issue of transfer of water as just a trade issue, our government views it in a much broader context. Bill 6 firmly grounds and characterizes these issues as an environmental and resource conservation issue. While trade disputes may sometimes trigger an examination of water transfer issues, the conservation and protection of Manitoba's freshwater resources is, first and foremost, a conservation issue.

As the preamble to Bill 6 indicates, there are numerous reasons why the protection of Manitoba's water resources is of the utmost importance. Manitoba's water resources and the ecosystems reliant on these resources are essential to a long-term environmental, economic and social well-being of Manitobans. Unregulated removal of large quantities of water could have significant adverse effects. Future domestic needs are not known, although certainly these needs will increase as Manitoba continues to grow. The potential effects of climate change are still unknown, and we

therefore must exercise a precautionary approach.

In addition to these reasons for Bill 6, the interbasin and transfer of water is also something Manitoba has opposed for years in relation to two projects proposed by our American neighbours, the Garrison Diversion project and the Devils Lake outlet project. The transfer of non-indigenous biota between watersheds is a matter of great ecological concern. We will now be able to hold up this act in discussions with our American neighbours and say that we would not allow this type of water transfer to occur from Manitoba to North Dakota, and we should tell them that they should pass similar legislation.

Bill 6 essentially does three things. Firstly, subject to a short list of exceptions, it prohibits the bulk removal of water from Manitoba's portion of the Hudson Bay drainage basin. Then, it allows for the designation, by regulation of sub-water basins within Manitoba. This would allow for bulk transfers of water across sub-basin boundaries within Manitoba to be controlled. It is important to note that Bill 6 itself does not create any such sub-water basin. No sub-water basins will be created unless and until the Government makes regulations creating such a sub-basin following a period of public consultation.

Thirdly, the Bill proposes for appropriate exemptions from the prohibition against bulk transfers, for example, water, pre-bottled in containers of 25 litres or less; water used in Manitoba to manufacture a product; or water for use by people or animals while in transport. Bill 6 is similar to legislation that has been enacted or is under development in several other Canadian provinces. It is consistent with the principles contained in the Canada-wide accord for the prohibition of bulk water removal from drainage basins, which has been under discussion by the 14 Canadian environment ministers for the past several months. Indeed, the main purpose of that accord is to encourage each jurisdiction to take the appropriate action on its own home front, and we are doing exactly this with Bill 6.

Finally, Bill 6 is trade consistent. Our analysis, supported by analysis of trade officials in both Manitoba and Ottawa, is that water in it natural state is not a good or a product, and is therefore not subject to international trade agreements such as NAFTA. As Bill 6 is focussed on protecting Manitoba's ecosystems and on water in its natural state, we are confident it would withstand any trade challenges that could some its way.

In closing, I look forward to swift passage of Bill 6. It will put into place this important piece of legislation protecting Manitoba's vital water resources. I should also indicate that when we get to the clause-by-clause stage, I plan to bring forth a motion for an amendment requiring public consultation to occur prior to regulations being made to designate sub-water basins.

Madam Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

* (20:40)

Mr. Jack Penner (Emerson): I listened very carefully to what the Minister was saying. Quite frankly, it is the same message that the Department had 11 years ago when I was the minister. I think it is a similar position that is being advanced today to what was being proposed at the time. However, I think we need to be very careful before we draft this kind of legislation.

Number one, we had the towns of Altona and Gretna, for roughly about 30 years, get all its supply of water from Pembina, North Dakota. In other words, we were importing potable water for use, not only in the town of Gretna, but the surrounding communities, and the town of Altona for all its domestic use.

Here we are now saying that we will not allow those sorts of bulk water exports. I do not know whether the Department knows or whether the Minister knows, but we are now in fact exporting water, as we sit here and speak, to the town of Neche, North Dakota, where Altona used to take its water from. The pipeline that was built to import water into Altona, in fact, now has a reverse flow. The treatment plant at Neche, which was used for 30-some-odd years to supply water to the towns of Manitoba, has

now been closed, and it is more economical for Neche to buy its water from Manitoba.

I say to you, Mr. Minister, that you are currently exporting water in bulk, and you are doing it at a very reasonable cost, and it is a reciprocal type of an arrangement that was drafted between the two communities.

There is another opportunity for that same sort of provision in the Middlebro area where there is an aquifer that has probably got some of the most pristine water in all of Manitoba. It need not be treated for any kind of use. I know that there are companies such as Pepsi-Cola and the communities of Warroad that are interested in this water.

Similarly, we have now just drawn an agreement between farmers at Ridgeville, Manitoba, that are importing water and are going to have a pipeline built from North Dakota into Manitoba. On those border communities, we are absolutely dependent on those kinds of arrangements between communities on either side of the border.

To pass this kind of legislation that is being proposed here, I think, is extremely dangerous. It reminds me a bit of the discussion that was held during Rafferty-Alameda, the construction of the two dams at Rafferty and Alameda. I know that the members opposite were very opposed to the construction of the Rafferty-Alameda dams in Saskatchewan. Now, being two NDP administrations side by side, I think both jurisdictions would agree that the beneficial effects of the two dams built on the Rafferty have very dramatically increased the quality of water on the Souris River.

I think we should be very, very careful before we draft and propose this kind of legislation which would impede those kinds of agreements over a long period of time. I think we will need the agreement from the North Dakotans and the Minnesotans to a far greater degree in the future to give us a supply of water than they will need us to give them a supply of water. I certainly will not support this bill.

Hon. Jon Gerrard (River Heights): I have several general questions for the Minister. I wonder if now would be an appropriate time to ask those, before we get into clause by clause.

Madam Chairperson: Is it the will of the Committee? *[Agreed]*

Mr. Gerrard: The first question I have, and it is really a question of clarification. I think it is important to get some general understanding on the record. You use and define the term "sub-water basin." Just to get an idea of what is going to be used or determined to be a sub-water basin, are we talking Red River basin as a sub-water basin, the Assiniboine River basin, or are we talking something like the Sturgeon Creek water basin? What sort of magnitude of water basin are we working with?

Mr. Lathlin: In my opening remarks, I suggested to the Committee that I would be introducing a motion to make an amendment regarding the provision of consultation before any designation of sub-water basin is gone into. In other words, the sub-water basin, this pact does not address that per se, but it will address it through the regulations development. Before we make a regulation defining what a sub-water basin would be, that is when we would have the public input through consultation to make sure that everyone would have a common understanding of what a sub-water basin would be.

Mr. Gerrard: Let me just put on the record my thoughts in this regard, that it would be quite important not to try and define a sub-water basin too finely. The reason is that, if you took water out of Sturgeon Creek and put it into the Red River or into the Assiniboine River, you can get into some potentially rather silly situations where you are regulating or needing permits for moving water over a relatively short distance. So I think it would be important to make sure that, when you define subwater basin, you are looking at a fairly sizeable sub-water basin like the whole Assiniboine River basin, for example.

Mr. Lathlin: Madam Chairperson, yes, I agree with the Member. I believe it was during Estimates that I provided him with some lengthy explanation as to what our plans were with regard to a comprehensive water management system for Manitoba. During those exchanges back and forth, I suggested to the Member that

in the fall we are going to be launching a province-wide consultation process whereby we will be soliciting input from the public with regard to this management plan. As I said to him yesterday, this plan would include not only surface water and groundwater, but it would also include drainage work.

I advised the Member yesterday that uncontrolled drainage work for the past several years is really coming to haunt us now, where downstream communities, individuals, even First Nations at Fairford are being negatively impacted by that years and years of uncontrolled drainage work. So when we get into our comprehensive water management development, that is when those things will be considered that the Member has raised.

Mr. Gerrard: Let me move on to the second item where I think that I would ask for a little bit of clarification. This bill provides a prohibition in relationship to water that no person shall remove water from a water basin or a sub-water basin. The intent here, it seems to me, is to not only take water out, but move it from one sub-water basin to another sub-water basin as it were.

I can think of some examples which would not be covered by the exceptions under 3(1). Somebody who has a water bomber that they are taking water out to fight a fire, I mean he is not an explicit exception, but presumably because it is within one water basin, it would not be considered a removal of water that would end up in some other water basin. Somebody who is taking water out of a lake or a dugout even for irrigation purposes for their strawberries and so on, again, presumably you are not concerned about somebody just taking water out for that purpose, but that you are concerned about that water ending up in a different sub-water basin as it were. So I am just asking for a little bit of clarification.

Mr. Lathlin: Madam Chairperson, again, I advise the Member that as we go into developing the regulations, those concerns that he is raising will be addressed. Let me also advise him that I mean, if we are fighting fires up North, for example, of course, you would go to the nearest source of water. You would not go to a dugout. Planes, the water bombers that we are using for fire suppression are not equipped to scoop up water from dugouts. They are designed to go into lakes, preferably near the big fire for efficiency's sake. So common sense, I am sure, will prevail once we get into developing those regulations.

* (20:50)

Mr. Gerrard: That was really the point that I was trying to make, that it is going to be quite important to develop regulations which make some sense. Otherwise, you can end up with some silly situations. My reference to water bombers was really on primarily northern lakes or rivers where they would be used. The reference to dugouts related to somebody who is irrigating their strawberry patch. Because the amounts of water that you are talking about regulating are not huge, they are the amounts of water that you could take out of a small lake or even a dugout under some circumstances. So I think it is going to be quite important to have a clear understanding in the regulations of what is happening, and that there is a lot of common sense used in setting up the regulations so that we do not get into sort of a micromanagement of what happens at the moment.

Mr. Lathlin: All those things that the Member is raising, when we get into developing the regulations, whatever activity that will be carried out will happen only in Manitoba. We are not talking about taking water over to Ontario or vice versa. The development of the regulations–

An Honourable Member: You might with a water bomber if there was a fire just across the border.

Mr. Lathlin: If there is a fire in Ontario, well, we get water from Ontario to fight the Ontario fire, right? If there is a fire in Manitoba, we get Manitoba water to fight the fire in northern Manitoba. So common sense will prevail, I say to the Member once again.

Madam Chairperson: Is the Committee ready for the question?

Mr. Jack Penner: I think Mr. Gerrard raised an absolutely excellent point. If you go to page 3

and section 3(1), it says: "Section 2 does not reply in respect of water (a) that is, or is to be, packaged in Manitoba in a container of not more than 25 L."

I say to you, Mr. Minister, that a farmer spraying his crops just across the line from Tolstoi has no access to water in Minnesota, except at Tolstoi, at the standpipe. He pulls in with his 2000-gallon tank, not litre tank, gallon tank, and fills up his tanks and goes across the line to Minnesota to spray his crop. If you turn to the next page, under this act that person is liable to a $50,000 fine, first offence; the second offence a $100,000 fine and third offence a $500,000 fine. These are farmers doing their business. We have the same thing apply in the Altona-Gretna area, whereby farmers constantly cross the borders with their spray tanks. If one standpipe goes out of order, they run over there and pick up a load of water and come back or vice versa. If they were caught, this act, without regulation, you could be on the third tank and be liable to a $500,000 fine and 18 months in jail.

Is that the kind of legislation we want to pass in this province? I think not. Similarly, this spring, when we had grass fires in the Vita area, we brought in water bombers and we did not have access to any water on the Manitoba side, and the department of resources know this. We ducked across the line and filled up the water bombers, flew back into Manitoba and doused the fires.

Under this act, if the Minnesotans did that on our side, they would be liable to a $50,000 fine first load. I seriously say to the Minister, this bill needs to be set aside and some serious thought given to this bill, because you will not fix this with regulation. This cannot be fixed by regulation. The first tank is, by the Act, if we pass this act, the first tank is $50,000; the second tank is $100,000; the third tank is $500,000.

That is as simple this bill is, and you cannot fix that with regulations. I say to the Minister do yourself a favour, go back to the drawing board, redraft this bill and then come back with another proposal, and we might listen to you.

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Shall clauses 1 and 2 pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Voice Vote

Madam Chairperson: All those in favour of passing clauses 1 and 2, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Yeas have it.

An Honourable Member: On division.

Madam Chairperson: On division.

* * *

Madam Chairperson: Clauses 3(1), 3(2) and 3(3)--pass. Shall clauses 4, 5(1), 5(2) and 5(3) pass?

Some Honourable Members: Pass.

An Honourable Member: No.

Voice Vote

Madam Chairperson: All those in favour of passing clauses 4, 5(1), 5(2) and 5(3), please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Yeas have it.

* * *

* (21:00)

Madam Chairperson: Clauses 4, 5(1), 5(2), 5(3)–pass; clauses 6, 7, 8–pass.

It has been moved by the Honourable Mr. Lathlin

THAT section 6 be amended

(a) in clause (a) of the French version, by striking out everything after "à titre de" and substituting "sous-bassin hydrographiques;";

(b) by renumbering it as subsection 6(1); and

(c) by adding the following as subsection 6(2):

Public consultation re designation of sub-water basins
6(2) Except in circumstances that the minister considers to be of an emergency nature, in the formulation or substantive review of a regulation designating parts of the Manitoba portion of the Hudson Bay drainage basin as sub-water basins, the minister shall provide an opportunity for public consultation regarding the proposed regulation or amendment.

[French version]

Il est proposé que l'article 6 soit amendé:

a) dans l'alinéa a) de la version française, par substitution, à "bassin ou de sous-bassin hydrographique", de "sous-bassins hydrographiques";

b) par substitution à son numéro, du numéro de paragraphe 6(1);

c) par adjonction de ce qui suit:

Consultation du public–désignation des sous-bassins hydrographiques
6(2) *Sauf dans les cas qu'il estime urgents, au moment de la formulation ou de l'étude en profondeur de règlements portant désignation, à titre de sous-bassins hydrographiques, de parties de la portion manitobaine du bassin versant de la baie d'Hudson, le ministre invite le public à présenter ses observations relativement aux règlements ou aux modifications proposés.*

The motion is in order. Amendment–pass; clause 6 as amended–pass; clauses 7 and 8–pass; clauses 9 and 10–pass; preamble–pass; title–pass. Shall the Bill as amended be reported?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Madam Chairperson: All those in favour of reporting the Bill as amended, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Yeas have it.

The Bill as amended shall be reported. Agreed? *[Agreed]*

Bill 21–The Water Resources Administration Amendment Act

Madam Chairperson: Does the Minister responsible for Bill 21 have an opening statement?

Hon. Oscar Lathlin (Minister of Conservation): Again I am very pleased to speak on Bill 21, The Water Resources Administration Amendment Act. As you are all aware, the Red River Valley suffered severe flooding in 1997. Prior to the 1997 flood, a number of homes in the valley were built at elevations lower than

those recommended by provincial Water Resources officials.

Building within the Red River Valley in designated flood area is controlled by The Water Resources Administration Act, and this act requires that anyone building within the designated flood area obtain a permit and build in accordance with its requirements. Although the Act requires building to certain standards, there is no practical means of enforcement. There is also no means of alerting potential buyers that structures do not conform to flood-proofing criteria.

In 1998 amendments were made to The Water Resources Administration Act to help ensure that residents of the Red River Valley were protected against severe floods. These amendments provided for a greater enforcement to ensure that buildings were constructed to the flood protection level. For structures not meeting current flood-proofing standards, the amendments provided provisions to alert potential buyers by allowing a caveat to be placed on the land title.

The previous amendments to the Act have not been proclaimed. Before this is done, a transition clause is needed to provide a bridge between the old act and the unproclaimed amendments to clear up possible confusion over which act should apply. Bill 21 contains this transition clause and some minor administrative word changes to the previous amendments.

Again I look forward to a speedy passage of this bill to help ensure that buildings in the designated flood area are constructed to the flood protection level. Those are my remarks.

Madam Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Harry Enns (Lakeside): Her Majesty's loyal opposition is in full agreement with these amendments and recommend it for speedy passage.

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1, 2(1) and 2(2)–pass; clauses 2(3), 2(4) and 2(5)–pass; clauses 2(6), 2(7) and 3–pass; preamble–pass; title–pass. Bill be reported.

Bill 16–The City of Winnipeg Amendment Act (2)

Madam Chairperson: Does the Minister responsible for Bill 16 have an opening statement?

Hon. Jean Friesen (Minister of Intergovernmental Affairs): I just wanted to repeat my thanks to members of the Committee and to those people who presented on this bill, and to indicate that we have taken some of the suggestions and that we are prepared to introduce a number of amendments at different stages.

Unfortunately, even though it is a relatively short bill, the amendments are a little complex because they have to be repeated in various places. If I can give you some advance notice, we do have amendments at section 437.1, at 44(1), at 467(1.2) and some renumbering in section 4 and then at section 477(2.1) and 490(2). So I apologize for the number of them, but it is a matter of repeating things at different places in the Bill. So, with that, Madam Chair, I am ready to proceed.

Madam Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

* (21:10)

Mr. John Loewen (Fort Whyte): Yes, I do.

As we mentioned earlier in committee, we are also anxious to see this bill pass. I just take it from the Minister's comments that they have had some discussion with the officials from the City of Winnipeg who made representations here

today. Just for confirmation, it seems from her numbering of the clauses that are being amended, she has agreed to amend the clauses outlined by the City under their title, eliminate the requirement to attempt personal service of routine orders. I am assuming that is correct.

I would ask the Minister maybe to express her feelings on the other areas, in particular the request by the City to allow an order to be published if the City has problems with personal services, if she would not mind commenting on that. I would also be interested in hearing the outcome of her discussion with the City regarding the formation of an appeals committee and whether the City and the Minister have come to some agreement so that the appeals committee would not be too onerous on the City of Winnipeg. So perhaps I could ask the Minister to respond to those questions.

Madam Chairperson: We thank the Member.

Ms. Friesen: To answer the last one first, that is the issue of what is defined as a committee of council. I did speak to Councillor Eadie afterwards and with lawyers there, and it was something which, essentially, we left as we did at the table. There were clearly differences of interpretation and that we would leave it with the lawyers and perhaps come back at a later date. I will not put words into Councillor Eadie's mouth. I think he did speak about it here. He and other city councillors have some general concerns around the responsibilities of standing committees of council and of the heavy responsibilities in some cases. So I think that was really one of the sources of his concerns.

On the other two issues that the Member raised, we will be offering amendments on this. The first deals with the issuing of orders where there is not a demolition anticipated, the non-demolition areas. In those cases, the City has asked for more flexibility, greater leeway in the issuing of orders. What our amendments are intended to do is to give the City greater flexibility and to give them the choice of whether to serve in person or by mail in a manner that provides the City with an acknowledgement of receipt, or if the person cannot be served–there is really a second level there. If the person cannot be served, then, after a reasonable effort has been made, you can send it, as it indicates in other parts of The City of Winnipeg Act, by facsimile or any other type of mail or communication that provides confirmation of delivery. So it does give the City two opportunities, and it gives them the choice in the first case.

Now, the second area is one which does result as a result of an order by the Medical Officer of Health in the demolition of a property or the potential demolition of a property, and the City has asked for greater leeway there, and at this stage, that is not something that I am going to suggest that we amend. I do take the loss of property as a very serious matter. One might say I am proceeding on this in a very small "c" conservative way, and where there is a loss of property or potential loss of property involved, I would like to see the courts used. It is something that we have talked to the City about. It is something I am prepared to review as we look at The City of Winnipeg Act as we go further along, but we are not offering amendments on it at this stage for that reason. So we are separating out the two issues of when orders can lead to loss of property.

Just to conclude, there are some matters of housekeeping which deal with the drafting omission in the Bill where it was not indicated when receipt had been received, deeming a particular type of submission, and secondly, including under The Public Health Act the regulations, something that the City of Winnipeg was looking for greater certainty on.

Mr. Loewen: I thank the Minister for those clarifications. We are prepared to pass this bill, and from what she has explained, certainly pass the amendments as well, subject to taking some time after the Committee has met to review the amendments in more detail and give some further thought to the City's request regarding the inability to serve some owners who intentionally, I think everyone agrees, try to dodge the order in their own self interest and contrary to the interest of the City and the public. So, subject to perhaps bringing forth some further amendments on third reading, we are prepared to pass the Bill tonight.

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble

and the title are postponed until all other clauses have been considered in their proper order. We will be considering clause by clause, is that agreed? *[Agreed]*

Clause 1–pass. Shall clause 2–

Ms. Friesen: I move in both official languages

THAT the proposed section 437.1, as set out in clause 2(a) of the Bill, be amended by adding the following definition in alphabetical order:

"**The Public Health Act**" means The Public Health Act and includes regulations made under that Act. (« Loi sur la santé publique »)

[French version]

Il est proposé que l'article 437.1 énoncé à l'alinéa 2a) du projet de loi, soit amendé par adjonction, en ordre alphabétique, de ce qui suit:

« Loi sur la santé publique » *La Loi sur la santé publique et ses règlements d'application. ("The Public Health Act")*

Madam Chairperson: The motion is in order. Amendment–pass; clause 2 as amended–pass; clause 3–pass.

It has been moved by the Minister of Intergovernmental Affairs

THAT the proposed subsection 440(1), as set out in section 3 of the Bill, be amended by striking out clauses (a) and (b) and substituting the following:

(a) personally, or by mail in a manner that provides the city with an acknowledgment of receipt; or

(b) if the person cannot be served by one of the methods described in clause (a) after a reasonable effort has been made, by sending a copy of it to the person's address, as determined in a manner provided by by-law, by facsimile transmission or any other type of mail or communication that provides confirmation of delivery.

[French version]

Il est proposé que le paragraphe 440(1), énoncé à l'article 3 du projet de loi, soit amendé par substitution, aux alinéas a) et b), de ce qui suit:

a) en mains propres ou par envoi par la poste, pourvu que cet envoi permette à la Ville d'obtenir un accusé de réception;

b) si la signification ne peut être effectuée au moyen d'une des méthodes indiquées à l'alinéa a) après que des efforts sérieux ont été faits, par envoi d'une copie à l'adresse de la personne, déterminée de la manière prévue par arrêté, ou encore par télécopieur ou tout autre mode d'envoi par la poste ou de communication qui permet d'obtenir une confirmation de la livraison.

The motion is in order. Amendment–pass; clause 3 as amended–pass. Shall clause 4 pass?

It has been moved by the Minister of Intergovernmental Affairs

THAT the proposed subsection 467(1.2), as set out in section 4 of the Bill. be amended by striking out clauses (a) and (b) and substituting the following:

(a) personally, or by mail in a manner that provides the city with an acknowledgment of receipt; or

(b) if the person cannot be served by one of the methods described in clause (a) after a reasonable effort has been made, by sending a copy of it to the person's–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

–address, as determined in a manner provided by by-law, by facsimile transmission or any other type of mail or communication that provides confirmation of delivery.

[French version]

Il est proposé que le paragraphe 467(1.2), énoncé à l'article 4 du projet de loi, soit amendé

par substitution, aux alinéas a) et b), de ce qui suit:

a) en mains propres ou par envoi par la poste, pourvu que cet envoi permette à la Ville d'obtenir un accusé de réception;

b) si la signification ne peut être effectuée au moyen d'une des méthodes indiquées à l'alinéa a) après que des efforts sérieux ont été faits, par envoi d'une copie à l'adresse de la personne, déterminée de la manière prévue par arrêté, ou encore par télécopieur ou tout autre mode d'envoi par la poste ou de communication qui permet d'obtenir une confirmation de la livraison.

The motion is in order.

* (21:20)

Mr. Loewen: I am just trying to sort through this amendment quickly on the fly here and determine whether it meets the requests that the City actually made today. I believe their biggest concern was that they have trouble serving some of these orders personally or by mail and receiving acknowledgement, and that they were requesting more flexibility. I guess I am having a little trouble determining if in fact there is much more flexibility in there, seeing as the only other options really are by facsimile or some other method of which I am not sure that would provide a confirmation of delivery.

My question to the Minister I guess is: How does this provide the flexibility that the City was looking for?

Ms. Friesen: It may well not go as far as the City would like, but it does offer greater flexibility than they have at the present. It offers them the option of serving personally, which they argue that in some cases that is difficult, or they can elect not to go personally at all but to serve by mail in a manner that provides them with an acknowledgement of receipt, a form of certified mail. That is a first level, so there are really two levels. So they have that in their first option.

Then if they believe that either of those have not been successful they can be served by one of the methods described in clause–sorry. After a reasonable effort, they can send a copy of it to the person's address as determined in a manner provided by by-law, meaning that this is an enabling act. They will have to establish by by-law which address they are going to use, whether it is a tax address, whether it is a phone address, phone book address. That will have to be established and formally laid out. Facsimile transmission or any other type of mail or communication that provides confirmation of delivery, I think that is the issue, legally, that there is confirmation that it has been delivered, giving security I think for the City in this area.

Mr. Loewen: Confirmation of delivery, in my mind that would typically mean that the person to whom it was being sent would have to sign for it at some point. Is that stipulated here, or is there some flexibility there?

Ms. Friesen: There are some concerns there. The issue is really that registered mail, which is now called certified mail, as you know, when it comes to your house it does not necessarily require the person to whom it is addressed to be signed. However, that is the form of certified mail that exists now with Canada Post. So it does give you confirmation of delivery at an address and of receipt at that address. But, as you know, there are times when people will sign at that address and they may not be the actual addressee.

Mr. Loewen: I would like to thank the Minister. I guess, just out of curiosity, quickly, is it anticipated that at some point e-mail would be allowable under this clause?

Ms. Friesen: Yes, it may well be available at some point. I was not convinced that we had the means in every case to ensure that there was a recognition of delivery in e-mail. It may be possible at a later date to ensure that you can write that in, but I was not convinced that was necessarily there in all cases of e-mail. If there is e-mail which does give you confirmation of delivery, then that, I think, would be included under these terms.

Madam Chairperson: Amendment–pass.

Committee Substitution

Mr. Gregory Dewar (Selkirk): I would like to do a committee change. I move, with the leave of the Committee, that the Honourable Member for Thompson (Mr. Ashton) replace the Honourable Member for The Pas (Mr. Lathlin) as a member of the Standing Committee on Public Utilities and Natural Resources effective immediately, with the understanding the same substitution will also be moved in the House to be properly recorded in the official records of the House.

Motion agreed to.

* * *

Madam Chairperson: It has been moved by the Minister of Intergovernmental Affairs (Ms. Friesen)

THAT section 4 of the Bill be renumbered as subsection 4(1), and the following be added as subsection 4(2):

4(2) The following is added after subsection 467(1.2):

Deemed date of service
467(1.2.1) An order sent in accordance with clause 1.2(b) is deemed to have been properly served on the day it is confirmed to have been delivered.

[French version]

Il est proposé que l'article 4 du projet de loi devienne le paragraphe 4(1) et qu'il soit ajouté, après le paragraphe 4(1), ce qui suit .

4(2) Il est ajouté, après le paragraphe 467(1.2), ce qui suit :

Date de la signification
467(1.2.1) *L'ordre envoyé en conformité avec l'alinéa 1.2b) est réputé avoir été dûment signifié à la date de la confirmation de sa livraison.*

The motion is in order. Amendment–pass; clause 4 as amended–pass; clause 5(1)–pass.

It has been moved by the Minister of Intergovernmental Affairs (Ms. Friesen)

THAT the proposed subsection 477(2.1) as set out in subsection 5(2) of the Bill be amended by striking out clauses (a) and (b) and substituting the following:

(a) personally, or by mail in a manner that provides the city with an acknowledgment of receipt; or

(b) if the person cannot be served by one of the methods described in clause (a) after a reasonable effort has been made, by sending a copy of it–

An Honourable Member: Dispense.

* (21:30)

Madam Chairperson: Dispense.

–to the person's address, as determined in a manner provided by by-law, by facsimile transmission or any other type of mail or communication that provides confirmation of delivery

The motion is in order. Amendment–pass; clause 5(2) as amended–pass; clauses 5(3), 5(4) and 6–pass; clauses 7, 8, 9, 10 and 11–pass.

It has been moved by the Minister of Intergovernmental Affairs (Ms. Friesen)

THAT the proposed subsection 490(2), as set out in section 12 of the Bill, be amended by striking out clauses (a) and (b) and substituting the following:

(a) personally, or by mail in a manner that provides the city–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

–with an acknowledgment of receipt; and

(b) if the person cannot be served by one of the methods described in clause (a) after a reasonable effort has been made, by sending a

copy of it to the person's address, as determined in a manner provided by by-law, by facsimile transmission or any other type of mail or communication that provides confirmation of delivery.

The motion is in order. Is the Committee ready for the question?

Mr. Loewen: Madam Chair, just again to satisfy my own curiosity here, I notice in section (b) the words "after a reasonable effort has been made" remain. It was requested, I think, from the City that that phrasing be removed. I am having a little trouble understanding why it is necessary if it only applies to section (a) which specifies, presumably, what effort is required. So, presumably, if the City does what is required in section (a) and is unsuccessful in getting acknowledgment of the receipt of the notice, then they would move on to section (b) and it would, by default, assume that by performing section (a), which is required, they would have made the reasonable effort. I am a little curious as to why the words "after a reasonable effort has been made" are still needed.

Ms. Friesen: I am advised that that is a phrase which is known in law, and modifies or describes section (a) where reasonable efforts have been made personally or reasonable efforts have been made by mail in a manner that provides the City with acknowledgment of receipt.

Mr. Loewen: I notice that this wording is in all of the amendments that we have passed, and I guess this is what I was referring to earlier. Maybe it would be advisable to take a little time and get some further legal opinion on the necessity of this wording. It might result in an amendment of third reading. Just on a common-sense basis, it does not seem necessary to me, but if after a more thorough legal review, it is deemed that it should be there, then we do not have a problem with it, but it might be easier for everybody to clean it up and just get rid of it.

Ms. Friesen: I just wanted to advise the Member that the solicitor for the City of Winnipeg is here and I think has looked at these clauses. It may be that the Member may want to talk to the City, perhaps through the councillors or to staff, and certainly the staff here would be pleased to talk to you about that as well.

Madam Chairperson: The motion is in order. Amendment–pass; clause 12 as amended–pass; clauses 13, 14 and 15–pass; preamble–pass; title–pass. Bill as amended be reported.

Bill 14–The Provincial Railways Amendment Act

Madam Chairperson: Does the Minister responsible for Bill 14 have an opening statement?

Hon. Steve Ashton (Minister of Highways and Government Services): Yes, I do. I think it is important first of all to thank the presenters who came before the Committee. I do want to indicate that not only the presentations at committee but some of the comments in debate, comments from my colleagues in terms of our caucus discussion and stakeholder discussions have been noted.

I want to indicate that we will be bringing in a number of amendments that reflect the fact that the intent of this bill is to build in some safeguards in terms of short lines to make sure there is a process available that leaves no stone unturned in terms of seeing if there are other possible uses. That is something that rural communities asked for. I think it is a reasonable request.

At the same time, we have listened very carefully to the presentations from the rail industry, in particularly short-line operators, and particularly a number of their concerns related to the length of the process.

When we initially brought the Bill in, it was based on mirroring the federal process. I think a reasonable point was made that that is perhaps a lengthier process than is required in this situation, given the fact that short lines by definition have already gone through the federal process and have moved into provincial jurisdiction.

The purpose of the amendments, which I will be introducing in a few moments, are not to change the basic principle of the Bill, which

incidentally I know the previous Minister of Highways and the previous government had been looking at as well. But we will be tightening up the time frames. I think that was a legitimate point that was raised, not only tightening up the process, but providing more of a definitive time frame. In fact, we will be moving the time frame from a range of between 10 and 22 months to a range of between 5 and 12 months.

We will also be bringing in an amendment that will make a requirement of the Motor Transport Board that it shall issue a ruling once it has gone through the process. That was a point that was made by presenters. We have also listened on the concern related to deposits. We are going to have an amendment that will require a deposit. I think it is important to note that this is not meant to be anything that is prohibitive. Our intent in this legislation was to ensure that we had a process available whereby we could develop viable bids. It is not meant as a delaying mechanism. It is meant to find alternatives, perhaps another short-line operator, perhaps another existing short-line operator or another operator generally that can operate the rail line. We think that is important. We think what we have developed is going to do that.

I just want to finish on one other point, and that is that we did have, I think, very good presentations from a number of presenters, but I want to note the concerns that were put forward by Cando in the presentation that noted Alberta legislation which essentially gives greater definition to the obligations of the short-line operator when a rail line is abandoned. As much as the intent of our legislation is to avoid abandonment wherever possible, we do recognize that there are some cases where that will happen.

I can indicate that I will be talking to my colleague the minister of the environment on that. I notice that this was highlighted by the presenter, and this is indeed one of the concerns of short lines generally. I think if you look at this, we provide a greater certainty, but even with this bill, even with improvements in this bill, there are other areas beyond the scope of this bill where there is some uncertainty. Obviously, if you are looking at making a business investment of getting into a short line, you also need to know not only your business case but your potential exposure in terms of other areas as well.

So I will be talking to my colleague and my colleagues, generally, looking at that. We do take that concern very seriously. But, just to sum up, we, I think, have listened, and I believe this provides reasonable protection to rural communities, while at the same time I think reflects legitimate concerns raised by the industry.

Madam Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Harold Gilleshammer (Minnedosa): Madam Chairperson, we were able to speak on this bill in second reading, and I know the Minister was in attendance and indicated that there were a number of the issues that we brought up that he agreed with. I am still of the mind that this is flawed legislation, and I know, with the numerous amendments the Minister is going to bring in tonight, that he is going to try and repair this bill. I still am of the mind that perhaps you should step back and wait six months and do a little more research on it, a little more consultation.

Having said that, I know that the Minister intends to move ahead with it, but I think there are still some areas that need to be fixed. I have already indicated to him that I have one amendment on section 4 that we can discuss when we get to that point, but I do appreciate that a number of the concerns that have been raised by CANDO and others have been addressed. I know, too, that he does have a copy of this document from Alberta which I think he has just referenced, that there is another step that can be taken to ensure that there is a full view of what needs to be done in this whole area of short lines and short-line abandonment. With that, I am prepared to move ahead.

* (21:40)

Madam Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If

there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 and 2–pass; clauses 3(1), 3(2) and 3(3)–pass; clause 4.

It has been moved by the Honourable Mr. Ashton

THAT the proposed subsection 33(3), as set out in section 4 of the Bill, be amended in the part before clause (a) by striking out "may" and substituting "shall".

The motion is in order.

Mr. Gilleshammer: We have not seen the amendment yet.

Madam Chairperson: Amendment–pass.

Mr. Gilleshammer: We have an amendment.

Madam Chairperson: It has been moved by Mr. Gilleshammer

THAT section 4 of the Bill be amended by striking out "or" at the end of the proposed clause 33(3)(a), by striking out the period and adding ";or" at the end of the proposed clause 33(3)(b) and by adding the following after the proposed clause 33(3)(b):

(c) the holder

(i) owned or operated the railway line and was licensed under this Act before the coming into force of this clause, and

(ii) would have obtained the approval of the board for discontinuance if this section and section 34 read as they existed before the coming into force of this clause.

The motion is in order.

Mr. Gilleshammer: This would grandfather the situation with the existing short lines that we have encouraged to go into business in Manitoba. As we heard this morning at committee, they have a substantial investment. They have only recently gone into business, and I think we are substantially changing the rules by which they exist. I think this is an attempt to honour the rules and regulations that were in place when they were encouraged to purchase these short lines.

Mr. Ashton: Given the improvements we are making in terms of the Bill, and I think it is an important process, we feel that it is also important to have in place a process for the existing rail lines. I want to stress again that the intent of this is to ensure that if there are other viable options that they are also explored as well. I think, if you look at the federal process, it is aimed at making sure that wherever possible, rail lines continue and are not put out to salvage.

It is the same process we are looking at provincially and through the amendments, which have been in response to some very good feedback from industry, we believe we have built in place a balance that will reflect that. We will not be supporting this largely because I do not think that would be what people in the communities that are served by those rail lines would want. I think they would want us to have that balance, and I believe by having a much tighter time frame, we are dealing with some of the legitimate concerns of the industry. So it is more of a balanced approach. I appreciate the concerns of the Member, but once again we feel that it is also important to look for options for existing rail lines through this process.

Madam Chairperson: The motion is in order. Is the Committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: It has been moved by Mr. Gilleshammer

THAT section 4 of the Bill be amended by striking out "or" at the end of the proposed clause 33(3)(a), by striking out the period and adding ";or" at the end of the proposed clause 33(3)(b) and by adding the following after the proposed clause 33(3)(b):

(c) the holder

(i) owned or operated the railway line and was licensed under this Act before the coming into force of this clause, and

(ii) would have obtained the approval of the board for discontinuance if this section and section 34 read as they existed before the coming into force of this clause.

Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Madam Chairperson: All those in favour of adopting the amendment, please say yea.

Some Honourable Members: Yea.

Madam Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Madam Chairperson: In my opinion, the Nays have it. The amendment is accordingly defeated.

* * *

* (21:50)

Madam Chairperson: It has been moved by the Honourable Mr. Ashton

THAT the proposed subsection 34.2(4), as set out in section 4 of the Bill, be amended

(a) in the section heading, by striking out "180-day" and substituting "60-day"; and

(b) in the subsection, by striking out "180 days" and substituting "60 days".

The motion is in order. Amendment–pass. Shall clause–

Mr. Ashton: Another amendment.

Madam Chairperson: It has been moved by the Honourable Mr. Ashton

THAT section 4 of the Bill be amended by striking out the proposed subsection 34.2(5).

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT the proposed clause 34.2(7)(d), as set out in section 4 of the Bill, be amended by striking out "60" and substituting "30".

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT the proposed subsection 34.2(10), as set out in section 4 of the Bill, be amended

(a) in the English version, by striking out the section heading and substituting "Period for reaching agreement"; and

(b) in the subsection, by striking out "six months" and substituting "90 days".

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT section 4 of the Bill be amended by adding the following after the proposed subsection 34.2(10):

Board may extend period for reaching agreement

34.2(10.1) The board may, on application by the licence holder or the interested person with whom the licence holder is negotiating, extend the period for reaching agreement

(a) by any period that the licence holder and interested person agree on; or

(b) by up to 90 days, if the licence holder and the interested person cannot agree on the length of the extension but the board is satisfied that they are involved in on-going

negotiations in good faith that may result in an agreement.

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT the proposed subsection 34.2(11), as set out in section 4 of the Bill, be amended by striking out "six-month period" and substituting "period for reaching agreement".

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT the proposed clauses 34.3(1)(b) and (c), as set out in section 4 of the Bill, be amended by striking out "six-month period" and substituting "period for reaching agreement".

The motion is in order. Amendment–pass.

It has been moved by the Honourable Mr. Ashton

THAT section 4 of the Bill be amended by adding the following after the proposed subsection 34.3(4):

Deposit
34.3(4.1) When the Government of Manitoba or a municipality accepts the offer, it shall provide a deposit to the board of 5% of the net salvage value set out in the offer or $25,000., whichever is less.

Deposit to be held by the board
34.3(4.2) The deposit shall be held by the board for the parties under the deposit conditions set out in the regulations.

Acceptance not binding without deposit
34.3(4.3) If the government or municipality fails to provide the deposit to the board, the acceptance is not binding on the licence holder.

We may have a slight procedural problem. Would the Committee like to take a five-minute recess or do you want to just–

Mr. Ashton: I move

THAT section 4 of the Bill be amended by adding the following after the proposed subsection 34.3(4):

Deposit
34.3(4.1) When the Government of Manitoba or a municipality accepts the offer, it shall provide a deposit to the board of 5% of the net salvage value set out in the offer or $25,000., whichever is less.

Deposit to be held by the board
34.3(4.2) The deposit shall be held by the board for the parties under the deposit conditions set out in the regulations.

Acceptance not binding without deposit
34.3(4.3) If the government or municipality fails to provide the deposit to the board, the acceptance is not binding on the licence holder.

Madam Chairperson: The motion is in order. Amendment–pass.

Mr. Ashton: I move

THAT the proposed subsection 34.3(5), as set out in section 4 of the Bill, be amended by striking out "communicates its written acceptance of the offer to the licence holder," and substituting "accepts the offer in writing and provides the required deposit".

Madam Chairperson: The motion is in order. Amendment–pass.

Mr. Ashton: I move

THAT section 4 of the Bill be amended by adding the following after the proposed subsection 34.3(10):

Canadian Transportation Agency as arbitrator
34.3(10.1) The board shall refer an arbitration under subsection (10) to the Canadian Transportation Agency if

(a) either of the parties requests that the reference be made to that agency; and

(b) that agency is prepared to accept the reference.

* (22:00)

Madam Chairperson: The motion is in order. Mr. Loewen, did you have your hand up?

Mr. John Loewen (Fort Whyte): Yes, I did, thank you, Madam Chair. Just for clarification then, and I think this follows with one of the requests that was made earlier in presentations to the Committee, I believe what the Minister is proposing by this amendment is if the parties are unable to agree on an independent appraiser then the board will step in. If I read it correctly, if the parties are unable to agree on an appraiser, which is not too unusual in these circumstances, is it still incumbent on the board to make a written request or on the parties to make a written request to refer to the transportation agency? Maybe the Minister could just explain in a little more detail.

Mr. Ashton: This was a request actually by two of the presenters. It was requested by Southern Manitoba Rail and also the Western Rail Coalition, obviously very different perspectives. The intent I think of the suggestion for the amendment is that people know the CTA and its arbitration process. CTA does deal with rail line abandonments, et cetera, so it was with that grade of certainty. This basically allows for that process but also recognizes that obviously the CTA has to be willing to do that. You cannot, by provincial legislation, require a federal body to do that. That was one area where there was consensus on sort of, shall we say, both sides of this issue. It is an attempt to get some grade of certainty in terms of that process. So it is consistent with two of the presentations.

Mr. Loewen: I am correct in interpreting this that would only happen if one of the parties requested that the Canadian Transportation Agency be retained as the arbitrator. It would require one of the parties to request them specifically.

Mr. Ashton: Yes, because the request by two of the presenters was that be the way with which it should be dealt in terms of arbitration, which we thought was a reasonable request. The intent of this is basically not to prohibit both parties from deciding to go to some other arbitrator, perhaps in province. So we took the general suggestion of the two presenters which is to have the Canadian Transportation Agency available, if requested by one of the parties. We do not want to force the CTA process in a situation where both parties agree on some other arbitrator.

Mr. Loewen: Just in reading this from a business perspective, it seems pretty cumbersome. I think what I heard today from the presenters was that they were looking for the Canadian Transportation Agency to be the arbitrator. Maybe the Minister might want to reflect on this prior to your bringing it to third reading and maybe review this amendment. It might make a little more sense and make it a little less cumbersome for all parties involved, if in fact they are unable to agree on an independent appraiser, that the arbitrator automatically become the transportation agency, rather than going through the process of having to have one of them request it. I do not know. It just seems a little cumbersome.

Mr. Ashton: Well, I actually think that we are dealing with the concern you are expressing, through you, Madam Chairperson. The concern here is to have the CTA available basically but not to preclude both sides–and we do not want to force the CTA. If you have both sides agreeing to an arbitrator that is not the CTA. then that, to my mind, should not be a decision that we forced through legislation. So what it does is it builds in, I think, very much the concerns that are being expressed, and this is the way we have to word it, too. This is based on legal advice in terms of that. So it does allow for flexibility but does have the basic standards, being the CTA.

Mr. Loewen: I am sure there are many lawyers who will be happy to get involved in the interpretation.

Madam Chairperson: The motion is in order. Is the Committee ready for the question?

An Honourable Member: Question.

Madam Chairperson: It has been moved by the Honourable Mr. Ashton–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

THAT section 4 of the Bill be amended by adding the following after the proposed subsection 34.3(10):

Canadian Transportation Agency as arbitrator 34.3(10.1) *The board shall refer an arbitration under subsection (10) to the Canadian Transportation Agency if*

(a) either of the parties requests that the reference be made to that agency; and

(b) that agency is prepared to accept the reference.

Thank you. Is it the pleasure of the Committee to adopt the amendment?

Some Honourable Members: Agreed.

Madam Chairperson: The amendment is–

Mr. Gilleshammer: Yes, I am in favour of it. I just want to go back. There has been a flurry of paper here, and I do not know whether we dealt with this one that came by recently at the proposed subsection 34.3(6) and (7) as set out in section 4 of the Bill. Did we deal with that?

Mr. Ashton: There is a drafting error, and there is a corrected version. It only deals with 34(6), so you can dispense with that. There is a corrected version coming.

Mr. Gilleshammer: So there is another one coming.

Mr. Ashton: Yes.

Madam Chairperson: Amendment–pass.

Ms. Marianne Cerilli (Radisson): Madam Chairperson, I move that leave be granted to accept all the amendments passed by this committee tonight that were read only by the Chairperson be accepted as if read by the Minister or member.

Madam Chairperson: It has been moved by Ms. Cerilli that leave be granted to accept–

An Honourable Member: Dispense.

Madam Chairperson: Dispense.

–all the amendments passed by this committee tonight that were read only by the Chairperson be accepted as if read by the Minister or member.

Madam Chairperson: Is it the pleasure of the Committee to adopt the motion?

Some Honourable Members: Agreed.

Madam Chairperson: The motion has accordingly been adopted.

* (22:10)

Mr. Ashton: Madam Chair, I move

THAT the proposed subsection 34.3(11) as set out in section 4 of the Bill, be amended

(a) in clause (b), by striking out "40(4)" and substituting "40(5)"; and

(b) in clause (c), by striking out "40(5)" and substituting "40(6)".

Madam Chairperson: Amendment–pass.

Mr. Ashton: Madam Chairperson, I move

THAT the proposed subsection 34.3(6), as set out in section 4 of the Bill, be amended by striking out "90" and substituting "30".

Madam Chairperson: Amendment–pass; clause 4 as amended–pass. Shall clauses 5, 6, and 7 pass?

Mr. Ashton: I have one more amendment, final amendment. I move

THAT section 5 of the Bill be amended by adding the following after the proposed clause 48(1)(j.1):

(j.2) respecting deposits and deposit conditions under subsections 34.3(4.1) to (4.3);

Madam Chairperson: The motion is in order. Amendment–pass; clause 5 as amended–pass; clauses 6 and 7–pass; preamble–pass. Shall the title pass?

An Honourable Member: No.

Mr. Loewen: I feel it necessary to put some words on the record regarding this bill. It is probably as appropriate as anywhere in the title. I have got a number of possibilities here, the first coming to mind being the provincial railways amended amendment act. It seems incredible to me that we have come with a relatively small bill and had to amend it, I have lost count here, 17 or 18 times. The Minister can provide this committee with all kinds of reasons for doing it.

I think it is very unfortunate that in particular the amendments do not go anywhere near addressing the concerns we heard earlier this morning. I appreciate that everyone is looking at their watch and is anxious to get home. I am anxious to get home as well. I have got my family coming back from the lake, the first time I will see them in a number of days. So I do not want to prolong this. But I do think it is important that there is some comment put on the record regarding this bill.

Time and again I have heard in the House where the Premier, the Leader of this party, has talked about his willingness to bring these bills to committee stage, to have his party listen, to react and reflect on the comments that are made by presenters. We get in a situation this morning where we have a gentleman representation the Railway Association of Canada fly all the way from Montreal and in effect get shut down by the Committee, get a limitation of maybe 15 minutes. When leave was asked to ask more questions, we get the response that we will grant a minute or two leave from members opposite. I think that is bad form and bad process on behalf of this committee and something maybe that all parties need to take a look at. I am new to this process and I keep hearing, well, that is something that was done before by your side of the House. I do not think that is really relevant.

I think when people come before committees and they have the opportunity to put their thoughts on the record, particularly when they are people who are experienced in an industry which is in a lot of ways a fledgling industry in the province of Manitoba and there are not that many that have had the courage to take it on. I think it is imperative that we give these people a full opportunity not only to listen to their presentation but also to question them to determine where they are coming from.

I have to say right from the start, that was a bit of a disappointment. I am even more disappointed that the fact is that in all these amendments nowhere does it truly reflect what we heard today. In fact the presenters even admitted at the end of it that although they had had some inkling of these amendments, they did not nearly go far enough to satisfy the concerns that the presenters had. I think that is unfortunate.

As I am sitting here, I can think of other titles that maybe would be applicable to this bill: The provincial railways foreclosure act; the provincial railways expropriation act; the provincial railways discouragement act, and there are many, many more.

I just want the Minister to know that I think it is a very unfortunate situation when we have people who are willing to invest at considerable risk to themselves and their investment in this province, not only, as we heard, people from Brandon who have taken the risk and made the investment, but also people who have moved to this province to make that investment, have invested in this province and have set up roots in this province, have come to this committee to tell us that the proposals in this bill along with the proposals in Bill 18 will make it very, very difficult for them not only to continue their business but also to expand their business. I am sure the Minister must be aware that it is very rare that somebody makes an investment in a business without hoping that at some opportunity in the near future they can expand that business and continue to see it grow.

Once again I just want to put on the record my disappointment that we are dealing in such an expeditious fashion with this bill. There is

nothing I see in this bill that is being presented that needs to get enacted right away to save any particular piece of property, or in fact present any positive opportunities for any business in this province, or for that matter for those people who are interested in the land reclamation side of it.

It is unfortunate, I think, that this bill, combined with Bill 18, which we, I guess, will deal with at another time, it is unfortunate that these two bills are being pushed through this sitting in the House. I think it would be advisable for the Minister to maybe take a sober second look at these bills and consider whether the people of Manitoba, all the people of Manitoba, and in particular those who have taken the risk to create short-line railways in Manitoba, maybe did not have a little opportunity for more input to the Minister to provide him with some sober second thoughts so that maybe at some point this fall we could come back with a bill that did not need quite the number of amendments and maybe addressed in a more positive fashion for a business in Manitoba the issue of land reclamation.

* (22:20)

So with those brief comments I just wanted to make the Minister aware of my feelings on this. I think it is unfortunate that this bill is being pushed through the House at this time, or through committee at this time.

Mr. Ashton: I must express–and I will not spend very long on this–some concern. I think the Member was at a different committee hearing than I was, because I went through the presentation from CANDO Contracting, for example, and as I indicated there were four solutions listed for Bill 14. We have adopted three of them in the amendments. In fact, those were acknowledged. The fourth, I have indicated, again, that I am looking at it with my colleague, which goes beyond the scope of this bill. So we responded to the presentation from CANDO.

I looked at Southern Manitoba Railway. There are four points in a letter that was written to me June 5. We have responded to two of them, and in fact two of the others were to go beyond the scope of the Bill. In fact, the other presentation from the rail sector was very much in the same line.

So we have listened, and I make no apology in a bill like this. This should not really be an issue of great philosophical difference. There are a lot of technical aspects of the Bill, and I think it is a strength in this particular case in a bill like this. It is not like some of the other bills in the session where it is more philosophical differences where you are obviously going to agree or disagree. We brought in these amendments because we listened, and we brought in a much more streamlined process.

I would remind members that one of the main reasons we are bringing in this bill, as well, is we want to be, I think, open to the short-line industry. But there are rural communities that rely on those rail lines, and we want to make sure that process is in place. If we were not to pass this legislation tonight, it would mean that the existing short lines would not have any protection or any process whatsoever in place. So even if we had somebody willing to come in and take over that short line, which is the purpose of this bill, they would not be able to do so.

I appreciate that the Member has a different view on this, but we have tried to listen. It is a balance, but it is a balance that also combines some concern for rural communities that do rely on those rail lines, a concern that was expressed by those rural communities, by the way, to the previous government. The previous government was looking at similar legislation. So we are not trying to say we reinvented the wheel on this.

Mr. Loewen: Well, Madam Chair, if the Minister believes that his amendments have in fact dealt with the concerns we heard today from the short-line railways, I was at the same committee, and I do not believe they do. Perhaps then we could ask the Minister if he would postpone the bill till the fall, reissue it, and again let the people who presented today come back and make further comment on the Bill. If in fact he has truly addressed their concerns, then he has nothing to fear. There is no urgency in having this bill pass right away. So let us take due process and allow the people who are

contributing to the growth in the economy in Manitoba the opportunity to continue to build their business based on the same rules that allowed them to invest in good faith. If that is the case and the Minister satisfied all their requests for change, then I am happy. I am sure everyone on our side of the House will be happy.

But until we have confirmation from the presenters that were here today that they are indeed satisfied and comfortable having their investment in Manitoba and continuing to make their investment grow–because, as we heard today, if they are not, the risk is that they will be looking to Alberta, and that was specifically brought up today as a positive alternative. So if that is the case and if the Minister has met all of the requests, well, congratulations to him. But if that is the case he should have no fear of sitting on this bill for a little bit, redrafting it so that it is not full of amendments and bringing it back to committee so that the people who are involved in the business can have their comments on it.

Madam Chairperson: Title–pass. Bill as amended be reported.

That concludes the business before the Committee. Committee rise.

COMMITTEE ROSE AT: 10:26 p.m.