



Fourth Session — Thirty-First Legislature
of the
Legislative Assembly of Manitoba
STANDING COMMITTEE
ON
PRIVATE BILLS

29 Elizabeth II

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The Honourable Harry E. Graham
Speaker*



THURSDAY, 17 JULY, 1980, 2:00 p.m.

MANITOBA LEGISLATIVE ASSEMBLY**Thirty - First Legislature****Members, Constituencies and Political Affiliation**

Name	Constituency	Party
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BANMAN, Hon. Robert (Bob)	La Verendrye	PC
BARROW, Tom	Flin Flon	NDP
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WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	PC

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVATE BILLS
Thursday, 17 July, 1980

Time — 2:00 p.m.

CHAIRMAN — Jim Galbraith (Dauphin)

MR. CHAIRMAN: Members of the committee, we now call this committee to order. We are here to deal with Bills 54, 57, 65, 66 and 87.

I'm informed that Mr. Turner from the Law Society is here on hand to deal with Bill 57, but I am at the wishes of the committee so I will ask for guidance at this time.

**BILL NO. 57 — AN ACT FOR THE
RELIEF OF
INGIBJORG ELIZABETH ALDA HAWES
AND GEORGE WILFRED HAWES**

MR. DAVID BLAKE: Mr. Chairman, if there's a delegation here I think probably we should maybe deal with that first and save them waiting around most of the afternoon, because it may be some time before we get to it.

MR. CHAIRMAN: Agreed? (Agreed)

I'll call Mr. Turner from the Manitoba Law Society.

MR. KEITH TURNER: Mr. Chairman, last evening, of course, I said that I would bring the matter to the attention of the Executive and Finance Committee. I expected it would take about a week in order to obtain an informed response. I wasn't prepared last night to speak to it because I had only received the proposed amendments last evening.

I really have nothing to add, further to what I said last evening. We did get together a meeting for this afternoon of the Executive Committee of the Law Society, as I said we would do, but that was scheduled for 1:30 and meanwhile I was told to be here at 2:00 so we really haven't had an in-depth consideration of the proposed amendments.

With respect to Bill 57, the typical type of statute used for the relief against limitation periods, we have nothing to say. It is the proposed amendments, of course, which would concern us. The imposition of a statutory liability upon the Law Society and that we would oppose, if the amendment is before the committee.

MR. CHAIRMAN: Do any members of the committee have any questions of Mr. Turner?

Mr. Cherniack.

MR. SAUL M. CHERNIACK: Mr. Chairman, yesterday Mr. Turner sort of undertook to try to comply with an enquiry by Mr. Blake, which I thought was not quite relevant and yet, I guess as a member of the Law Society, I was intrigued to know the answer, and I'm wondering if Mr. Turner has the answer available. And the question, as I recall it from Mr. Blake, which as I say, I don't think it's quite relevant, was whether Mr. Turner could inform the

committee of, I think it was occasions that Mr. Szewczyk was delinquent in filing the accountant's certificate and yet received the licence to practice. Now, Mr. Blake will of course correct me if I'm wrong in describing the question.

MR. BLAKE: I asked how often they were required and had he complied with them, I think.

MR. CHERNIACK: Now, Mr. Chairman, I didn't think it was relevant to whether Mr. Szewczyk was negligent and was properly disciplined in connection with the negligence in the Hawes case, but I was very intrigued when Mr. Turner, I think, volunteered to respond to that enquiry because I'd like to know how the Law Society did handle the case of Mr. Szewczyk and his activities or failures in regard to his responsibilities to his profession. So I'm asking Mr. Turner a question which I think he has a right to refuse to answer.

MR. TURNER: There's no hesitation in answering the question. I put that question to the executive and Finance Committee in the very limited time that we've had. Yes, Mr. Szewczyk, as all members of the Society, was required to file an accountant's certificate with respect to the status of his law office accounts as at March 31 each year. It has absolutely nothing whatsoever to do, as Mr. Cherniack points out, with the problem of Mrs. Hawes or the insurance or anything else for the committee. The certificates went back five years. There were no accountant's certificates filed by Mr. Szewczyk for the years 1976, 1977 and 1978. They were filed for 1975, filed for 1979 and filed for 1980.

With respect to his failure to file the accountant's certificates, and again I emphasize it had nothing whatsoever to do with the insurance. He paid his practising fee. He paid his insurance premiums. He paid his reimbursement assessment. It had nothing to do with the problem. But with respect to his failure to file those certificates, he was charged by the Law Society, by the Discipline Committee, and the matter was heard by the Judicial Committee and he was reprimanded for his failure to do so on August 9, 1979. As I say, since then the certificates have been filed for subsequent years.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: If there are no further questions, I thank you.

Mr. Filmon.

MR. GARY FILMON: Mr. Chairman, was there any requirement for him to fill in the certificates for the intervening years or did the executive consider that?

MR. TURNER: I enquired about it and the certificate which was . . . When they picked up again after the three years absence, I asked whether they were cumulative and the answer I received was no. So

there were no certificates filed, even late, for those three years.

MR. FILMON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions of Mr. Turner. If not, I'd like to thank you, Mr. Turner, on behalf of the committee.

MR. TURNER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Mr. Turner told us that he had called a meeting for 1:30 and has not been able to hold the meeting but he was told to be here at 2:00 o'clock. Now we're going to be in this committee for some period of time and I'm wondering whether it would be fair to the Law Society to be given some stated period of time like, you know, a couple of hours before we deal with this bill and the amendment, as a matter of not just courtesy, but justice, that they are going to be involved in a discussion that may end up in the payment of moneys by the Law Society. Because we are in Speed-up I knew that they couldn't have a week but if they have acted to the extent of having their group ready to meet, whether we couldn't offer them a room and an opportunity to meet and come back if they wish to, undertaking not to deal with this matter for a limited period of time, whatever can be negotiated. I don't feel that I'm one to do it. I just feel out of fairness that opportunity should be given, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack I am at the wishes of the committee. I look for guidance . . .

MR. BLAKE: . . . the Committee, Mr. Chairman, from my point of view, if they want to hold their meeting and come back to us, we could deal with the bill afterwards.

MR. CHAIRMAN: Is that agreeable with all members of the committee?

MR. CHERNIACK: Let's ask Mr. Turner.

MR. CHAIRMAN: Mr. Turner would you be agreeable to that?

MR. TURNER: Yes, we can be back. It would just be a matter of articulating. The objection which we have is that the whole concept is absolutely wrong in principle. I say that, but however, I can, given between now and 3:30 be back at 3:30 and articulate the reasons for taking that position on behalf of the Law Society. I'm not clear that the amendment has ever been put before the committee, and I felt in a rather uncomfortable position both last night and even at this moment. Who am I to presume to say to this committee whether they should be dealing with the matter or not? I don't know that there has been a motion placed before the committee to amend Bill No. 57, over the objection of Mr. Walker, whose representations you heard last night, so I don't know what I am speaking to.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I was serious yesterday and I am serious today, that I have every intention, if I live long enough, to present that amendment of which Mr. Turner has a copy, and since I don't need a seconder, I can assure him it will be presented when the matter comes before us. It can't be presented until the bill is being discussed section by section, but I assure him I will present it. I have no way of knowing how any other member of committee will vote on it, but it will be a subject for discussion, I assure him. Is that good enough?

MR. TURNER: Certainly, Mr. Cherniack. We can be back by 3:30, if that is agreeable to the committee.

MR. CHAIRMAN: Is this agreeable to the members of the committee?

MR. BLAKE: Can we can get on with that bill as close to 3:30, Mr. Chairman, as we can.

MR. CHAIRMAN: I think Mr. Turner realizes that . . . can't finish it and then get on with this one.

MR. TURNER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Okay, thank you, Mr. Turner.

 The members of the committee, what particular order do want to deal with the bills, as they are listed here on the page, other than 57, or do you want to take any bill in particular?

MR. BLAKE: It depends if there are representatives here from all of the groups, Mr. Chairman, or not. I know the RN's are here, 65, and the LPN's are here too; either 65 and 87 then, I would say first.

MR. CHAIRMAN: Are the members of the committee agreeable?

A MEMBER: . . . start on. Can we finish that by 3:30?

MR. CHAIRMAN: Okay, we'll deal with . . . Mr. Cherniack.

MR. CHERNIACK: I've had several occasions to discuss with the Minister how this might be handled. I wonder if he can indicate to us how he wishes these bills to be dealt with.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think it's going to be difficult, frankly, to reach conclusions this afternoon on clause-by-clause study of at least two of the bills that are in front of us, Bill 65 and Bill 87. In fact, I suggest that there is some additional consideration that needs to be given to a section or two in Bill 66. We have, as Mr. Blake has pointed out, representatives here from the registered nurses and the licensed practical nurses and there may also be some of the registered psychiatric nurses here. We had wanted to have them here to assist the committee in this work, and I appreciate their being here. I think, though, that there are a number of clauses that require the co-operative attention of the committee. I appreciate the subject matter that's been raised to date by Mr. Cherniack and his

colleagues, as well as that raised by my own colleagues.

I am not certain, sir, that we should have in mind conclusion of the clause-by-clause examination of these bills this afternoon. I think that we can deal with the clauses from the perspective of an overview, but I suggest that there will have to be some amendments forthcoming. I have indicated to the committee last night that there are a number of amendments coming on Bill 87, the Licensed Practical Nurses. There may also be one or two on Bill 65 and Bill 66, so I would really have to seek the consensus of the committee as to whether they would agree that we could consider this afternoon's session as a session for an overview study of the clauses, but not expect to have the bills refined into final shape at this particular sitting of the committee. I think it will require at least another sitting, Mr. Chairman, although I know everyone is anxious, particularly those who are affected by the bills, to have the study concluded as quickly as possible. But I think everyone would also concede that we're dealing with extremely important legislation in all three cases with considerable ramifications for society and for the government of the day, whatever government. So I would put that caveat on our approach to them this afternoon, and I'm not suggesting that that is a caucus position or a government position, I speak in this respect essentially, sir, as a private member.

MR. CHAIRMAN: Mr. Filmon.

MR. GARY FILMON (River Heights): Mr. Chairman, I wonder then if the proper course of action would be to simply look at the particular clauses that have been identified, either in debate on second reading or in committee here, either by members of the committee or by the delegations, as being ones that are concerning them, and then deal with those clauses, assuming that the others are acceptable by virtue of the fact that nobody else has spoken on them. Is that a fair way to look at the, shall we say, contentious clauses, and look at them with respect to all bills, because there's a certain degree of similarity amongst the three bills, in most clauses, in most areas, and then proceed on a page-by-page or clause-by-clause with the amendments that would come forward out of this afternoon's discussion?

MR. CHAIRMAN: Members of the committee, I am at your discretion.

Mr. Cherniack.

BILL NO. 65

THE REGISTERED NURSES ACT

BILL NO. 66 — THE REGISTERED PSYCHIATRIC NURSES ACT

BILL NO. 87 — THE LICENSED PRACTICAL NURSES ACT

MR. CHERNIACK: Mr. Chairman, I think we should all make an effort to handle these bills with the greatest facility, and yet with all the care and concern that the Minister indicated they should have. I am conscience bound to make a pitch which I don't

expect to be completely persuasive and that is in relation to the entire field of legislation dealing with professionals in the health care field. I'm about to make it but before I do, in the event that I am persuasive enough, then we would have to deal with it differently; other than that, I think possibly the way to do it would be, in view of the fact that the LPN legislation is due to have some very substantial changes made to it, that possibly we could take either the 65 or the 66, or both together, and just run down page-by-page or section-by-section, noting the differences and voicing opinions regarding them, and either approving the final wording or agreeing to review the wording again. Possibly that way we could go right through both bills almost concurrently because they're so similar, Mr. Chairman, and then having done that, I suspect that the LPN legislation will be clear in our minds because of what we will have done to the first two, and be able to deal with the changes that the Minister is going to propose.

Having said that, I'd like to make my position on all these bills clear and try to get a reaction. So, if I'm in order on that point, Mr. Chairman, I would like to do that.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, that's certainly agreeable to us. Just before Mr. Cherniack does that, might I just underscore the fact that all of us in the Legislature and in the associations concerned here are determined that we produce legislation that's in the best interests of the people of Manitoba, as well as the health professionals of Manitoba. Mr. Cherniack is aware and we're all aware that he and his colleagues worked on legislation of this kind for some considerable time. I want the record to indicate clearly that my colleagues and I have done likewise and the three relevant associations have participated fully and totally in that exercise. We are here now at the sort of climatic point of a long pursuit, of a long and very conscientious and very complex attempt to produce much needed improvements in the health professional field of legislation. I think that it may take us two or three days to complete the final refinement of that legislation.

I am not anxious to delay the work of the legislature or the work of the committee, but I just want to reinforce my point that Mr. Cherniack is fully entitled to deliver his overview and I will be interested in hearing it, but our position stems from some two and a half years of pursuit of acceptable legislation, and what is before the committee is the result of a great deal of work and a great deal of soul searching. I think last night's exercise was extremely valuable, if tedious, it was extremely valuable because it permitted members of the committee and those who have participated in the development of the legislation their first opportunity to really put the wording into the arena and have it exposed to the critical perspective of others. I think we may well want to ask, Mr. Chairman, through the House leaders, that the next meeting of this committee on these bills be held two or three days hence, not four or six hours hence. With that point made, and that in mind, I certainly have no objections whatsoever to Mr. Cherniack making his overview statement.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we have pretty well heard Mr. Sherman's response to the statement that I'm about to make, but that won't foreclose my making it of course. It's not just two and a half years, it's many more years that I have been looking at these various aspects of professional legislation, and last night's discussions, which as he says were tedious on occasion, nevertheless brought to my attention what I felt was just supporting the position that I have taken and wish to take now to the effect that only a co-ordinated health professions' bill integrating the various servants of the public in the health field would make sense.

I know that the Minister is committed, he has made it clear, he is committed that this legislation pass this session, and of course he has the control over that, but I want to indicate the differences that appeared yesterday that were only there to accentuate the fact that within the health services' professions, there is a split and there is a sort of a difference in hierarchical approach to the standards and the method of delivery of the health services. I point out that, to my disappointment but not surprise, the gentleman representing the employers, the actual deliverers of the service, those responsible to the public for delivering the service, had very little to say about the input they would want to make in the overall standards of service.

Mr. Crewson, who represents just about all of the organizations that deliver the service, said he'd like to be forewarned of what's going to happen so that he could have his say in that, but he did not indicate a need that he felt that he wanted to be involved on behalf of his organizations in setting standards both as to qualifications and as to service and as to education. We did not hear from the teachers to any large extent, i.e. the universities were not represented to indicate what they believed ought to be the role of the academic in the professional field vis-a-vis the practical professional approach.

I may be wrong you know, I probably am wrong because it was a long evening, but we heard from the teacher from Red River College who spoke about the difference in program for the LPNs and for the two-year RN program but other than that I don't think we heard very much from those who are responsible for the actual education, the curricula. We heard from the doctor who came here and said he's all in favour of this, meanwhile knowing that The Medical Act is being delayed for between sessional review and thereto it will be dealing with standards of service, and to me the logical thing is an approach which, I believe, was taken in Ontario, if not in other jurisdictions, where all of the health professions were put under the umbrella of a board which would try to co-ordinate it.

We heard clearly how the RNs disputed the powers of the LPNs to set certain standards because the RNs said, we are the ones responsible to supervise. I'm not saying that in any sense of criticism. I believe they're right. I really think that what the Minister indicated he wishes to do is probably the right thing to do in the circumstances. But at the same time, we don't have the input of the medical profession in the powers about to be given to the RNs and I think it's wrong, Mr. Chairman, and I fault government; I want

to make it clear, I don't fault the current government alone but I fault its predecessor governments for not becoming involved on behalf of the public which puts them in the position of power and control for the delivery of one of the most important aspects of public service, that is in the health field, not to be much more involved. I am going to later press to see that we get a little bit more of government responsibility in decisions that will be made in the future, dealing with standards, dealing with qualifications, dealing with education.

What I really think would make sense — and I'm afraid now that by passing these bills we will be postponing for a very long time — is an effort to bring them all under one umbrella so that they have to sit around one table and talk, recognizing each the other's abilities and each the other limitations and each together planning to deliver a better service. I say that because the cost of the delivery of health service is growing to such an extent that I think it is endangering, if not the economy of the country but it's certainly having a tremendous impact on the ability of governments to provide health services to people, and an effort to control the cost of that has to be related to an effort to co-ordinate the delivery so that the most effective, most efficient and widest-spread delivery of service is available.

I think that permitting professions within the same field to continue to have separate powers and to have even competing attitudes is only going to make it more difficult and defeat what I think is a desirable thing and that is a health team working together and not having parochial interests or vested interests.

What I think would be the logical way is to have government prepare a form of structure which will have what I called an umbrella or call it joint or call it joint advisory group, dealing with all the health services and that includes lab technicians and that, of course, includes the medical profession and it includes the hospitals which are responsible for the services, and it includes the nursing homes which deal with such a large segment of our population in need of health care, so that they all sit around the table equal in their discussions. When I say equal, I mean the LPNs would have an equal contribution to say as to what they believe is right with the RNs, then certainly the RNs with the medical profession. I don't think the RNs have that opportunity with the medical profession. The impression I have is that they don't, they are not in complete accord on the delivery of services.

So I think the logical thing, the desirable thing — and maybe some day it will come to pass — would be to have one co-ordinated group that overviews the rules and regulations, the method in which standards are set as to the nature of practice; as to ethics of practice; as to division of responsibility; as to educational qualifications, training qualifications and the education generally in the entire field. It should be co-ordinated.

Now, I do believe that to some extent it has happened in Ontario, although there too I know the professions are still separate with their own separate bodies, but they do have one overall overview. What this legislation does is say, only the Lieutenant-Governor-in-Council must approve regulations that will be passed. I will point out later why I think it's an inadequate provision but I think it is unsatisfactory

for government not to be much more involved in delivering that service.

So having said what I'd like to see done, only if I get support from a group of members within the committee to that would there be much point in continuing the discussion in order to see whether we could still attempt to accomplish that purpose. But if committee indicates that in spite of what I have argued, that the Minister's point that we should deal with these bills and we must get them done before the session ends is to proceed, then I will have made my effort and accept the fact that it will go as the committee determines it should.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think there is a thrust or two to Mr. Cherniack's remarks that should not be permitted to go unchallenged.

Mr. Cherniack implies, unless I've misunderstood him completely, that there has not been opportunity for the public, proper opportunity, and for those who represent important professional components in the public to offer their comment and their input on the development of this legislation.

MR. CHERNIACK: No, not correct.

MR. SHERMAN: Mr. Cherniack now says that that is not correct, that is not what he said. I'm glad he's saying that's not what he said because if it is what he said it is entirely and totally with some foundation. —(Interjection)

The fact of the matter, Mr. Chairman, is that, certainly speaking for my colleagues, the sponsors of these bills — I can't speak for the previous administration, but for my colleagues the sponsors of these bills — two-and-a-half years of discussion and consultation has been held with representatives of the very groups to whom Mr. Cherniack has referred. If the Manitoba Medical Association did not wish to make a presentation before the committee on Bills 65, 66 or 87, that is the association's prerogative and it should not be construed as reflecting a position of disinterest and avoidance of this legislation.

I can assure Mr. Cherniack that lengthy discussions have been held with the MMA, with the College of Physicians and Surgeons, with instructors, with employers on this legislation over the past two-and-a-half years, and what is in this legislation at the present time represents input from those groups, as well as others who appeared here, and as well as others who haven't appeared here, regardless of whether they formally appeared before this committee or not. Now if we're going to wait for Mr. Cherniack's proposed coordinated group to deal with these problems, I suggest that that implies a type of Omnibus legislation — and I want to assure him that the concept of Omnibus legislation was very profoundly considered by this government, by the sponsors of the bills and by the Executive Council, and was rejected as being impractical and unworkable when one considers the complexity of the different fields of interest in the whole spectrum of the health professions, technologies and occupations.

What we have done is develop a set of guidelines which lay down the parameters within which health professions can assume self-governance and which lay down the parameters which assure public protection and activities in the public interest. All those associations that have come forward with requests for new legislation or amended legislation have conformed in their proposals to those guidelines. That is the one coordinated group approach; that is the omnibus approach that we feel is practical and realistic and workable, and that is the omnibus approach that I suggest to Mr. Cherniack, essentially meets his concerns. To go beyond that into the never-never land of some amorphous organization, starting at a committee level that's going to tie all these things together into a neat kind of codified package such as that being requested by Mr. Cherniack, is tantamount to saying to all these associations: You're going to have to wait anywhere from 10 to 15 years for legislation that is necessary now, to meet contemporary society, to meet your development and growth, to meet the new technologies and the new relationships that you have to cope with in your fields of work.

So that I do not intend in any way, Mr. Chairman, to be arbitrary — and I concede that I am the servant of the committee — I want to make it clear that we have considered the kind of all-embracing omnibus approach that Mr. Cherniack seems to favour. We've rejected it for very good reason and on sound legal advice, and although we're looking at a number of amendments to each of these pieces of legislation, I am not prepared as Minister of Health to concede on that point.

I want to proceed with these bills, but I want them in proper and acceptable shape. As I've suggested, that may take two or three more days. It certainly does not require two or three more years, which would be the minimum required under the philosophical approach that Mr. Cherniack takes to this question.

So I think we can dispense with that issue at this point, Mr. Chairman. I appreciate Mr. Cherniack's comments, but the fact is two administrations have worked on this over the past 10 years. Ours believes we're at the point now where there can be conclusive, meaningful, workable legislation, and with the co-operation of the committee, those three bills can be hammered into shape between now and the early part of next week.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, there are a couple of thrusts of the Minister's comments which cannot go unchallenged.

The first, Mr. Chairman, is that since I respect his ability to listen and digest, I must fault myself for my inability to express adequately my thoughts, which had nothing whatsoever to do with suggesting that the public had no opportunity to have an input in the bill, nor suggesting that other professions in the health field had no opportunity to discuss these bills. I obviously can't put it across well enough for him to understand so I can only deny that I said it.

What I did say was that in the ongoing delivery of the services, of the health professions to society, there should be an effort sponsored by government

to see to it that there is a coordinate, continuing review and overview of the activities. That's what I said. He understood that because he then answered and said, no, we the sponsors of the bills, the caucus, the Cabinet have reviewed it, have considered omnibus legislation profoundly considered them and came to a conclusion that it was not acceptable.

It is unfortunate that that kind of consideration did not receive an opportunity for the public to hear, because I would very much have liked to have heard the profound discussions that went on — and I'm not saying that in any cynical sense, I assume it was discussed — and it's unfortunate that government and this Minister decided to do it in-camera and in such a way that we don't have the benefit of their thinking. What we do have is the benefit of their conclusions, and that is, that it is a never-never land, that it's amorphous, that to hope for a neat codified package it would take 10 to 15 years, that is a conclusion — I don't agree with it — but I accept that that is the conclusion of this government, and being in a minority position I, of course, accept the fact that they will carry their point of view and I will work in a co-operative way to deal with these bills.

It is not a question of party politics as far as I am aware. I'm not aware that either of the two parties in the House have any different principle or philosophy involved in these bills, although it may have in the manner of delivery of health services.

So having rejected Mr. Sherman's misinterpretation of what I said, and indicated a regret that this profound consideration was behind closed doors and therefore not available for public review, I am still prepared to proceed with the work of this committee, as I say, in a co-operative and positive way, to try and produce the best possible bills. But I think it's unfortunate that there is no effort being made in any way, even in an unofficial way, to involve all the professions in the standards that will be accepted by any one of them, and possibly when we start talking about memberships and the advisory council, we can still discuss that in, not necessarily a profound way, but in an open way.

MR. CHAIRMAN: To members of the committee, I'd like to ask now how we're going to proceed with this. Do you want to go page by page, Bill 65, page by page? Mr. Filmon.

MR. FILMON: Mr. Chairman, I think a suggestion was that we consider 65 and 66 more or less concurrently. No, you don't want to do that?

MR. CHAIRMAN: It will be easier one at a time. You can't keep crossing over.

MR. FILMON: Okay.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, maybe I misunderstood Mr. Sherman. He certainly misunderstood me earlier. What was his view on this? After all, Mr. Chairman, although the bills are not in his name, he is responsible for the conduct of these bills through committee and let him determine how it shall be handled.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think that Mr. Filmon's suggestion of a few moments ago about agreeing on those clauses, those sections, that are acceptable at this point in time and red-circling, if you like, those that are going to require further consideration, discussion and possible amendment, is the preferable method in which to proceed. I think we can do that on each bill individually. I think it makes it makes it extremely difficult for the Chair and for the clerks and legislative counsel and more difficult, in fact, for members of the committee to try and deal with more than one bill at once. But I don't want Mr. Cherniack to immediately interpret that as a violation of an agreement between him and me. We did agree we would deal with the three bills in concert. If he feels that in concert means dealing with Clause 1 in Bill 65 and Clause 1 in Bill 66 and Clause 1 in Bill 87 all at the same time, then to avoid any unfortunate misinterpretation, I would concede the point. But I think dealing with them in concert is dealing with them the way we are dealing with them, all together in numerical order, but all within the context of the same sort of general approach in terms of principle to these professions.

MR. CHAIRMAN: The Honourable Mr. Ransom.

HON. BRIAN RANSOM: Mr. Chairman, I wonder if there isn't something that's sort of inbetween those two positions that would be work lore, or maybe it's what Mr. Sherman is meaning also. Could we not go through Bill 65 on a clause-by-clause basis, making reference as we go through to the differences between this bill and the other bill, essentially having the discussion largely on Bill 65 and then being able to go through at least to Bill 66, subsequently, in a much faster fashion having basically had the discussion on 65?

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Just very briefly, I've just carried that on. That is what I had in mind and I think maybe that's what Mr. Cherniack had in mind. Other than that, in going through Bill 65 and having the discussion and making the comparisons, that whatever we were doing wasn't the final stage, that after going through all of them that way, we would then go back and consider them perhaps on a page-by-page basis in a final form. This would only be a preliminary form of going through it. Is that my understanding?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Firstly, I want to make it clear that I've never felt that Mr. Sherman and I have had a real difference ever of an understanding as between each other, and I don't feel that we did more than have a general agreement that we would deal with these three — his expression — in concert is acceptable to me. Mr. Ransom said exactly what I was going to say and as Mr. Filmon said, I think we can deal with 65, drawing comparisons with 66, or even the other one to the extent that it's advisable and, as Mr. Filmon said, I think that what I would feel

badly about is if we said "pass" on something and then we can't go back to it when we deal with another bill. Mr. Filmon suggested what I think is workable. The RN bill, well, they are all well drawn, but the RN bill is sufficiently well drawn so I think we could use that as a starting point, making our common section by section, and then after we review that, I think we could go back and, as Mr. Ransom says, I think we could rather quickly pass the sections. What I didn't want to, hoped would not happen, is that we would pass a section and then be foreclosed from going back to it in view of later discussion. So, I agree absolutely with what I believe Mr. Ransom said and Mr. Filmon said.

MR. CHAIRMAN: Do I have the understanding then of the committee that we're going to go through Bill 65, sort of, in a preliminary stage, and then, if you find out the difficult spots, come back and pass the bill page by page after?

At this time I'd like to bring to the attention of the members of the committee that members of the Law Society have returned to our midst and I'm just wondering if members of the committee want to leave Bill 65 at this time, since you're talking about two or three days, and return to Bill 57. I am at your discretion.

MR. CHERNIACK: What about Mr. Blake?

MR. SHERMAN: Mr. Chairman, Mr. Blake is being called.

MR. CHAIRMAN: What is the wish of the committee? Do we just wait a minute then for Mr. Blake? There he is. At this time we will deviate back to Bill 57 and I will call Mr. Turner.

BILL NO. 57 — AN ACT FOR THE RELIEF OF INGIBJORG ELIZABETH ALDA HAWES AND GEORGE WILFRED HAWES

MR. TURNER: Thank you, Mr. Chairman, members of the committee. Mr. Chairman, the Law Society of Manitoba, as I said earlier, does not oppose Bill 57, to relieve Mr. and Mrs. Hawes from the limitation period against the motorists. This kind of legislation has been passed before in some deserving cases. The Law Society does oppose the proposed amendments to Bill 57, those proposed by the Honourable Member, Mr. Cherniack. The question naturally arises why does the Law Society oppose?

(1) There is not now and never was a cause of action against the Law Society of Manitoba by Mr. and Mrs. Hawes.

(2) Their own counsel, Mr. Walker, the counsel for Mr. and Mrs. Hawes, does not even so much as suggest that there is or ever has been a cause of action against the Law Society of Manitoba — and by cause of action, I mean a claim in law.

(3) Mr. and Mrs. Hawes have a judgment against Mr. Robert Szweczyk for which the Law Society is not in law or in equity responsible or in any way obliged to pay.

(4) The Law Society of Manitoba has never been liable for the errors and omissions or neglect of any of its members.

(5) The Law Society has, of its own motion, obligated everyone of its members, subject to certain exemptions which are not relevant, to be insured for errors and omissions of himself for his own negligence. That was not imposed upon the Law Society; the Law Society itself instituted the . . . program.

Having said that, it is unheard of for the Legislature of Manitoba to impose a financial or monetary liability upon a professional society, a labour union or like association for the negligence or error of any one of its members. It is unheard of.

For all of these reasons, the proposed amendments are wrong in principle. Given the time constraints, we have deliberately stayed away from raising the question of the constitutional validity of this proposed legislation.

In closing, Bill No. 57 in its present form, for which there is precedent, will give to Mr. and Mrs. Hawes all the relief and all the rights that they and each of them had on the day of the unfortunate motor accident in question. This submission has received the close consideration of the President, Mr. Duncan, the Past President, Mr. Shulman, a senior bencher, Mr. Walsh, and myself as Vice-President, all of the Law Society. It has the backing of the executive and Finance Committee of the Law Society of Manitoba. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, thank you. I want to avoid as much as possible any possibility of a debate with Mr. Turner, but I want to get some of the facts clear in my mind. The Law Society is not objecting to the proposed bill as it is, which, as I understand it, removes a statutory right, and I think an obligation on an insurer to oppose payment of money if a claim was not made within a stated period of time. Is that a correct interpretation of the bill?

MR. TURNER: It permits suit to be brought against the two motorists, Goodman and Burns, for Mr. and Mrs. Hawes to establish against them or either of them such claim, reduced to monetary award, as they may have. Subsequently, I take it, then the insurer of the motorist found responsible would be obligated to pay the judgment.

MR. CHERNIACK: Mr. Turner, I don't think you replied to the specific of my question and that is that the intent of the bill is to remove a statutory limitation period, which would prevent them from carrying out their action because of the fact that action was not commenced within the legally stipulated maximum period of time. Is that not . . .

MR. TURNER: That's the effect of the bill.

MR. CHERNIACK: That's the effect, and the Law Society, you say has no objection to seeing that happen.

MR. TURNER: No, it's happened before and repeatedly.

MR. CHERNIACK: The fact that it happened before doesn't mean that it was right. But the fact is that you accepted that as that in spite of the fact that there is a law which sets a limitation period this bill proposes to set aside that limitation period in this particular case, and the Law Society accepts it, I think even approves it.

Now do I understand correctly that the Law Society, which imposed an obligation on its members to be insured, recognizes that the failure of the insurer of Mr. Szewczyk to pay is based on the failure of Szewczyk to give notice within a limited time period.

MR. TURNER: Failure to give notice under the policy and failure to disclose to a successor insurer the fact of a happening which might give rise to a claim, yes.

MR. CHERNIACK: In this particular case, because Szewczyk, who in one case failed to commence action within a limited period of time, in this case omitted to give proper notice as required under the Law Society's contract; because of that no payment has to be made by the insurer with whom the Law Society made the contract.

MR. TURNER: Yes, the insurer has denied liability.

MR. CHERNIACK: Yes, and do I understand also that had the notice been given by Mr. Szewczyk, then not only would the insurer have been liable but the Law Society itself would have had to pay out money out of its coffers under that contract.

MR. TURNER: If Mr. Szewczyk were held liable, the insurance carrier for the lawyer would have had to pay the ultimate judgment and of that judgment there would be a 2,000 deductible payable by Mr. Szewczyk, and 23,000 payable by the Law Society out of the insurance fund.

MR. CHERNIACK: So that Szewczyk's failure to give notice to the Law Society or the insurance carrier, in my opinion, is in effect saving the Law Society a 23,000 obligation, or to put it differently and possibly more acceptably to you, had Szewczyk given proper notice of his delinquency, the Law Society would have had to pay 23,000.00. Is that not correct?

MR. TURNER: As things stand, yes.

MR. CHERNIACK: So that you will pardon me, Mr. Turner, for saying that the amendment suggests that the limitation period imposed on the Hawes under The Limitations Act and the limitation period imposed on Szewczyk under your contract of insurance would both be set aside — that's the amendment — saying that failure by Szewczyk to notify to commence action in time, or to notify the Law Society or its insurer in time, has resulted in a loss of money to Hawes and that this amendment, intending as it does, I think, to recognize the waiver of limitation proposed on the bill, also recognizes a form of waiver of limitation relied on by your insurer for Szewczyk's liability.

MR. TURNER: In Mr. Szewczyk's case there was failure to give notice to the carrier and then, when there was a change of carrier, another failure to disclose a happening. His insurance would have been absolutely void. There would have been no insurance and there is no insurance.

MR. CHERNIACK: I think the rest of it would be an argument I would present to the committee and not with Mr. Turner.

MR. TURNER: The bills gives the cause of against the motorists. Your proposed amendments impose a direct financial burden.

MR. CHERNIACK: No doubt; no question about that.

MR. CHAIRMAN: Are there any other questions of Mr. Turner from the committee? If not, I would like to thank Mr. Turner for returning.

MR. TURNER: Thank you, Mr. Chairman.

MR. CHAIRMAN: What is the wish of the committee. Do you want to continue with Bill 57 or do you want to revert back to Bill 65? The Honourable Mr. Ransom.

MR. RANSOM: I'd suggest, Mr. Chairman, that we clear this bill up now.

MR. CHAIRMAN: Bill 57, An Act for the Relief of Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes. What is your wish, page by page, clause by clause. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the normal course would be to deal with it section by section, so you would start with Section 1 before the preamble, wouldn't you? And since my motion, which is now being distributed, Mr. Blake has had a copy since yesterday, since it would both change the preamble and change the sections, I'm wondering whether, is this the time to present the amendment that I have, should members be given an opportunity to read it? I wait for a ruling from you, Mr. Chairman, as to how we should handle it. It's one whole package really and I think we can debate it as one package, I don't think we should take it apart into little pieces.

MR. CHAIRMAN: I suppose this is as good a time as any to have the amendment presented to the committee.

MR. CHERNIACK: Well, do you want me to do it then, Mr. Chairman?

MR. CHAIRMAN: Go ahead, Mr. Cherniack.

MR. CHERNIACK: All right. I take this as prepared by Mr. Tallin, I see that he has it in the form of two motions. So my first motion is;

THAT the preamble to Bill 57 be amended by adding thereto, immediately after the 3rd paragraph, the following paragraph:

AND WHEREAS before the expiry of the period of limitation in respect of an action arising out of the collision, Ingibjorg Elizabeth Alda Hawes and George

Wilfred Hawes, consulted Robert H. Szewczyk, a barrister and solicitor of the town of Selkirk in Manitoba, concerning an action against Wayne Oscar Goodman or Willard Gabriel Burns or both of them, to recover damages, arising out of the collision; and (b) by adding thereto immediately after the 4th paragraph thereof, as printed, the following paragraphs:

AND WHEREAS Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes, subsequently brought an action against Robert H. Szewczyk, based on negligence in not commencing an action against Wayne Oscar Goodman, or Willard Gabriel Burns, or both of them, within the limitation period, in which action Ingibjorg Elizabeth Alda Hawes obtained judgment against Robert H. Szewczyk, in the amount of 63,703.53. Mr. Chairman, I want to depart for a moment from the text, to add the words "plus costs" at this stage, after the figures the words "plus costs", then go on:

and George Wilfred Hawes obtained judgment against Robert H. Szewczyk, in the amount of 1,100, and add the words "plus costs", which judgments were entered in the Court of Queen's Bench on December 13, 1979, and are hereinafter referred to as "the professional judgments";

AND WHEREAS pursuant to the Law Society Act the Law Society of Manitoba has established a professional liability claims funds, hereinafter referred to as the Claims Fund, for the purpose of paying therefrom, subject to the provisions of section 30.1 of the Law Society Act, and the rules made thereunder, professional liability claims against members of the Society;

AND WHEREAS the Law Society of Manitoba has established an insurance scheme for the indemnification of its members for claims of professional liability, hereinafter referred to as "the insurance scheme", and, as part of the insurance scheme, entered into a group contract of insurance with an insurance corporation, hereinafter referred to as "the insurer", for the payment, in part, of professional liability claims against members of the society, which was in force and effect on and for some time following the expiration of the period of limitation, for an accident in respect to damages arising out of the collision;

AND WHEREAS no amounts have been paid by the Law Society of Manitoba from the Claims Fund or by the Insurer to Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes, or either of them in respect of their judgments against Robert H. Szewczyk.

I don't know, Mr. Chairman, whether that motion should be heard, passed now or whether we should continue with the whole package?

MR. CHAIRMAN: I'm informed here that you may as well continue with the other motion.

MR. CHERNIACK: I would like to do that, Mr. Chairman, but I think that members of the committee may permit me to ask someone else to read the balance of this into the record because of my voice problem.

MR. FILMON: I'll be happy to do that for Mr. Cherniack.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Cherniack is moving THAT Bill 57 be amended by renumbering section 2 thereof as section 6, by striking section 1 thereof and substituting therefor the following sections:

Payment by Law Society. 1(1) Notwithstanding any other Act of the Legislature or any regulation, rule or order, made under any Acts of the Legislature, the Law Society of Manitoba shall pay

(a) to Ingibjorg Elizabeth Alda Hawes one-half of the amount of the professional judgment in her favour against Robert H. Szewczyk, together with costs taxed in respect thereof and interest thereon, less any amount that she has recovered from Robert H. Szewczyk, in partial satisfaction of the judgment; and

(b) to George Wilfred Hawes one-half of the amount of the professional judgment in his favour against Robert H. Szewczyk, together with costs taxed in respect thereof and interest thereon, less any amount that he has recovered from Robert H. Szewczyk, in partial satisfaction of the judgment.

Amount to be charged against claims fund. 1(2). The amount paid under subsection (1) may be charged by the Law Society against the claims fund, to the extent that there is any credit in the claims fund.

Payments by Manitoba Public Insurance Corporation. 2(1). Notwithstanding any other Act of the Legislature, or any regulations, rules or orders, made under Acts of the Legislature, the Manitoba Public Insurance Corporation shall pay

(a) to Ingibjorg Elizabeth Alda Hawes one-half of the amount of the professional judgment in her favour against Robert H. Szewczyk, together with costs taxed in respect thereof and interest thereon, less any amount that she has recovered from Robert H. Szewczyk in partial satisfaction of the judgment, and

(b) to George Wilfred Hawes one-half of the amount of the professional judgment, in his favour against Robert H. Szewczyk, together with costs taxed in respect thereof and interest thereon, less any amount that he has recovered from Robert H. Szewczyk, in partial satisfaction of the judgment.

Amounts charged to reserve. 2(2). The amount paid under subsection (1) shall be charged by the Manitoba Public Insurance Corporation to reserves maintained by it for the payment of claims, arising out of automobile accidents.

Partial recovery by Law Society. 3(1). If the Law Society of Manitoba makes the payments for which provision is made in subsection (1), it may recover from the insurer, as a debt due from the insurer to the Law Society of Manitoba, the amount that the insurer would have had to pay in respect of a claim by Robert H. Szewczyk against the insurance scheme if

(a) immediately after the expiry of the limitation period for an action in respect of damages arising out of the collision Robert H. Szewczyk had reported to the insurer and the Law Society of Manitoba the possibility of a claim made against him by Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes, or either of them; and

(b) the amount of damages recovered in the claim by Ingibjorg Elizabeth Alda Hawes and George

Wilfred Hawes was the amount paid by The Law Society of Manitoba to them under section 1.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I interrupt the amendment by thanking Mr. Filmon for a tedious task, but as I understand it, it's an essential part of the procedure. May I also in comments say that I took some proprietary medicine. I didn't know whether to ask the RNs or the LPNs whether what was I doing was okay, so I did it on my own. May I continue now?

Payment by Law Society to Man. Public Insurance Corp.

3(2) Where the Law Society recovers any amount from the insurer under subsection (1), it shall pay one-half of that amount to the Manitoba Public Insurance Corporation.

Assignment of judgments

4(1) Where the Law Society of Manitoba and Manitoba Public Insurance Corporation pay the amount required to be paid by them under sections 1 and 2 to Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes, Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes shall assign the professional judgment in their favour against Robert H. Szewczyk to The Law Society of Manitoba and The Manitoba Public Insurance Corporation in appropriate proportions and The Law Society of Manitoba and The Manitoba Public Insurance Corporation, or either of them, may enforce the judgments so assigned in the same manner as though they had been judgment creditors in respect of the judgments in the first instance.

Assignment to insurer.

4(2) Where The Law Society of Manitoba recovers any amount from the insurer under subsection 3(1) and pays one-half of the amount so recovered to The Manitoba Public Insurance Corporation as provided in subsection 3(2), The Law Society of Manitoba and The Manitoba Public Insurance Corporation shall assign an appropriate portion of the judgments assigned to them under subsection 1 to the insurer.

Collections.

5 Any amount required to be paid or authorized to be recovered under this Act may be recovered as a debt due in a court of competent jurisdiction.

Mr. Chairman, shall I now speak in support of the amendment?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, it's many years that I have had an opportunity to listen to debates in the Legislature dealing with the removal of the limitation period. At no time did the Legislature ever agree that there should not be a limitation period, because it is considered a principle in Legislatures in all western, in all democratic countries of which I am aware, that within a certain period of time a person should enforce a claim or be forever barred, and we have had many debates in this Legislature on the question of whether or not a special case has been made whereby the limitation period should be waived, and it was always in the extraordinary processes.

It's really kind of peculiar that we pass a law, and then every time a person is hurt by the fact that the law was not complied with we then discuss whether or not we should change the law for that particular person, which also means that those people who don't have the sophistication, knowledge or help or friendship within the Legislature to ask for such relief, don't get the relief. Very often the Legislature has refused to grant it, saying legislation is legislation; if the limitation is wrong, extend it, and I think we did. I think it used to be one year and then it became two years. But the principle was still there. The insurance companies were very concerned that it should be there, because otherwise they might forever have to have reserves set aside for potential claims that would go on for many years.

In this particular case, the fault was not that of the petitioners; it never is, really. The fault was their lawyer, and because of these problems which occurred in the past, many legislators — and I must say, Mr. Chairman, in my opinion, it's usually the lawyers and the Legislature who are the most reluctant to see the limitation waived, because I think they had a greater sense of the purpose of the limitation period, but the lawyers used to argue, why don't you sue the person who is really at fault, and that is the negligent lawyer. It was felt that the person at fault is that lawyer, let that lawyer pay for his negligence, after all, he is a professional. He belongs to a self-licensing, self-disciplining body, one of the oldest professions in our civilization and they should make sure that the integrity of the profession is maintained. And The Law Society, as Mr. Turner said, and to its credit and maybe under pressure, decided that it better get involved in enforcing their own members to share collectively in some way for the faults of the other. When I say faults I mean the acts or omissions, the negligence of the other, and force this insurance on us so that we members of The Law Society all pay for this insurance. And I don't know that there is much disagreement that it should be paid. We think it's right. I think obviously most of us do, because as Mr. Turner said it's a voluntary act of The Law Society that makes it mandatory for each of us to pay this insurance requirement.

Now we come to a really peculiar situation, a number of facts that have developed that make it peculiar, and to my knowledge, unique. Firstly, we have the Member for Minnedosa, who is not a lawyer but who has a warmth, a feeling for the people who are adversely affected by the fault of their lawyer, who came to the Legislature two years ago apparently and said: Because of no fault of their own they have suffered and they should be entitled to have a removal of the limitation period. I don't remember being involved in that debate, but I think I shared with others the thought that their case is no worse than that of any other case, where somebody acting on their behalf was negligent and they suffered damage because of it, and as has been stated this year, and I really don't remember what was debated two years ago, the committee after second reading in Private Members' Committee apparently approved the legislation, and when it came to third reading it was defeated by the Legislature.

Mr. Chairman, I have the uncomfortable feeling that this could happen again, and the reason I say that is that the principle is still there. There is a limitation period — the Minister responsible for the MPIC did take a public position on it and said there is a limitation period. In this case apparently the MPIC acted very much in good faith, even to the extent of reminding the lawyer with whom they were dealing that his time period was coming to an end. The question then is why should MPIC be put to the cost of defending an action and paying an action which by law it was not required to pay. It would almost be, I think, derelict, in its duty to all its other premium payers to be paying money that it was not legally liable to pay, and that is the position that could still be argued and argued vehemently and possibly successfully, as it had been in the past.

But the next peculiar thing was that the Hawes took seriously what the legislators said, and the Hawes said, okay, we'll sue that lawyer. Now their present lawyer, Mr. Walker, said to them, I don't think you have much chance against Szewczyk, he is not worth anything, but by this time The Law Society had a compulsory, a mandatory insurance policy, to which all lawyers had to contribute and which was to insure the lawyer. So Hawes, through their lawyer, went to court, went through the proceedings, had a judge adjudicate on the amount of damages and award a judgment, the amount of which is shown in the amendment. Now, when some people, apparently Hawes and their lawyer, expected to see that judgment paid by the Law Society and its insurer, they discovered that for a very similar reason the Law Society and its insurer was not going to pay the claim. As Mr. Turner said, they are not legally liable to pay it because in this case apparently the same Szewczyk, who neglected to sue in time, also neglected to give notice under the contract of insurance. So suddenly we find that this judgement, being useless against a lawyer who is insolvent, is also useless against his insurer.

I should think that most members of the Law Society should be distressed that, where there is an insurance policy, the payment is not being made on the same kind of a technicality. It distresses me to that extent, especially in this case where the Law Society would apparently, by its self-insurance portion of that contract, have been liable for some 23,000 had notice been given. I have to fault the Law Society for not saying, well, here is the 23,000.00. It's true that notice wasn't given but it's not the fault of the unfortunate Hawes. Mr. Chairman, it's also not the fault of MPIC that Szewczyk didn't make the claim and therefore the Law Society did not have to pay the 23,000.00.

The next thing — I hope it is unique — but for the first time I have learned that the Law Society would grant a licence to practise to a lawyer who has failed to comply with a requirement of the Law Society which I thought was an essential part of the practice of law. I said openly and Mr. Turner repeated, and repeated my saying it, that that has nothing to do with this issue, with Hawes and with Hawes' problems. But I find that the Law Society has granted to Szewczyk on three occasions, three consecutive annual occasions, the right to practice in spite of his failure to comply with the requirement to file a certificate. Filing that certificate has nothing to

do with his negligence in this case, but failing to file the certificate is similar to his failure to commence the action within the two-year period and it's similar to his — what is it? — 10 or 12 years failure to file income tax returns, which also has nothing to do with this case. But I'm talking about a man who is apparently practising law now in the province of Manitoba, a colleague of mine, a member of my same society, and I don't take kindly to the fact that because of these technical things that have happened the Haweses are suffering both ways. Firstly, they have to come through Mr. Blake and ask that a law be set aside for their special favour, and that is, The Limitations Act. Secondly; secondly, they have not been able to claim against the Law Society, a learned profession. And we're going to talking more about professions and the obligations of professions.

Now we come to another peculiarity, Mr. Chairman, which I bring openly in case it wasn't revealed openly, that now the lawyer for Hawes is thinking that he could collect a larger judgment against MPIC than the amount he did get in award against Szewczyk. He's now saying that it was recently discovered that the damages suffered by Mrs. Hawes were greater, more extensive, than what was known then and, therefore, he would like the bill to go through as it is in the expectation that he could go right through the whole process from Day One, from starting the action right through the trial, right through appeals, maybe, and bring up evidence which came to light only recently.

Now, Mr. Chairman, I have to say that MPIC is being threatened by the bill in that the damages it would have had to have paid, had Szewczyk commenced action at the right time or within the right time, would certainly have been assessed, at least by Mr. Justice Hewak, to be 63,000 or maybe less. But because of all the delays and because Szewczyk was in error and failed to start action in time, the lawyer, Mr. Walker, now says, well, I could probably collect a lot more money. I have to say that's not fair to MPIC. If you say, well, they weren't adversely affected, they would have to pay a claim anyway had Szewczyk started action in time, now I think they are adversely affected because under the bill unamended, they would suddenly become liable for an amount which was beyond the expectation of all parties within the time period within which the action should have been commenced and brought to trial.

Now I find that Mr. Walker who, I thought, should have been very happy yesterday to say that this amendment will provide that without need to go to court, without any preliminary examinations, without the trauma of a trial, without all the problems inherent and the time delay inherent in an action, would be saved all that and would by an arbitrary but legal act of the Legislature compel payment immediately of the amount of the award of the judgments, which come to about 65,000, by the two bodies which I am suggesting roughly should be liable for it.

Now if you want to mince words, I suppose the Law Society maybe should say, well, we shouldn't have to pay more 23,000.00. But what from I learned yesterday, I was distressed enough to feel that it wouldn't hurt them if they have to pay 32,000 or

whatever in order to bring that kind of a justice that we're talking about. I don't think it's rough justice; I think it's fair justice unless, as I say, you want to say, well, only 23,000 against the Law Society and the balance against MPIC. I think it's fair; I think it's right; I think it's just. I really don't think that Hawes should be put through another trial even if her lawyer thinks that she should. I shouldn't be paternalistic to decide for her what's best for her, but since I know that all that she would have received, had everything gone smoothly and correctly, would have been 63,000 or less, then my amendment proposes that she get it. The people who are bound to pay it, or the bodies who are bound to pay it, carry upon themselves today, not a legal responsibility but I believe a moral responsibility and we, as a Legislature, as the highest court in the land, have the right to do it.

One other thing, Mr. Turner said he's not discussing the constitutional aspect. I will only have to refer to the legislative counsel and ask him if in his opinion we have a right to pass this amendment, then that sets aside to me any other questions. If he believes we have a right to do it, then I believe we can do it and I believe we should do it.

I know I spoke at great length, Mr. Chairman. I don't intend to belabour the point. I just make this one point: I believe that amongst the people who spoke in the Legislature on second reading in support of the bill, there are those who did so on the understanding that the liability would be imposed on both the insurance corporation and the Law Society. I believe that there may be a switch in votes if this amendment does not carry. Now that's not a threat because I'm not sure how I will vote, although I suspect that I will believe that this amendment is the more correct thing to do than the bill itself. But I think members should take into consideration what the result will be whichever way we go, without any guarantee that on third reading it will pass in any form.

MR. CHAIRMAN: Mr. Blake.

MR. BLAKE: Thank you, Mr. Chairman. I don't want to go through the arguments or the discussions that we've had before on this bill. I think it's been aired very very well. As I have said before, my whole intent on bringing the bill forward is to, I hope, undo an injustice that has been done to Mrs. Hawes, who has suffered extremely through this unfortunate motor accident of 1974. As I say, my whole concern was to provide her with some compensation and some relief, that the bill I brought in, in 1978, was intended to do. The bill before us today, Bill 57, is almost identical to that particular bill. The amendment that we have been discussing now changes the intent of that particular bill. The bill merely is intended to waive that Statute of Limitations and give Mrs. Hawes the right that she once had, that she felt was in good hands when she went and consulted a member of the legal profession to handle her interests for her and, with her plight and suffering in the hospital had left this to her husband, who also felt completely confident by delivering the family's problem to a lawyer. We are well aware now of the problems that have been faced by that family since then.

I must say that I'm not altogether unsympathetic with some of the features of the amendment proposed by the Honourable Member for St. Johns. I think the publicity resulting, that the Law Society may well receive, might not be all that they might like to have come to their profession. However, be that as it may, Mr. Chairman, I feel the amendment as proposed will change the intent of Bill 57 and for that reason I won't be supporting the amendment.

I have only to take legal counsel's advice that this bill is in order. I just wasn't aware that the Legislature had this particular power to order people to pay out funds, but it could be that they have. I feel that with the amendment, as presented to us, we would become involved in great controversial legal battles that would leave Mrs. Hawes for many many years to come waiting for the outcome of a legal decision or an opinion in some arena that she has no control over. The bill itself does not guarantee Mrs. Hawes that she will be paid. The bill merely removes the Statute of Limitations two-year limit, to allow her lawyer to proceed with the claim against the motorist which in turn, hopefully, will be covered by the insurance coverer, which in this case, will be the Manitoba Public Insurance Corporation. That award will be made by a legal body, such as the award was made in the case of the lawyer. It is well within Mrs. Hawes' rights to then assign to the corporation; if the judgment is in her favour, she could then assign the judgment that she has in favour of Mr. Szewczyk and allow the corporation to recover whatever funds they may be able to, should he fall into more fortunate financial circumstances than he apparently is in at the present time.

But, Mr. Chairman, we've had a great number of discussions and a great deal of material brought forward in this particular case and, as the Member for St. Johns alluded to, it would maybe well appear now that Mrs. Hawes' injuries are maybe far greater than was originally determined. Be that as it may, that will have to be decided in the final court that makes the decision or makes the award under the insurance carriers responsible for the two motorists that were involved in the accident.

But I don't want to go through the pros and cons of it again, Mr. Chairman, I think the case has been well made. Mr. and Mrs. Hawes have suffered a great injustice and have received no compensation, due to technicalities in the law that they had no control over and were not even aware of that had existed. So for that reason, Bill 57 is being proposed. I've known the family for 30 years and for that reason took it upon myself to bring the bill before the Legislature originally. At that time, when we went to third reading, it was a voice vote. We did not call for the ayes and nays, because it was indicated that the negligent lawyer had insurance. The Law Society were adequately financed to look after the responsibilities and the negligent needs of errant lawyers, and for that reason, we let the vote pass on a voice vote and proceeded with the legal action against the lawyer. As you well know, the results have been that Mrs. Hawes has not received a dime and is suffering greater anxiety and pain today than she did at that particular time.

Mr. Chairman, without belabouring it, I will not be supporting the amendment as proposed.

MR. CHAIRMAN: Mr. Domino.

MR. LEN DOMINO: Mr. Chairman, from my understanding of the situation right now I tend to agree with Mr. Cherniack. It seems to me that the Law Society is responsible, at least to some extent. They supply insurance for their members, insurance that is to protect the citizens and clients against just a situation like this. In this case the insurance, because of technicality, it doesn't cover the unfortunate lady who has been injured. It seems to me that the Law Society should be held responsible financially, and Lord knows, members of the Law Society certainly do understand finances and the implications of that.

I tend to agree with the Member for St. Johns. I don't think that we should be asking the MPIC to pay out any more public funds than is absolutely necessary, especially if it's not their fault. They're not the people who were responsible for this unfortunate situation. So, Mr. Chairman, I would tend to agree with the Member for St. Johns and I think I'll be supporting him on this.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Thank you, Mr. Chairman. I feel slightly in an awkward position having dealt with members of the Law Society over the past year in supporting a bill for competence and in fact the motivation that I had in sponsoring the bill was to take care of precisely this type of situation whereby they would have the power to deal with members of their Society who were perhaps not competent to be practicing law by virtue of their ability to perform the professional acts that they were registered to do, and as well, by virtue of their membership in the Society giving some indication to the public that they were competent to do these things. So consequently when I see an instance of this nature and having regard to the arguments that have been put forward so eloquently by Mr. Cherniack and as well, some of the information which came out in the discussion, which I was unaware. It's well that we do have these bills come before committee because questions are asked that bring out information that we might not have otherwise known.

For instance, the fact that the Society by virtue of its self-insurance portion, would have been liable for approximately 23,000 of that settlement itself. So with all those things in mind, I am very strongly persuaded by the argument, despite Mr. Turner's response, I'm persuaded by the argument that somehow the Society had some degree of responsibility because the insurance coverage which they prescribe for their members was not adequate to protect the public in this instance, that is Mr. and Mrs. Hawes against the negligence or the lack of competence of one of their members. So that seems to me to make them a party in this action and to be a strong argument in favour of their carrying some of the responsibility and perhaps some of the financial consequences of this whole unfortunate mess in which the Hawes find themselves.

With regard to Mr. Blake's argument I'd like to ask — and I suppose the Legislative Counsel would be the one to answer this — should this bill pass as amended, what avenues of appeal does MPIC and

the Law Society have against the provisions of the amended bill?

MR. CHAIRMAN: Mr. Tallin.

MR. FILMON: Could it be taken to Court of Appeal in Manitoba or to the Supreme Court? Not being a lawyer I'm not aware of these?

MR. TALLIN: Mr. Chairman, if they raised the question of the constitutionality they can take it as far as the Supreme Court, I would presume. But I don't know what other basis they would challenge it. They might also refuse to pay it until they were sued for it.

MR. FILMON: So that would involve a lawsuit then.

MR. TALLIN: I beg your pardon?

MR. FILMON: So that might involve a lawsuit as Mr. Blake says, and lengthen the time.

MR. TALLIN: It might, yes, but not on the same facts.

MR. FILMON: I see. Is it not true though that if we pass Bill 57 unamended that it only gives the Hawes the right again to sue the two individuals who were the owners of the car and through them MPIC for the money, so that, too, involves a lawsuit for them if Bill 57 is passed unamended. Is that correct?

MR. TALLIN: They would begin an action and there's a possibility that the action wouldn't go to full trial. There might be settlement, I don't know.

MR. FILMON: I see. Okay. So it's not as though passage of the bill will automatically give them a cheque for 63,000 plus — in either case.

MR. TALLIN: No. They'd have to file a claim.

MR. FILMON: In either case.

MR. TALLIN: That's right.

MR. FILMON: Okay. Well, unless I'm persuaded otherwise, Mr. Chairman, I must say that I'm prepared to support the amendment.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, there's obviously an interesting and sincere difference of opinion on the moral issue that's been raised, and I think it is a moral issue. I think that the moral point that Mr. Cherniack makes and that has been supported in concept by Mr. Domino and Mr. Filmon, is sound and bears a very conscientious attention on the part of the Law Society for the future.

But I find it difficult to support the amendment in the light of the position that I know the sponsor of the bill has found himself in with Mr. and Mrs. Hawes. Presumably — and he can correct me if I'm wrong — the approach that he has taken and proposed in this bill is an approach which was discussed with them and which they understand and to which they subscribe. With respect to the

difficulties of perhaps being subjected to another court action, another case in court, I think the questions just posed by Mr. Filmon indicate to us that there is no guarantee either way that Mrs. Hawes will not be put to the anguish and the effort of another court experience. So the amendment as proposed by Mr. Cherniack does not address that problem, which is a problem that I concede is worthy of consideration, at least in the first instance.

But I find it difficult to accept the fact that the owners and the drivers of the motor vehicle involved in this collision, should be absolved from any responsibility merely through the negligence of another person. I don't deny that on the evidence there appears to have been some negligence or some failure to follow through on the part of Mr. Szewczyk. But I find it difficult, notwithstanding the fact that we have a limitation of actions and that our laws are based on consideration of the necessity for limitation of action, I, nonetheless, find it difficult to accept the fact that the owners and drivers of the motor vehicle should be completely absolved of any responsibility and any further concern and any further anguish in this case simply through the action or inaction of another person. And as has been pointed out, I think, by Mr. Turner, Mr. Chairman, we're not discussing the establishment of a precedent here.

Mr. Cherniack has made the point and made it well, that the law is the law and what's the point of having a law if we're going to continually provide exceptions to it.

The fact of the matter is that we do live in a flexible social order and I think that we're all grateful for that to one degree or another and that we have provided for that kind of flexibility in the past simply because of the fact that society and nature being what it is, one can't prescribe parameters that can always be rigidly imposed in fairness. So we're not confronted here with some kind of dangerous precedent, and because I don't believe that the owners and drivers should be allowed to sleep easy at night simply because of somebody else's inactivity, I will be voting, Mr. Chairman, against the amendment.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: Mr. Chairman, as I understand this bill it is a bill for the Relief of Ingibjorg Elizabeth Alda Hawes and George Wilfred Hawes, not a bill for the relief of anyone else, any other corporation. It seems to me that the question is, if we are to pass a bill for their relief is what would be in the best interests of Mrs. Hawes.

Now I'm sure that some of the reasoning that I might use here perhaps might seem foreign and irrational to some of the lawyers present, but I tend to think that perhaps this question has been viewed in a very legalistic sense and once the issue has come to the Legislature we are, as has been said at the highest court to be appealed to here but yet were not a court in the common sense of the word and perhaps some of the debate and reasoning is not quite as consistent as it might be in other courts.

But it strikes me as a layman that it's simply foreign to a person driving on our highways that they do not have insurance coverage in the sense that

through somebody's negligence or somebody's oversight, they are not going to be able to get paid compensation for injuries that they suffer. I think that a great many people would be shocked to know of the facts of this situation and there would be no doubt in their mind that irrespective of any technicality that the corporation which has the monopoly on auto insurance should simply be required to pay the compensation to these people. And while there may have been other acts committed subsequently that have simply complicated the issue and perhaps there is an issue that needs to be addressed there in terms of the responsibility of the Law Society, I don't think that this bill is the place to address that concern.

Mrs. Hawes and the Hawes family have been made to suffer great anguish over the period of time since this accident and the award that was made by the court as they attempted to recover damages from the lawyer involved, was 63,000, approximately, which in light of information now would seem to be inadequate. And because the Hawes had been made to suffer such anguish over the period of time, because of the delays, I think now if we are to grant relief for them that we should be granting that relief in such a way that would allow the court to determine once again in light of the information that's available today, what would be reasonable compensation for the Hawes.

So, Mr. Chairman, as I say that reasoning may not be quite as consistent as some of the legal minds would make their case, but to me it seems to be one of common sense, that if we're going to grant this relief that we do it in the form that Bill 57 has drawn and, Mr. Chairman, I would not be supporting the amendment.

MR. CHAIRMAN: Mr. Hyde.

MR. LLOYD G. HYDE (Portage la Prairie): Mr. Chairman, I, myself, feel that I'm out of my field when I try to make a legal decision on a bill that is being presented here on behalf of Mrs. Hawes. I believe that the woman has suffered long and severely, and I certainly can't see myself adding to the suffering that she will have to put up with. I will not be supporting the amendment that is presented here this afternoon and would be supporting the bill as laid out in Bill 57.

QUESTION put on the amendment, MOTION carried.

MR. CHERNIACK: Mr. Chairman, now we have to go through the bill.

MR. CHAIRMAN: Page 2, as amended pass; Preamble as amended pass; Title pass; bill be recorded as amended pass.

To the members of the committee, which bill do you want to deal with now? Do you want to revert back Bill 65 or do you want to take Bill 54?

MR. FILMON: Go with Bill 54, that's probably going to take less time and we'd get it out of the way and then we can have the three nursing ones to deal with tonight.

MR. CHAIRMAN: Is that agreed? (Agreed)

**BILL NO. 54 — AN ACT TO GRANT
ADDITIONAL POWERS TO
CHARLESWOOD CURLING CLUB LTD.**

MR. CHAIRMAN: Mr. Steen.

MR. WARREN STEEN: Mr. Chairman, as you and others know, that I wasn't able to be present at this committee last night, and hear Mr. Alex Lawrence, who was representing the Charleswood Curling Club.

Mr. Cherniack has an amendment to this bill which is now being distributed. This is an amendment which has not been agreed upon by the general membership of the Charleswood Curling Club, because in the summer months it is very difficult to pull your general membership together. I have just finished talking to Mr. Lawrence, who is one of their representatives that I've been dealing with concerning this bill, and he says to me that he can't give me permission to accept Mr. Cherniack's amendment to the bill, yet I want to go on record as saying that I personally favour Mr. Cherniack's amendment, but it's not in the original printed bill that was agreed upon by the Charleswood Curling Club Co. Ltd., and they are a Company Limited.

Mr. Lawrence says that the amendment, in his own personal opinion, is satisfactory. He would be glad to take it this fall to an annual meeting of the Charleswood Curling Club and, in due course, he would like to see this become a public company limited, and the drawback to making a curling club into a public company limited, is that you have to have, I believe it's 95 percent of your shareholders' approval. Well, of the 400-plus shares in this curling club, there is well over 100 shares that are out in names of persons that they can't locate. These persons have either passed on or they've moved away, or they haven't been active around the curling club for years. So there's no way that the club can meet the 95 percent requirement. But if the bill was to pass in due course, those shares that are in names of persons that are no longer interested in the club, through the share assessment, would come back into the hands of the club and someday the curling club would have 95 percent of their shares within names of individuals that were active members, but this would likely take a process of three to five years.

So I'm sort of at a dilemma. I have three choices that I can offer to the committee. You can amend the bill, but I, as mover, don't have permission from the organization. You can accept Mr. Cherniack's amendment. I personally see nothing wrong with it. It does protect the citizens of the Charleswood area, that if the club was ever wound down and assets sold off, that the money would stay in the community. The amendment is not going to do any harm to the curling club, but I don't have their permission to alter the bill, as the sponsor of the bill. As I said, Mr. Lawrence has been unable to call a general meeting over the summer months. We can

either accept the amendment as a committee, not accept it as a committee, or the third alternative, Mr. Chairman, is I could pull the bill and reintroduce it at the next session and, in the meantime, ask the people in Charleswood if they would accept that amendment.

Now if I was to come back next year, and they say, no, we're not prepared to accept that amendment, would you sponsor it again, I can't give you an answer today as to whether I would sponsor it again because I'm on record as saying that I think the amendment is a good one. So, I'm at a dilemma as to what to do. It's really up to the committee. I'm not a voting member of the committee. Are there any other members, Mr. Chairman, that might want to express a desire or a wish as to how to handle this matter?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I think I do have a suggestion. It seems to me that everybody who has spoken about this bill, privately or publicly, has indicated support of the principle which I suggested, and that is, that it being, in effect, that since it ought to be considered a community non-profit organization, no private structure that now exists should make it possible for a small group of members, who have contributed a maximum of 10,000, to have available to them an asset which is estimated to be between 100,000 and 600,000, depending on who is giving the estimate. And that's why, apparently, most people have agreed with me that when and if this company is wound up, which might be never — and hopefully it will live as a curling club for a very long time — but if it ever is wound up, then the moneys, the assets should be used for the community good.

Now since everybody who has spoken about it, including Mr. Lawrence, who said yesterday he agrees personally with it, the suggestion I would make, rather than put Mr. Steen in the awkward position of either saying, should I pull it or should I bring it back next year if I get consent, would be — and I just throw it out — accepting my amendment and then changing the commencement of the Act from Royal Assent to Proclamation. Now that would give the opportunity to Mr. Lawrence, who frankly I don't know why he couldn't have called a meeting — it doesn't mean curling clubs can only meet in the wintertime — but it would give him time to call a meeting and get approval and then come back to the Cabinet and say, would you please Proclaim it, or having called a meeting and not having received approval, could come back to Cabinet and say, please don't proclaim it, and then that might obviate the need of this coming back to the Legislature next year, unless they prevail on a member to bring it in in its present form, without that factor of ensuring that it doesn't have a personal advantage to anybody, that I propose to put in. How does that go as a suggestion?

MR. CHAIRMAN: Mr. Adam.

MR. A. R. (Pete) ADAM: Mr. Chairman, it was a shareholder who made a presentation last night, in addition to Mr. Lawrence, Mr. Hilgenga. I've known

Mr. Hilgenga briefly between 1940 and 1944, and last night he made a presentation here that when the original intent of the bill was decided by the board or the members, the executive, there was only a representation of 22 percent of the shareholders. That is the statement that Mr. Hilgenga made last night. Now for whatever reason, some had passed on, some they didn't know where they lived or their records were not properly kept up-to-date or for one reason or another. And in other words, 76 or 77 percent of the membership were not present to pass or request this kind of legislation.

Mr. Hilgenga suggested that this bill be withdrawn, not be proceeded with at all, because of the fact that it could eventually end up, the corporation could end up in some hands to the benefit of a few and maybe losses to a large membership of the members of the company. The amendment was shown to him and he said that was the very least that he could accept. He certainly would not want to see the bill passed without at least that kind of amendment whereby, if the corporation was wound up that the residue of the funds would go to a public charity of some sort.

So I would suggest that maybe is a compromise. I'm not sure if it assists. Even Mr. Lawrence last night did not object personally, as Mr. Cherniack has said, did not object to that provision himself but he couldn't speak for the other shareholders. Why he didn't call a special meeting and get a reaction to that proposal, I'm unaware of the reasons for not proceeding with that but I feel that this is a fair compromise. Nobody can argue that if there are a number of members that cannot be found and some have passed on, why should those assets, those shares fall into the hands of the remaining shareholders. That's my point.

MR. STEEN: Mr. Chairman, I think Mr. Cherniack's suggestion is a good one. I don't want to have to go through the process of introducing the bill again next year, if I can avoid it, and I think in accepting his amendment and having the commencement of the Act changed is a good way of handling this particular matter.

In answer to both Mr. Cherniack and the other speaker, Mr. Adam, the drawback of calling a meeting in the summer was they had one at the tail-end of the curling season and they attracted 24 shareholders. That was held back in the spring. To get a meeting now, I'm sure the attendance would be less than 24 and then Mr. Adam's argument of some 70-odd percent of the persons did not show up, therefore they didn't agree with the thing, would even be enhanced. So having a meeting at this time of the year would be very difficult in obtaining a decent representation.

So, as the mover of the bill, but not a member of this committee, I'm quite acceptable to Mr. Cherniack's suggestion.

MR. RANSOM: Mr. Chairman, I think that the amendment should be moved and passed and the further amendment, as Mr. Cherniack has suggested, to come into force on Proclamation.

MR. ADAM: There's just the one further point that Mr. Hilgenga made in his presentation was that the meeting to adopt this proposal of this bill was called

on a Sunday morning at approximately 9:30, and he suggested that wasn't a very appropriate time to call a meeting of this sort for this purpose, that there could have been a better time to call a meeting to change the structure of this corporation. In fact he said that Sunday morning a lot of people had gone to church, and other activities on Sunday, and that is why he was almost suggesting that the meeting was — he didn't say that, and I don't want to put words in his mouth, but there was an implication that perhaps it was called at that time so that there wouldn't be very many members there.

MR. CHAIRMAN: Are there any other further discussions by the committee?

We will go to the bill then. How do you want to handle it, clause by clause, page by page?

Page 1 pass; Page 2 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I move that Bill No. 54 — before I move it, I might say that after moving the additional clause which has been distributed, I propose to have a second amendment changing the words from Royal Assent to proclamation, but I have to move two separate motions, I believe, unless you will accept them both as one. Since we are dealing page by page maybe should do that, Mr. Chairman, because it's consecutive.

Mr. Chairman, I move that Bill No. 54 be amended by renumbering section 6 thereof as section 7, and by adding thereto immediately after section 5 thereof the following the section:

Disposition of property on dissolution.

6. Upon dissolution of the corporation property remaining after paying all the debts and the obligations of the corporation shall be paid to an organization in Manitoba, the undertaking of which is charitable or beneficial to the community.

Secondly, that section 7 of Bill No. 54, as renumbered (Section 6 as printed) be amended by striking out the words, "the day it receives the Royal Assent" and substituting therefor the words "a day fixed by proclamation."

MR. CHAIRMAN: Okay, we have those amendments. All those in favour? (Agreed). Page 2 as amended pass; Preamble pass; Title pass; Bill be reported as amended pass.

MR. CHERNIACK: Mr. Chairman, would it be presumptuous to suggest a three or four or five-minute adjournment?

MR. CHAIRMAN: I am willing for a stretch if everybody else is.

MR. SHERMAN: Mr. Chairman, could we pin Mr. Cherniack down, to use one of his favourite terms, to a specific.

MR. CHERNIACK: Why don't you come with me.

MR. SHERMAN: What does he have in mind, Mr. Chairman, three, four or five minutes.

MR. CHERNIACK: 5 minutes.

MR. SHERMAN: 5 minutes, all right. (Agreed)

**BILL NO. 65
THE REGISTERED NURSES ACT**

MR. CHAIRMAN: We will start dealing with Bill No. 65, The Registered Nurses Act, and I am informed that the sponsor of the bill can have promoters of this bill sit at the table with us.

When were in discussion of this bill before, I have been informed that we were going to go through it page by page but not to pass it, just to go through it and pick out the trouble spots, or do you want to pass the pages that are not contentious so we don't have to come back to them again?

MR. CHERNIACK: Mr. Chairman, I thought what was agreed was that we would be reviewing Bill No. 65, bearing in mind the opportunity to refer to the other bills and that anything we do should not preclude our coming back to a section. So I would expect that we would just be doing it, and not passing it in a formal way so that you are not signing it as if that's concluded.

MR. FILMON: Mr. Chairman, I would think that we would go through it clause by clause, but the only reason I say we should leave it open to the final approval, is that we may, in considering the same clause in the second bill, get a different perspective on it and want to come back to the first bill, so I think that we should go through all three and then come back to the final approval clause by clause of each, well page by page by that point, because I am sure we will have ironed out all the difficulties.

MR. CHAIRMAN: Page 1 of Bill 65. Page 2 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman . . .

MR. SHERMAN: No, Mr. Chairman, I think at this juncture . . .

MR. CHAIRMAN: I recognized Mr. Cherniack, Mr. Sherman, I'm sorry.

MR. CHERNIACK: Very minor, Mr. Chairman, it's just that my sense of the alphabet tells me that (e) and (f) should be rearranged, and I want to remind you that the very last word on that page should read "problems" not "programs;" Minister should come after member, I think, alphabetically.

MR. CHAIRMAN: What page are we on?

MR. SHERMAN: Page 1, but my point, Mr. Chairman, was at this point I think we are agreed that we should be going clause by clause and I think the clauses should be called, not the pages.

MR. CHAIRMAN: Okay, what clause do we want to call then? Mr. Filmon.

MR. FILMON: I was just going to say that if we are correcting the alphabetization of the definitions then (i) and (j) should be reversed as well.

MR. SHERMAN: The last word in (g)(ii). Yes, that should be health problems.

MR. CHAIRMAN: Is that all on page 1? Mr. Adam.

MR. ADAM: Could we have a clarification on 1(e) on 65 and the difference as it is shown in Bill 66, the wording?

MR. CHAIRMAN: Do you want to repeat that, Mr. Balkaren?

MR. BALKARAN: The definition was intended to be the same, Mr. Chairman, and I think in 66, what could be done is the addition of the words, "in the province", be added, so that they are both consistent.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: You mean added in 66. Is that what you are saying? I think that Mr. Adam may have been talking about the difference in the words, "indicates and requires" in the next subsection, but I think we should note what Mr. Balkaren said about Bill 66.

MR. SHERMAN: Or Mr. Chairman, Mr. Adam, may be referring to the fact that the Lieutenant-Governor-in-Council is mentioned in 66 and not in 65.

MR. FILMON: That's the same definition in Bill 87, so 87 and 66 are consistent but not with 65.

MR. BALKARAN: 66 would have to be amended to bring it in line with 65.

MR. FILMON: Or vice versa.

MR. CHAIRMAN: Mr. Balkaren.

MR. BALKARAN: The Lieutenant-Governor-in-Council doesn't charge the administration of this Act to any Minister, not being a government bill.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: In that case then 66 and 87 would both have to have the same change to conform with the definition of the Minister in 65.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Yes, on the next one, I think the Mr. Cherniack means "unless the context otherwise indicates", and in 66 it's "unless the context otherwise requires". What is the reason?

MR. CHAIRMAN: Mr. Balkaren.

MR. BALKARAN: Mr. Chairman, I don't know that there is any significant difference but for the sake of consistency you could select either word, whichever word the committee wishes to adopt, as far as I am concerned, is equally good. I might add, Mr. Chairman, the Interpretation Act uses the phrase "unless the context otherwise requires".

MR. CHERNIACK: Good and since two of your bills says "requires" and 65 is the only one that says

"indicates", how about changing indicates to refers in 65? It's (f) which should be (e).

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Are we okay? Are we current? I would just like to have Mr. Balkaran confirm my impression that this is the one section which differentiates between exclusivity of practice and reserve of title, in other words this is the section that takes care of the fact that the profession, in this case, the Manitoba Association of Registered Nurses, controls only the designation of the people, of their members, and not the description of the task that they do and therefore does not confine the task to members of the organization alone. Do I make clear my question?

MR. BALKARAN: That's correct, Mr. Chairman.

MR. CHAIRMAN: Page 1; Page 2 — Mr. Cherniack.

MR. CHERNIACK: On page 2, incidentally I thought we were going by clauses, but it doesn't matter, by Sections. The RPN Act sets out objects of the association; this Act does not. I wonder if that has any significance or whether there is any advantage to the public to have the objects set since nowhere do we really find a code of ethics. I don't know to whom to ask that question, I guess the Minister, and he'll decide whom to ask.

MR. CHAIRMAN: Mr. Sherman, just before you take it, maybe we could ask the members of the Registered Nurses and the Psychiatric Nurses to come to the table to help us answer some of these questions. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, my response was going to be somewhat the same as yours. The only answer that I could give to Mr. Cherniack is that the objectives of the Association of Registered Nurses appear to me to be specified throughout the bill, but whether there is cause to lay them out in a specific section or Clause, as is in the case of Bill 66, is a question that I certainly have no strong feelings on either way, but the Association of Registered Nurses may have a comment on that.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I'm just wondering whether they would be more comfortable, have that moved away entirely. Would you like this? Before we call on them and I, too, would like to hear that. I'd like to make my point. I start again on the premise that we are all agreed that the objectives of this legislation is to protect the public interest, paramount, to protect the public interest. There are appeal provisions and there are advisory councils and there are requirements for the Lieutenant-Governor-in-Council to take positive acts in relation to the administration of these organizations. In the light of that, and as one who does not normally approve of preambles in legislation, I favour the setting out of objectives of an organization to lay it clear to the public and to the other bodies involved, such as the advisory council, the legislative council, to be reminded of the public interest. That is why I like the idea of the objects

being in the Act so that they can be referred to if it becomes necessary to remind anybody involved that the objectives are those to serve the public interest.

When we come to the RPN legislation, I'm going to ask to add a subsection, which I would like to read now, which indicates the reason why I think it's worth having. I was going to suggest an (f) to the objects of the Association of the RPNs to carry out its activities in such a manner that the best interests and the protection of the public are ensured. I'm not glib about this; I'm pretty serious to say that I think that this is a proper provision in professional legislation for the reasons given. Now, I wonder, Mr. Chairman, if we could get a reaction to that.

MR. CHAIRMAN: Mr. Balkaran. Miss Tod.

MISS LOUISE TOD: We would have no objections to including of objects. However, what we have done is incorporate them in the regulations.

MR. CHERNIACK: I don't see them in the regulation section.

MISS TOD: I'm looking at the College of Ontario's Act at the moment where it spells out the objects of the college are: to regulate the practice of nursing; to establish and maintain standards and so on. These are all covered in our regulations in our proposed Act. The objectives as listed for The RPN Act, I do not think would be appropriate for our Act.

MR. CHERNIACK: Mr. Chairman, of course, they are not appropriate, they deal with mental health and mental disorders, but the principle. Now I'm not clear whether Miss Tod means they have put them in into the regulations themselves or into the sections, Section 5, dealing with regulations. Because I think there is a difference and the difference, I think, is made apparent by the subsection I want to propose for the RPNs and that is a statement in legislation that the objectives are to promote, maintain and enlighten the progressive standard of nursing; to assist, to promote maintenance of properly constituted schools for the preparation of qualified registered nurses; to carry out its activities in such a manner that the best interests of the protection of the public are ensured. That does not appear, I believe, in Bill 65. I'd like to suggest that it ought to be in wording that is applicable to R.N.s, of course, not to RPNs.

MR. CHAIRMAN: Sir, could you identify yourself?

MR. MICHAEL SINCLAIR: I'm Michael Sinclair, Mr. Chairman, I have assisted in the drafting of this Act. The Association has no objection to the inclusion of objects in the Act. The Association would suggest that there is a set of objects here that I would put forward for that purpose. Sorry, if I'm not being heard through the speaking system.

MR. CHAIRMAN: Is that better?

MR. SINCLAIR: I'm sorry. Mr. Chairman, we have no objection to the inclusion of objects and I wonder if I could read the objects that we would propose or whether you want us to skip over this and we could get them typed up and submitted since you

apparently are going to be on this legislation for a little while.

MR. CHERNIACK: Either way.

MR. CHAIRMAN: It seems to be agreed. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think it would be interesting to hear them verbally. We would want to see them in print, too.

MR. SINCLAIR: I would propose these objects, Mr. Chairman, the objects are:

- (a) to regulate the practice of nursing and to govern its members in accordance with this Act, the regulations and by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill amongst its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of nursing;
- (d) to establish, maintain and develop standards of professional ethics amongst its members;
- (e) to administer this Act and to perform such other duties and exercise such other powers as are imposed under any other Act;
- (f) such other objects relating to human health care, as the board considers desirable.

You may want to have those printed to consider them and amend them.

MR. CHERNIACK: Mr. Chairman, to me, those are not the kind of objects that I am hoping to see because what they do, in effect, are covered in Section 5. They describe the powers of the board; they don't describe the objects of the Association or the objectives of the Association. I just make this distinction which I think is self-apparent. The first one is to regulate the admission of nurses into the profession, something like that, or to regulate their members. But I think that what we have in the RPN legislation is a very desirable thing and that is to indicate the purpose of a professional association being given the kinds of powers that they are being given here, and that is their sense of dedication to serve the public and the public interest.

Therefore, what Mr. Sinclair read only describes the extent of authority, whereas what I would like to see is what the RPNs have, and say, to promote, maintain and enlighten the progressive standard of nursing; to promote the maintenance of properly constituted schools for the preparation of qualified nurses; to co-operate with other persons interested in the promotion, in this case, it says mental health, but the wording could be adapted, but it still means that they want to work with others and they want to work towards an improved system, to maintain the ethical education and practising standards of its members at the highest level, and the section I want to add which I think has weight. Now, if I am not persuasive, let's leave it alone, I don't want to make a big issue of it, but I'd like to be persuasive to say that these are the true objectives. The others are just powers and, therefore, I don't think they belong in any way other than they are now. The other one, as I

say, is to carry out its activities in such a manner that the best interests and the protection of the public are ensured. Mr. Chairman, in the specific, I think that if some matter has to go to the board, to the Lieutenant-Governor-in-Council, to the Advisory Council or to the Court of Appeal, whoever is arguing whatever they are arguing at the time should be able to say, let's go back to the legislation and see that the objects of the Association are to do these enlightened and responsive to the community things, rather than, as I happen to interpret what Mr. Sinclair said, as being to regulate themselves. I would have liked to have been able to quote such an object as I have read now, I'd liked to have been able to quote that to the Law Society earlier today and say, what are you guys doing about your real objective? That's my point, and as I say, if I can persuade the R.N.s to agree to that purpose that we could leave the wording; if I persuade the Minister to agree and leave the wording, then fine; if I can't be persuasive on it, let's leave it anyway because I don't want to make a big issue. But when we get to the RPNs, I'm happy that it's there.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I don't have any difficulty with that suggestion whatsoever, Mr. Chairman. I can't speak for the sponsor of the bill or for the MARN, obviously.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, all I can indicate to the committee is the advice that I would give to the Association, and that advice would be to strongly oppose objects of that sort as the breeding ground of interminable litigation, because every Act undertaken by the Association, every by-law passed, every regulation passed, would be subject to review by the court on the grounds that either it did or didn't comply with the type of objects that Mr. Cherniack is suggesting. That seems to me to make completely unworkable a self-governing association.

MR. CHERNIACK: Mr. Chairman, there you have two points of view. I agree with Mr. Sinclair that putting it in would make it possible for another body to look at what they are doing and say, is it in accordance with those lights? I don't agree it would make it unworkable because an association that is not working in the light of that kind of objective should be checked up. But since they will be, and I assume they will be, working towards these enlightened advanced objectives, then that kind of review should not create any hardship on them. But if it does, then maybe it should, Mr. Chairman, so now you have two completely opposing points of view on what I think we agree on as a standard of description of the objectives and I think that maybe it's up to the committee to make the decision. I'm wondering, Mr. Chairman, if we can prevail on somebody to set out that kind of objectives and then let the committee review it at that time. Mr. Sherman did undertake and honoured his undertaking by having with us Dr. Johnson, who is indeed an authority on matters of health and health administration. Would it be unfair to ask Dr. Johnson

and Mr. Balkaran to get together and try and work out the kind of sets of objectives that I am suggesting for our consideration? Now, again, if committee does not go along with that suggestion, let's not make them do work that's unnecessary, but I would like to see that very much.

MR. CHAIRMAN: Is the committee agreeable? Mr. Filmon.

MR. FILMON: Mr. Chairman, I just wondered where the objects of the RPN association emanated? Where did you get yours from? What I am saying is, it seems to me that it would be much more difficult for us to compose a set of objects without the co-operation of the MARN, because that means we're trying to impose some objects on them which they may not consider to be their mandate and objective. It's going to be much more difficult that way, so where did yours come from?

MR. CHAIRMAN: Could you please identify?

MS ANNETTE OSTED: Annette Osted. The body of the objects which appear before you now were developed in 1960. The wording has been changed; a little bit has been added. We felt that we wanted to keep it and our legal counsel suggested that we should, so we did.

MR. FILMON: So it came from your association.

MS OSTED: From our original one.

MR. FILMON: Yes.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'll bet Mr. Filmon that kind of thing exists somewhere and that the R.N.s would know how to find it. I wouldn't be surprised if it's in their own code of ethics, or in their national code of some kind, or in the accreditation requirements. I don't know.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, as I said a moment ago, I have no objection to that suggestion, but as I also said, I can't speak for the sponsor of the bill or the other members of the committee from my party, or the MARN, so I don't think we can give Mr. Cherniack quite the assurance that he wants this afternoon. This presents us with a case in point of the exercise that we're embarked on here. He has identified a subject that's certainly worthy of consideration, and I think we're all prepared to consider it. The best we can give him in the way of an assurance, is that we will discuss it among ourselves as colleagues and with the MARN executive and their legal counsel, and provided there is consensus that it's acceptable, and also productive, from the point of the MARN and the public, then we can ask legal counsel to define some objectives in written form that the committee can look at at its next sitting. And certainly I can give Mr. Cherniack that undertaking.

MR. CHERNIACK: Mr. Chairman, that's really all I asked for, I didn't want a commitment that they would inserted, I made a request that they be drafted and submitted to the committee. I think it would be a little helpful and I must admit you've all seen Mr. Balkaran and I, we were whispering, Section 1 subsection (g), in some way describes some of the objectives of the RNs and I would think, Mr. Chairman, that we could take out of - well not we, I think the experts, Mr. Balkaran — could extract from (g) those portions that are descriptive of the standards or objects of the association and put them into a section that stands out as being the objects. And we could work on them and there you do have a start Mr. Filmon, of what they themselves think are their standards.

Mr. Chairman, I don't how often we're going to have a reference to what the RNs want and what the mover of the bill wants. It's really what the government should want to have in here, again for the protection of the public. But I'm quite happy with Mr. Sherman's undertaking to see if there could be something worked out, some wording to be submitted to the committee for consideration, without any other commitment at this stage. And of course it would have to be co-operatively developed with the RNs because that's what they have to work with as Mr. Filmon said.

MR. FILMON: If I may just clarify, Mr. Chairman, I certainly wasn't indicating that I would be opposed to putting in a section on objects, but I was saying that it would be a lot simpler if the objects were ones that were agreeable to the MARN.

MR. CHAIRMAN: Is that agreeable to the committee? Next clause of some concern? Mr. Filmon.

MR. FILMON: It's a minor point, Mr. Chairman, but I wonder if the representatives of the two associations who are at the table could indicate if their bills somewhere have the clause that says that the feminine is a masculine? I see it in the other one; do they all have it?

A REPRESENTATIVE: Yes.

MR. CHERNIACK: That's on here, is it?

MR. FILMON: It is; it's No. 2 in the LPNs. That's why it comes to mind.

MR. CHERNIACK: When we come to that, I'm going to ask Mr. Balkaran to tell us why they don't protect the other way and say that everything that is masculine shall be feminine.

MR. FILMON: Because it's assumed.

MR. CHERNIACK: But it's premature, I think, Mr. Chairman, but it's there.

I wanted to deal with Section 3, Mr. Chairman, when you're ready for it.

MR. CHAIRMAN: The Honourable Mr. Ransom on a point of order.

MR. RANSOM: On a point of order, Mr. Chairman. Are we dealing with all three or just . . .

MR. CHAIRMAN: I thought it was just the two.

MR. RANSOM: Because if we are going to deal with all three, I suggest that we have the representatives of the Licensed Practical Nurses available at the table as well. If we are dealing with two, then fine.

MR. CHAIRMAN: It was my understanding we were just dealing with the two.

Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm glad Mr. Ransom raised that point. I think we are dealing with one, bearing in mind the relationship with the other two, and trying to gather as much knowledge as we can that would help us to deal with the other two, but surely the RPN and the RN are much more similar and the LPN will be substantially changed. Nevertheless, surely as a matter of courtesy, we should do what Mr. Ransom suggests and invite the LPN.

MR. CHAIRMAN: My apologies to the representatives of the LPNs. I invite you now to take a place at the table.

Mr. Cherniack, you said you had one other . . .

MR. CHERNIACK: Mr. Chairman, Sections 3 and 4. I would like to raise the point that we learned yesterday, and I didn't know these numbers before, that there are 8,000 members of MARN and there is a board of 17, and there is the expectation that they may get around to having regional districts with, I suppose, boards for each region and, I suppose, one central body.

Mr. Chairman, I looked up The Law Society Act, and I have been holding it up as an example of a pretty well-operating organization and I must say I still do as far as their legislation is concerned, although you have heard my disappointment expressed today about some of their activities.

There must be three pages of sections in The Law Society Act which deal with the structure of what is called the benchers, which is the equivalent of a Board of Directors and how they are to be elected and/or appointed, in cases where they are to be appointed.

Mr. Chairman, when I made my major presentation in the House on all three bills I have made the point that, firstly, it is our obligation, primarily, to protect the public interest by passing this legislation, but secondarily, to look after the interests of the individual against the organization itself. I mean that quite seriously, Mr. Chairman. I am concerned about an 8,000 member organization and a 17-member board and the whole structure, the numbers of the board, the manner of appointment of the board, the requirement as to annual meetings — I put in the word "annual" — requirement as to membership meetings; all of that is left to the board to determine, that is, the existing board to determine, and that doesn't even have to go to the Lieutenant-Governor-in-Council. Mr. Chairman, I suggest quite seriously, and I do point at the Law Society as an example and, I don't know, I might have to look at The

Medical Act or any of the older professions to see how they are designed, but I think that legislation should provide for the manner in which a board shall be appointed or elected and the manner in which the election shall be conducted.

I say that, because as I said, during the noon hour I looked at The Law Society Act and I was reminded how ballots are to be mailed out. I might just indicate that in The Law Society Act we get a ballot with, I think, three envelopes, and there is a provision first for how nominations are to be made; after nominations are made then the ballot has to be printed in a special form; then when the ballot is completed by the member it is to be inserted into an envelope which is not identifiable; then that envelope is inserted into an envelope, which is identifiable, to show that the member had the one vote and one vote only; and finally, the envelope in which it is returned.

I think there is merit. We are dealing now concurrently with The Elections Act and it's true we are dealing with the elections of the Members of the Legislature of the province of Manitoba, but that's no reason to inflate that beyond the importance of the dealing of the 8,000 members of the body of MARN, which regulates their activities and controls their destiny to a large extent, and should, I don't question that.

I think that we ought to have here a minimum and maximum number of board of directors; we ought to have here a provision for how elections shall be conducted, maybe not to the detail and the extent of The Law Society Act, but to make sure that elections are conducted in such a manner that every member has an opportunity to know who the nominees are and to decide for whom to vote. I really think a board of 17 is too exclusive, too small, too powerful. I think that, I think it should be a larger board split into committees dealing with various aspects.

If I cannot, at this stage of our session, bring in all these, what I think are desirable provisions, the least I would like to do is to take out these important structural powers and put them into Section 5, at least, to make it incumbent on the Lieutenant-Governor-in-Council to say what it shall be.

Mr. Chairman, I have to tell you something I only learned yesterday, which stunned me, I must say that, and I may be wrong — MARN will correct me if I am wrong — I am told that MARN operates on the basis of proxies. I am told that members can give a proxy to another person to vote for them. The reason I say it stunned me is that I don't see that as being a method of voting for a professional association. I understand General Motors doing that, the way they send out an annual report and a notice of an annual meeting and a proxy appointing the president, or any other person in blank, with a power to vote for them. But I was told that MARN has that procedure and really I think it's wrong. I don't think people in the association should delegate their votes to others, I think they should either vote or not vote, just as I feel in the general population of Manitoba people should either vote or exercise their right not to vote, but not transfer their vote to someone else.

So if I am right about that it is an example of why I think that there should be a clearer spelling out of how you structure a board; or if I can't get that, and I know the limitation of time, at least put that

responsibility onto the Lieutenant-Governor-in-Council and make the Cabinet responsible, and I hate to do it to them, but they seem to be prepared to accepted the responsibility.

MR. CHAIRMAN: Miss Tod.

MISS TOD: I would just like to inform the committee that in the election of officers in the MARN, the system that Mr. Cherniack described for the Law Society applies to ours. Proxies are carried by members for voting at annual meetings, but not for elections.

MR. CHERNIACK: I am very slightly reassured. Firstly, because I feel that if that is the way they do run it, then that should be put into the Act so that it continues to be run, as far as the voting for officers is concerned, I don't know how nominations take place and even then a proxy to vote at an annual meeting is wrong. It's just wrong in principle unless, as I say, you have a corporate structure or a profit-making organization that has a million shareholders and they want to maintain control in the establishment of, let's say, General Motors. So that's a different point with which I disagree.

But I'd like to know if I'm wrong in suggesting that that belongs in legislation rather than within the confines of a board, I've not yet come to the question as to whether the board meetings are open or not; I would hope they are open to all members but I don't know that either and I think that this section entitles the board to conduct meetings in the closed quarters of their offices, without access to the general membership, and I think that's wrong. So that's what I'm raising in a general way.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, the format of the Act was directed by Legislative Counsel and my understanding is that Legislative Counsel was of the opinion that the type of things Mr. Cherniack has referred to have no place in statute and should be covered by by-law. Insofar as Mr. Cherniack's concern about what types of by-laws will be passed in this area, they will be by-laws that are passed by a majority of the members of the association and those are the parties who are best able to determine what type of by-laws they wish to govern themselves.

I feel it is inappropriate to burden the Lieutenant-Governor-in-Council with the consideration of that kind of minute detail concerning the number of professional associations that are governed by legislation.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, in the first place, the fact that Mr. Balkaran and I disagree, it doesn't mean that he's right and I'm wrong, of course neither does it mean that I'm right and he's wrong, but whether it belongs in legislation or not is a matter of protection of the public and not a matter of the refinement of legislation.

Mr. Chairman, the point made by Mr. Sinclair might have validity but doesn't because he just told us that — for one thing he was wrong, he said the

by-laws are passed by a majority of members, that's not true — according to this legislation the by-laws are passed by the board but must be submitted to the members at the next meeting of the members, and the members may, by ordinary resolution, confirm, reject or amend the by-law. He tells me they have a procedure whereby you can transfer your vote to somebody else by proxy. And for all I know, and they can clarify whether or not it's so, are these proxies sent in advance to the members? Do the proxies now designate somebody in present authority giving them the right to vote? Does that then mean what I interpret it to mean, that the board may pass a by-law and then at the next meeting of the members, have the by-law approved by a majority, including the voting by proxy, by the President, the Secretary, whoever, I don't know what the practice is?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, there are two points that I would make. One is that only some types of by-laws are effective at the time of being passed, those in (f), (g), (h) and (i), and they're the type of things that one would ordinarily leave to the day to day management of a Board of Directors.

Secondly, concerning the proxy system, there is a proxy system under the existing by-laws of the association. There will be a proposal to do away with that proxy system and it will be for the membership of the association to decide whether or not it will be done away with. I agree with Mr. Cherniack that it's not a system that I favour, but then I don't have decisions on policy, I can only recommend concerning the drafting of what the association does decide upon.

As to the present practice, the practice is that a member who attends at a meeting may carry four proxies from other people who appoint them in writing. The proxies must be registered with the Registrar prior to the commencement of the meeting. There are very strict controls employed concerning the use of the proxies and I think the rationale was that this is an association that draws members from all over the province and when a meeting is held in a specific location in the province, because of inability to get off work — as you know nurses are essential people and cannot leave their jobs as readily as others — there are also nurses of course who work on Saturdays and other days when other people might be off work and when meetings could be held when they could come in. Then of course there is also the cost of travel for people to reach a central point in the province, from some distant point.

So I think that those are the explanations of why a proxy system was adapted by the association and there may be reasons why some members of the association and who can tell, perhaps the majority will feel that that system should be continued.

MR. CHERNIACK: Mr. Chairman, that's only supportive of, I think, since Mr. Sinclair agrees with me on the advisability of a proxy, all the more reason, I think, to make sure that matters such as that have to be reviewed by a body such as Cabinet. I would just suggest that the portions of the by-law that require approval should also receive the

approval of the Lieutenant-Governor-in-Council as a regulation rather than as a by-law.

I still think that we ought to ensure that there is a fairly large-sized executive, or board of directors rather, there is an executive as well.

One other point I want to raise. On the appointment of the lay people, I think it is meaningless to say, "Four shall be", unless you say, "Four out of some number should be". You know, the RPNs say, I think it is the RPNs say, not less than 20 percent, which is roughly the same as the present status of the nurses, but then they could always add 20 members to the board and make this less meaningful.

I'm not sure that it is advisable or of any value for the nurses to decide which lay people will be on their board. It seems to me that it would be more advisable that the legislation, or some other body, an outside body; I would rather the Lieutenant-Governor-in-Council than the nurses; I would rather some other body involved in the field of health services. I would understand that better than a self-serving provision that, "We will decide who will represent the public on our board," which is, in effect, what the idea of a lay person on a board is, a representative of the recipient, the consumer of the service; that's the idea of a lay person, a consumer, a representative of the consumers shall be on the board.

I don't agree that the board of professionals should decide who best represents the consumer. I would rather the Cabinet, or I remind you again, the Law Society, there is a committee in The Law Society Act which appoints, not the government but a committee of people who have — well, the Chief Justice and, in that case, the president of the municipalities and the president, I think, of the school trustees, or something like that — form a committee which meets and appoints the representatives of the consuming public. I would like to suggest that for consideration by the Minister.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would just like to comment that Mr. Cherniack raises some concerns that have been raised with me in the course of the development of this legislation. They have no less validity for that, but he does remind us of concerns that had been addressed to us by colleagues and by various relevant interest groups in the field who offered their opinions and comments on Bill 65 while it was being drafted, or while preparations were being made for its drafting.

I think we come down to the basic question that runs through the debate on all these bills, and that is the question that revolves around the concept of a self-governing professional association. I don't think that Mr. Cherniack and I are necessarily on precisely the same wavelength on that question, and that's not offered as a criticism, I think there is a sincerely held difference of view on what constitutes a self-governing professional association or, if you want to break it down into a subsection, whether the Manitoba Association of Registered Nurses should be, in truth, a self-governing professional association.

We have not started from the premise, but arrived at the premise, that the MARN is entitled to be a

self-governing professional association and I don't think, when you get into the area of self-government, that you can insist that the provisions that concern themselves with the inner workings, the inner operations and inner mechanics of a self-governing professional association, should be subjected to review and examination and approval by some other authority.

This is precisely the situation in which the by-laws are classified, and should be classified, in our view. When it comes to those affairs having to do with the public interest and the protection of the public interest, in terms of qualifications, education standards, etc., there is no question, they are areas for regulation and have to be approved by Lieutenant-Governor-in-Council. But the by-laws, after all, are the mechanics of an inner nature, through which a self-governing can govern and regulate itself and our proposal is based on that premise, that indeed the MARN does deserve recognition as a self-governing professional association.

If the Honourable Member for St. Johns wants to look at some other bodies in that category, such as the Manitoba Medical Association, certainly their by-laws are not subject to scrutiny by Cabinet.

I think further elaboration on this point could better, perhaps, be offered by Miss Tod, because we have discussed the proposed new concept of the board at some length with her, and I think she made the point before the committee last night that the MARN is looking at a constituency representation kind of board membership, and intending to move in that direction.

But they have demonstrated, I think, over the past several years, that they are capable of administering the affairs of an association of some 8,000 members and the specifics of constituency representation are not spelled out at this point because they are not ready yet, but I can give Mr. Cherniack and the committee assurance that we have been assured that it is certainly the MARN's intention to move in that direction.

I have to say, Mr. Chairman, that I think it comes down to the basic question of what is a self-governing association. Last night Mr. Cherniack suggested to the LPNs that Bill 87 has been completely emasculated by the amendments that have been proposed and that they really now end up as a self-governing body only in name, but certainly not in fact. What I suggest to him is, to be consistent, that he should then agree that if he is going to suggest seriously that the MARN's authority over the inner workings of its own association be amended through insistence that by-laws be translated into regulations and thereby be made subject to approval by Lieutenant-Governor-in-Council, that he would be relegating the MARN to that very fate which he seemed to deplore where the LPNs are concerned.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Sherman said it better that I some of the things that I wanted to say.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, it happens that I believe that the MARN should be a self-governing professional association. But I said that the primary purpose of this legislation is for the protection of the public. The secondary purpose, much lesser purpose but one that should be there, is to protect the individual member against the Association, in that the Association controls the livelihood of the individual member. So, although they are self-governing, there is absolutely nothing wrong with setting out the rules or guidelines by which they obtain their power — when I say “they” I mean the executive or the power structure — obtains the power and loses the power, such as we have governments changing hands, mainly because the protections are there.

So I maintain they should be self-governing, otherwise we cannot fault them in cases where they fail to do their job of discipline and educational and academic requirements. But, for the same reason that I mentioned General Motors, they are self-governing too but there are rules established in The Corporations Act and in various legislation under which they have to operate.

I want to make sure that there is a permeation of democracy within an organization, because I want it to be self-governing, because I want it to be accountable.

Now it may be, Mr. Chairman, that we are going to solve this problem when we get way down towards the end of the legislation, where there is a section, way at the end, the last page, where it says that the by-laws passed under the old Act shall remain in full force and effect until repealed or amended. I am going to add at that time, I mean I’m going to suggest adding at that time, “or until December 31, 1981, whichever shall sooner occur,” because I would like to see the membership have an opportunity to look back at everything that has all the rules that have been established by the association and have an opportunity, like the principle of the Sunset Laws, to look again. Because if the structure is wrong, and I don’t know that it’s wrong but it may be, then how is the membership going to be able to change it unless the board presents that change to them, and it may well be that if we are assured, just as the Minister says he has been assured, that there will be a review, it may well be that by putting in the kind of section I am suggesting, that the by-laws must be reviewed and presented again to a properly constituted meeting of MARN, that that would satisfy my concerns to ensure that it continues to be democratic.

I say that, Mr. Chairman, because I have had experience with other professions, no experience with this one, but with other professional bodies, where I have found that there is a clique which runs the profession — I won’t name those professions, although I suppose I could — where there is a clique that has been running them and it’s very hard to dislodge it, and I don’t think that’s right, and that’s the point I am making.

I reiterate, I want them to be self-regulating; I want them to have the power to conduct their affairs, but I want to be able to establish rules.

One slight correction to what I am interpreted as having been said last night, and I think I said it at a late hour, that the LPNs have been emasculated. I

think that they have been to a large extent insofar as setting standards, but not insofar as regulating their membership. They would still have all the powers, as I read it, to regulate their own membership and if it is interpreted that I said they wouldn’t have that, then I withdraw that. They would continue to have that and I think they should.

MR. CHAIRMAN: Miss Tod.

MISS TOD: Mr. Chairman, we would have no objection to that amendment that all this would be done by the end of 1981; it will be done long before then.

MR. CHERNIACK: That would be helpful.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Mr. Chairman, I am wondering if we could get a clarification on the setting up of district boards or members, how the MARN proposes to have those district boards, how they would fit into this board of directors?

MR. CHAIRMAN: Miss Tod.

MISS TOD: This is being presently worked on by our legislation committee, so I can’t answer the question. I can give you some of my own ideas, but it hasn’t been settled yet.

MR. ADAM: Mr. Chairman, through you to Miss Tod, to me this is a very very important section, and I say this without any criticism, in order that the power structure not be based in the larger centres, that the way this would be set up is that the rural areas, smaller areas, would have ample representation on the board. We have seen, in some of the organizations that I belong to, such as the Pool and United Grain Growers and associations of that nature, where the power structure is very difficult to dislodge and that eventually the grassroots do not have very much voice, or very little voice, or, in fact, no voice at all in things that happen at the board level.

I am just asking for clarification. I am not suggesting that this is happening, I just want clarification of how that would fit in.

Another point that I would like to make is that we had the Manitoba Health Organization last night requesting that they be on the board and I am not sure whether I would support that. I don’t know how many corporate executives sit on the unions or act as stewards, or vice versa, and I’m not sure whether, I believe it was brought out by my colleague, Mr. Cherniack, last night, that there are no Registered Nurses on the hospital boards and so on. So I would be really concerned about that particular aspect.

But I would sure like to have some clarification, maybe not today, but I would sure like to know how that would work.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, as Miss Tod said, that is under consideration by the MARN. Certainly we are happy to have the reassurance from the MARN that that type of representation is being

developed for the board. The mechanics have not been finalized but there are different concepts that could be pursued. We could propose that it be set up along the lines of the council of the College of Physicians and Surgeons where there are specific districts defined and they are based on population, that is, population of members of the profession; or on the lines of the health and community services districts in the province. There are different approaches that could be taken. Certainly, any suggestions that Mr. Adam had in that connection, I am sure, would be welcomed in those considerations.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: I was just going to make a similar point, that I am sure they would consider Mr. Adam's recommendations, but I hope he wasn't suggesting that the passage of this Act wait until that is defined.

MR. CHAIRMAN: Miss Tod.

MISS TOD: I was just going to explain further that what is being discussed at the moment, and will probably be recommended to the membership, is that we develop regions similar to the regions of the health department, that within each region there will be elections by the nurses within that region. They will have a board and from that board they will elect representatives to sit on the board of directors of the MARN, assuring representation of nurses throughout the province.

Whether that board, those representatives sitting on a central board, will elect from amongst their own, the officers, or whether the members will wish to continue electing officers as they do at the moment, I can't predict.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Can we agree, Mr. Chairman, that this clause is one of those that we put in that provocative category and will be further addressed?

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I think we can agree. May I suggest that rather than ask a series of questions I might be inclined to ask, dealing with the by-laws, and in light of the fact that we will be dealing with Section 54, that we be given a copy of the by-laws of the MARN, in advance, so that we can look over them and see, because we are being asked to approve of them under Section 54. If we have a copy it will answer lots of questions about how nominations take place and elections. I wonder if there is any objection to that. I believe we already have received an agreement to let us have a copy of the proposed regulations, because I gather that they were almost ready to be presented and we were going to get it. I am being offered something; I don't know if I should . . .

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, the existing by-laws of the association are, of course, available. They

would have to be copied in order to be distributed to the members, but that certainly can be done.

Insofar as the regulations are concerned, the one regulation that has been developed is that regulation which would be required immediately on the new Act coming into force. That is the only regulation that has been developed in a final form, but it deals with the subject matter which Mr. Cherniack was concerned about last evening.

MR. CHERNIACK: On the assumption that we will be given a copy, and I'm sure the Clerk would arrange to have it copied if copies are not available. I agree with Mr. Sherman, let's go past that and come back to it when we need to. But I would very much like to read the by-law and get some idea of the present structure, because any changes would, of course, have to be made under the by-laws as they are today.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just on a point of information, so that we can make plans accordingly, I am not familiar with the House business of the day, or of the evening. I was not there when the House Leader —(Interjection)— We are returning here, we're not going back into the House. All right, we'll be back here at 8:00 o'clock.

In that case, Mr. Chairman, I move that committee rise.

MR. CHAIRMAN: We have a motion that committee rise. All agreed? (Agreed) Committee rise. We meet again at 8:00 o'clock this evening.

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