

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS
Saturday, 23 May, 1981

Time — 10:00 a.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood).

MR. CHAIRMAN: Committee come to order. We have a quorum. We have four bills before us and I don't see a representative from the Architects Association present, so perhaps we can lay that bill over and go on to the next one where representation is present. Is that agreed by the Committee? Mr. Cherniack, is that all right with you?

MR. SAUL CHERNIACK (St. Johns): It's all right with me, I'm just wondering, are you talking about The Respiratory Technologists Act.

MR. CHAIRMAN: Yes, they have representation here.

MR. CHERNIACK: Is Mr. Sherman not coming?

MR. CHAIRMAN: I'm not sure.

MR. CHERNIACK: I think he's one of the more important, maybe the most important of the Committee.

MR. CHAIRMAN: We'll put a call in to Mr. Sherman, I'm told he's in the building.

MR. LEN DOMINO (St. Matthews): We're prepared to proceed with Bill 40.

MR. CHAIRMAN: Let's just spend half-a-minute seeing if Mr. Sherman is available and, if not, we could go on with the C.A.'s Bill.
Mr. Downey.

HON. JAMES E. DOWNEY (Arthur): What bill are you proceeding on?

MR. CHAIRMAN: We were hoping to go on to The Respiratory Technologists Act but sort of waiting to see if Bud Sherman is available and if he isn't, we'll go on with the Chartered Accountants because their representation is present. The sponsor of that bill is present as well.

Well, perhaps that the best, we'll go on with the Chartered Accountants bill, Bill 40. There are some amendments. (Interjection)— Well, the clock is ticking away, let's get something done.

MR. ABE KOVNATS (Radisson): I think some consideration should be given to the registered respiratory technology group.

MR. CHAIRMAN: Members of the Committee would like to have Mr. Sherman present for that, being a health act.

All right, members of the Committee are we prepared to deal with Bill 40, An Act to amend The Chartered Accountants Act.

**BILL NO. 40 — AN ACT TO AMEND
THE CHARTERED ACCOUNTANTS ACT**

MR. CHAIRMAN: Clause 1 — pass.

MR. CHERNIACK: It doesn't really pass, we haven't looked at the objects and powers yet.

MR. CHAIRMAN: 4(a) — pass 4(b) — pass; 4(c) — pass; 4(d) — pass; 4(e) — pass; 4(f), Section 1.

MR. CHERNIACK: Mr. Chairman, just a moment please. I'm looking for some recognition in the powers that they have a function to serve the public interest.

MR. CHAIRMAN: Are you directing a question to legal counsel Mr. Balkaran?

MR. CHERNIACK: Not yet, I am just telling you why I'm holding things up for them. No, I'll pass that.

MR. CHAIRMAN: 1 — pass; Section 2 — pass; 2(1)(a) . . .

MR. CHERNIACK: Mr. Chairman, I want to propose, I guess at this stage, that there be the introduction of lay persons in (b), I am not sure they will want not more than three.

MR. CHAIRMAN: Pass 2(a)? —(Interjection)— 7(1)(a). Under Section 2, 7(a) — pass; 7(b) — Mr. Kovnats, you have some amendments; would you be good enough to read them into the record?

MR. KOVNATS: Mr. Chairman, that proposed new Clause 7(1)(b) to The Chartered Accountants Act, as set out in Section 2 of Bill 40, be amended by adding thereto immediately after the word "institute" in the 2nd line thereof the words "and who shall be".

MR. CHAIRMAN: You've heard the motion.

MR. CHERNIACK: It didn't register yet. You mean "institute" (b)? Yes, yes, yes.

MOTION presented and carried.

MR. CHAIRMAN: 7(2) Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that proposed new sub-section 7(2) of The Chartered Accountants Act as set out in section 2 of Bill 40 be amended by adding thereto immediately after the word "elected" in the 2nd line thereof the words "or appointed".

MR. CHERNIACK: I want to get clarification. Am I to assume that the by-laws will determine how many will be members and will determine how many will be lay people? It looks like — is it split elections?

MR. CHAIRMAN: Mr. Cherniack, do you want Mr. Thompson to come to the lectern?

MR. CHERNIACK: Yes, it would be helpful.

MR. CHAIRMAN: Mr. Thompson, would you come to the microphone there please? Could you answer Mr. Cherniack's question?

MR. D.A. THOMPSON: Yes, Mr. Chairman, it is intended that the by-laws shall determine the additional number of lay persons, that is whether one or two or three. That is the intention.

MR. CHERNIACK: And does it now?

MR. THOMPSON: It doesn't now because we don't have provision for it.

MR. CHERNIACK: No. How many directors does the by-law now provide for?

MR. THOMPSON: The present by-laws provide, as you will see in 7(1)(a), not fewer than 6 nor more than 21 who are elected. In actual fact, at the moment there are 15 member-directors.

MR. CHRENIACK: Is there any consideration that there may be fewer than 15?

MR. THOMPSON: That was discussed Mr. Cherniack, the other evening amongst our group and we agreed that there isn't any likelihood that there will be fewer than 15 member-directors, so that . . .

MR. CHERNIACK: My next question would be, if there will be no fewer than 15, under those circumstances would you expect there would be no fewer than two or three appointed lay people.

MR. THOMPSON: I think that is a fair assumption. I would expect that if we would keep with 15 for the time being with our present membership, we would keep with 15 member-directors and we would add to that two at the present time, lay directors.

MR. CHERNIACK: Mr. Thompson, would it not then not only be better and look better to provide not fewer than 15 or not fewer than 14 or not fewer than 2 lay? Wouldn't it then be more apparent what your intention is?

MR. THOMPSON: Mr. Cherniack, that was again discussed following fairly recent talks about the subject and I think that the President will agree with me that we would be prepared to include in 7(1)(a), in place of the figure 6, the figure 15. In 7(1)(b) in place of the figure 1, the figure 2. Am I correct, Mr. Chairman?

MR. CHERNIACK: That's pretty good. Mr. Thompson, the by-law that fixes the election to the Board I assume comes under . . .

MR. THOMPSON: General power.

MR. CHERNIACK: General power, the one we just passed?

MR. THOMPSON: No, it's a little later.

MR. CHERNIACK: Under 12?

MR. THOMPSON: It's a little later in the bill, Mr. Cherniack. It's 10(1) in the bill.

MR. CHERNIACK: It's in the bill. "The council may make by-laws . . ." Is there a provision that the by-laws have to be submitted to the general membership?

MR. THOMPSON: Yes, Mr. Chairman. The provision is to be found over on Page 3 of the bill, 10(3) at the top.

MR. CHERNIACK: Good. That's fine, that answers my question, Mr. Chairman. In the light of Mr. Thompson's statement may we go back to 7(1)(a) and (b) in order to change the numbers?

MR. CHAIRMAN: We'll have to, yes. Is that agreed with the Committee? Agreed? Would someone make those motions?

MR. CHERNIACK: Mr. Domino wants to.

MR. DOMINO: Mr. Chairman, I move that in Section 7(1)(a) . . . Have we moved that one? Okay so moved.

MOTION presented and carried.

MR. CHERNIACK: Is that both numbers changed?

MR. CHAIRMAN: Yes and (1) to (2) right — pass, as amended — pass; 7(2) as amended — pass; Section 2 as amended — pass; Section 3 — pass; Section 4 — pass; Section 5(10)(1) referring to by-laws. 10(1) — pass.

MR. CHERNIACK: No, no, I'm sorry.

MR. CHAIRMAN: 10(1) — pass; 10(2), would you like these to be dealt with individually?

MR. CHERNIACK: Yes.

MR. CHAIRMAN: 10(2)(a) — pass; 10(2)(b) — pass; 10(2)(c).

MR. CHERNIACK: On (c), we're dealing with amendments to a pretty short act. We've been dealing with acts that have been 25 pages long and they spelled out a great deal many more provisions than we have here, which means that the by-laws have to be relied on. Under (c), if I might ask Mr. Thompson could . . .

MR. CHAIRMAN: Mr. Thompson, could you again join us at the . . .

MR. CHERNIACK: I wonder if Mr. Thompson would be permitted to sit.

MR. CHAIRMAN: It's alright with me.

MR. THOMPSON: I'd love to stand up, that's the only way I can get above anybody else.

MR. CHAIRMAN: All right, Mr. Thompson. Mr. Cherniack, will you direct your question to Mr. Thompson please.

MR. CHERNIACK: Mr. Thompson, I wanted you to know that I always look up to you no matter where you are.

MR. THOMPSON: Thank you, sir, and that is reciprocated.

MR. CHERNIACK: Thank you. The other acts have made specific provision empowering their committee to walk into the offices of their members and inspect their records and their books. Do you have such powers in your by-laws and would they be enforceable in the the by-laws, or do you not need them?

MR. THOMPSON: We have at the moment a by-law that was enacted by the counsel and approved by the members at the meeting of members held a year ago that does in fact provide for a recurring review of professional practice. So, we do have by-law provision for it. The purpose of 10(2)(c) is to give us a firm base for that recurring review. Now, I think that my feeling is that we, and when I say I'm of course referring to the Institute, we have the power under our general authority to make by-laws; we have power to make by-laws for reviews, but this may in some instances have to be a compulsory review; we may have to enforce it; it may have to be an offence of professional misconduct if a member refuses to permit a review. That is the purpose of this very general and non-specific reference in 19(2)(c).

MR. CHERNIACK: But there are two methods of procedure. One way would be that someone lays a complaint or suggests improper practices and a committee would then say, well, we better call in Mr. So-and-So and discuss it with him and have a look at his statements and practices and then sort of make an order that he make his office available or open to them.

The other would be the drop-in kind, the doctors have the power now to drop in to any medical office and look at all the records without any notice or a please. That's a very powerful right that they've been given. Do your by-laws go that far and if they do, do you think they're enforceable just being in the by-laws and not in legislation?

MR. THOMPSON: In answer to that — this is the first time that the Institute has arranged for a review procedure or an inspection procedure. I daresay this is the first time — a year ago — and as with the introduction of all measures of that nature that are out of the ordinary, the initial approach and hopefully the forever is relatively soft. There is a committee dealing with mandatory practice review and there will be a staff member who is a specialist in accounting practice who will be the reviewer and the by-laws provide for notice to the member prior to inspection. In other words, we're not attempting to introduce in effect a police state, but there are provisions that when serious situations are drawn to the attention of this Committee that is designed for the purpose that the inspector may be sent in.

MR. CHERNIACK: The provisions that entitle a member being inquired into to appeal or to protest — are they in the legislation or are they more likely to be in the by-laws or are they there at all?

MR. THOMPSON: Sorry, the last — the right of the members to do what?

MR. CHERNIACK: To object to being investigated to being harassed if they . . .

MR. THOMPSON: They're clearly laid out in the by-laws with a view to ensuring that there's a fair and appropriate inspection that doesn't result in harassment. As distinct from the Act, of course, the by-laws in this respect are quite long and detailed, but I assure you that they've been discussed over a period of three or four years; they've been discussed thoroughly with the members — I was present, and the members feel that they are of sufficient protection, (a) to the public and (b) to the members.

MR. CHERNIACK: How many members are there approximately?

MR. THOMPSON: Pardon.

MR. CHERNIACK: Approximately how many members are there?

A DELEGATE: Nineteen hundred.

MR. CHERNIACK: I heard that.

A DELEGATE: Twelve hundred resident members.

MR. CHAIRMAN: Perhaps Mr. Cherniack, you could put it on record as to the figures that you were given.

MR. CHERNIACK: Yes, you say there are 1,900 members of whom 1,200 are in Manitoba, of whom about half are practising and the other half I assume are employed in industry and — say it.

A DELEGATE: Government.

MR. CHERNIACK: And in government, of course, government. I'm putting it on record so that we do know. The other 700 who are not in Manitoba, are they — (Interjection) — but they continue to be members of the Manitoba Institute. (Interjection)

MR. D. JAMES WALDING (St. Vital): Mr. Chairman, I wonder if we ought to have those replies on the record, otherwise . . .

MR. CHAIRMAN: Mr. Cherniack, has been sort of repeating the answers.

MR. CHERNIACK: At the request of the Chair, I've been doing that.

MR. CHAIRMAN: Can we pass 10(2)(c), Mr. Cherniack?

MR. CHERNIACK: Yes, I just wanted to comment to Mr. Thompson that the trend has been in the health professions particularly to spell out all these rights in the legislation. If ever the chartered accountants would consider coming back with a new bill, I would hope that they would have the rights of their members spelled out in legislation rather than in by-law, but that's not for now.

MR. THOMPSON: Mr. Chairman, I can say in that the Acts of incorporation of the Institute in the 10 provinces basically go back 100 years ago. They were drafted and they're roughly the same across the country now, although as they become more modernized, there are variations in some provinces. But the trend at that time was to provide for powers and authorities in a very general broad language. The trend nowadays is to be specific and it could be that the institute across the country will want to alter the construction of its provincial legislation. We have that definitely in mind but in drawing this, I kept in mind the principles of drafting under the original Act.

MR. CHAIRMAN: 10(2)(c) — pass; 10(2)(d) — pass; 10(2) — pass; 10(3) — pass.

MR. CHERNIACK: That's the provision that takes care of confirmation by the special meeting or the next annual meeting.

MR. CHAIRMAN: 10(3) — pass; Clause 5 — pass; Clause 6.

MR. CHERNIACK: No, at this stage, Mr. Chairman, I'd like to inquire into the question of membership. Under Section 12(b) of the legislation of the present Act — not this bill, the present Act — council may determine the fitness, moral character and habits of persons applying to be examined. I read this literally to mean that in each case of a person being examined the council will determine the fitness, moral character and habits as compared with the council setting up some general sort of guidelines that would apply to all members. Am I reading it wrongly or is it indeed on each application that the council determines the fitness, moral character and habits?

MR. CHAIRMAN: Mr. Cherniack, should we ask maybe Mr. Betton, the President.

MR. CHERNIACK: Whomever. Having said what I did about Mr. Thompson, I wouldn't for a moment presume to tell him whether or not he should answer.

MR. CHAIRMAN: Mr. Thompson.

MR. THOMPSON: Mr. Chairman, perhaps I might make the first reply and Mr. Betton may make it second. Section 14 is the foundation for the by-law provision and we have a by-law provision on membership that in effect repeats Section 14, that's of the basic Act, Mr. Cherniack. We have a by-law provision in effect that follows that and requires that each application be approved by Council. I don't mean that — obviously if you're having 50-60 applications you don't deal with them all at one or two meetings. That's what you do but the applications do require approval by Council.

MR. CHERNIACK: Do they have a requirement, for example, that a statement be submitted showing where they've lived in their lifetime and police records sought from each of those locations or how do they investigate this fitness, moral character and habits? Because that, as I understand it, does not deal at all with their ability to do the work because that is done under (d) skill and competency. So I am

asking and you can realize I'm not beating around the bush, I want to know just what efforts are made to discriminate as amongst candidates and what is the nature of the basis on which there is that kind of discrimination?

MR. THOMPSON: Mr. Chairman, as this question has to do with moral matters, I defer to Mr. Betton.

MR. CHAIRMAN: Mr. Betton, would you try and answer Mr. Cherniack's question, please?

MR. F.W. BETTON: Mr. Cherniack, we don't have a copy of our application form with us, but I believe two things are required of student applications; firstly, they have to be recommended by two members which in most cases would be their ultimate employers; secondly, there must be three references. Assuming we get the two recommendations of members and three references — we may or may not check the references — that is the basis of our student application.

MR. CHERNIACK: Do the two members have to certify that they know them and vouch for their moral character and habits?

MR. BETTON: I'm not exactly sure of the wording.

MR. CHAIRMAN: Mr. Gilmore, could you enlighten us please?

MR. C.O. GILMORE: If we have a member who transfers in from another province that we're not quite familiar with, we will ask the two references to furnish us with a letter of reference. As well, we get the three references — we write them a letter and ask them if, in their opinion, this person is a fit and proper person to be admitted to the Institute. That's how it's handled.

MR. CHERNIACK: I was dealing with the two references of the membership, that is the people who are likely to become the employers.

MR. GILMORE: The employer.

MR. CHERNIACK: May I interrupt? Are we now talking about student applications or membership applications?

MR. GILMORE: I'll talk about either one. Which one do you want to talk about?

MR. CHERNIACK: Please, both.

MR. GILMORE: When a person is looking to become a student of the Institute of Chartered Accountants of Manitoba, first of all he seeks out employment with a practising firm in the province. His employer naturally has a talk with him and decides whether he wants he or she to work with that firm. If the employer does, he signs a registration form. The student signs it and the employer signs it. The employer says he will do all in his power to give this student the proper training which will give him the skill of a chartered accountant. That's roughly what it says. That registration form comes into the Institute and the

student starts on the courses. When the student has completed all the courses of instruction, passed all the exams, he or she then writes the uniform final examination, which is written by over 3,000 candidates at the same time across Canada in September of each year. If you pass that uniform final examination, you're admitted to membership.

When the person applies to write that uniform examination he fills out an application which is much similar to our membership application, the student is recommended by two members, gives three references in the same way, but up to this point we have not circulated the references or asked anyone else if the person is a fit and proper person, because if they weren't they wouldn't be employed by the firm. So it's kind of redundant, but we follow the same procedure with students as we do with members from other provinces and other countries.

MR. CHERNIACK: Until your last sentence I had come to the conclusion that the judgment as to fitness, moral character and habits does not take place until after the student has been around for long enough that the employer can truthfully . . .

MR. GILMORE: The judgment we hope, takes place when the student is hired by the employer.

MR. CHERNIACK: At that stage?

MR. GILMORE: Yes.

MR. CHERNIACK: Not after that?

MR. GILMORE: Well, if the student gets in some trouble with the authorities, I guess the member has a responsibility to bring it to our attention.

MR. CHERNIACK: I thought I had followed you well, Mr. Gilmore, and yet I'm not too sure. The decision as to fitness, moral character and habits, the way you describe it I thought took place at the time of the application for examination, which may be at least a year and maybe seven years, I don't remember just what your . . .

MR. GILMORE: No. I'm saying informally the judgment takes when the student is employed.

MR. CHERNIACK: Formally?

MR. GILMORE: Informally it takes place.

MR. CHERNIACK: I'm not concerned with the informal.

MR. GILMORE: Then when he applies to write the uniform final examination, it's a formality more or less. If the student has passed all the courses of instruction he or she is then eligible to . . .

MR. CHERNIACK: Write the exams.

MR. GILMORE: That's right.

MR. CHERNIACK: How long is that after they start as a student?

MR. GILMORE: Well it depends on your academic background.

MR. CHERNIACK: Approximately or what's the range?

MR. GILMORE: Okay. The average might be two-and-a-half years, average.

MR. CHERNIACK: Okay. So that means then, in the two-and-a-half years average, the employer has gotten to know the student well and can certify as to his opinion.

MR. GILMORE: That's correct.

MR. CHERNIACK: But at the date of entry, all the employer has is firstly, the desire to have an extra student or not, that is the employment opportunities . . .

MR. GILMORE: The employer conducts several interviews with the student and brings he or she into his office and introduces him to other partners. There's quite a . . .

MR. CHERNIACK: His own office, yes. But that student does not become a member? Does that student acquire any status in the organization as a student? Does he become a student member or is he out of the organization until he has written his exams?

MR. GILMORE: He's a registered student until he becomes a member or if he's unsuccessful in the exams, then he has to withdraw.

MR. CHERNIACK: Does the student become a member under the legislation? Does he have any status in the organization at all prior to his being accepted as a registered member entitled to practice?

MR. GILMORE: He doesn't have a vote in the Institute affairs, is that what you mean?

MR. CHERNIACK: Has he already been accepted in a limited membership or as a student member?

MR. GILMORE: He is a student in accounts until he becomes a member and he has all the rights pertaining to a student.

MR. CHERNIACK: Which are?

MR. GILMORE: Well, he has rights to take exams, attend classes, perform work for his employer, etc.

MR. CHERNIACK: Now what I would like to know, the investigation as to fitness, moral character and habits is based on those five references, two from a member and three from outside?

MR. GILMORE: Two members from us recommend a person for membership in the Institute and that's by by-law.

MR. CHERNIACK: At the time of the examination after they've known them for an average of two-and-a-half years, is that correct?

MR. GILMORE: Yes.

MR. CHERNIACK: Yes. And three more people have to give references.

MR. GILMORE: The student gives three other references, not necessarily members.

MR. CHERNIACK: As to fitness, moral character and habits?

MR. GILMORE: Yes.

MR. CHERNIACK: And you don't have any other yardstick or measurements as to fitness, moral character and habits?

MR. GILMORE: The examination is our other yardstick.

MR. CHERNIACK: That would be the skill and competency side, wouldn't it?

MR. GILMORE: That's correct.

MR. CHERNIACK: Do you have any idea what is meant by "habits"? Do you mean do they drink, or do they smoke marijuana or something like that? Is that what a habit would apply to, or does it mean coming in time for meetings that are called for 10:00 o'clock?

MR. GILMORE: I would have to submit to our legal counsel on that.

MR. CHERNIACK: It's good of you to pass the buck. Frankly I don't see why he should have to answer what your practices are. But you are asking, you are asking and do have the power to assess that fit this moral character inhabits, so I want to know what do you mean by that. The reason it's in legislation is that you feel it's needed.

MR. GILMORE: I guess it's been there for quite a while, almost since 1886.

MR. CHERNIACK: And may well have been used to keep people out who should not have been kept out.

MR. GILMORE: I'm not aware of that, Mr. Cherniack. I'm not aware of it.

MR. CHERNIACK: But that's what I am saying; you have it in your legislation, why do you have it? If you don't need it, if you don't use it, why do you continue it?

MR. GILMORE: I would have to refer that to our solicitor. He's the . . .

MR. CHERNIACK: I'm leading now to the discussion I had with Mr. Thompson on the previous evening when I suggested that a person denied membership should have the opportunity to have his application reviewed and the decision, the denial reviewed, Mr. Thompson as I recall it didn't go along with me. That's really the reason I've been getting at that. I think it's only right if we give your organization the power to include or exclude members then those people who want to join into that profession should not be barred in an arbitrary way. Now I don't know

which of you would like to respond but my point is that there should be some rights of a student or a member to come along and say: You're being unfair to me, I want a review by the counsel or by a court.

MR. GILMORE: You're referring to existing students and existing members; is that right, Mr. Cherniack?

MR. CHERNIACK: I'm talking about people who come in and knock on the door and say I want admission.

MR. GILMORE: As . . .

MR. CHERNIACK: As either a student or as a member.

MR. GILMORE: Okay, a student as I advised, for a person to become a student he must become employed by a practitioner.

MR. CHERNIACK: Right, no question about it.

MR. GILMORE: Once he finds employment and he's got the credentials, the academic background, he's a student. If he feels he's having difficulty becoming a student he's told he has the right of appeal to the Student Education Committee. If the Student Education Committee don't rule in his favour he has a right of appeal to counsel.

MR. CHERNIACK: Where is all that?

MR. CHAIRMAN: Mr. Sherman.

HON. L.R. (Bud) SHERMAN (Fort Garry): Mr. Chairman, for my edification I'd like to know what we're discussing and why we're discussing it at this point under the Act. It's my understanding that we had passed Section 5. I'm not trying to pre-empt Mr. Cherniack's right to explore this question but it's my understanding that we had passed Section 5. If I'm wrong then I'm wrong.

MR. CHAIRMAN: You are correct, we are on Section 6.

MR. SHERMAN: We're on Section 6.

MR. CHAIRMAN: Or Clause 6.

MR. SHERMAN: Which deals with the repeal of Subsection 17(1) of the Act.

MR. CHAIRMAN: That's correct.

MR. SHERMAN: 17(1) of the Act deals with professional fees and it seems to me that we're into an area with respect to the entire principle of the bill in this exchange between Mr. Cherniack and the delegation. Now I don't question the committees right to explore that aspect of the profession but I ask direction from the Chair as to whether we're dealing properly with the bill in front of us, clause-by-clause and section-by-section as we should be. I think we should be getting on with dealing with the question of repealing 17(1) and then moving to Section 7 which deals with 21(1) which has to do with discipline and proceed to explore these questions on that basis.

MR. CHAIRMAN: Prior to starting Clause 6, Mr. Cherniack asked if he could ask the institute a question or two and I permitted him that right. You are correct, Mr. Sherman, we are not following the bill. The questioning is not in the bill.

MR. CHERNIACK: Mr. Chairman, I waited deliberately to get to that portion of this bill which comes to and is about to pass Sections 12 and 14 of the Act dealing with further powers of counsel and who may become members. I thought it was proper for me to wait until we passed Section 5 dealing with 10 because the questions I wanted to ask deal with Sections 12 and 14 of the bill, of the Act itself which are not in the bill, in order to lead up to Section 8 of the bill dealing with appeals under 21(2) which deal with appeals and 21(1) referred to in 21(2) refers to complaints being made against any member of the institute and dealing with decisions made. 21(2) which we're going to deal with deals with appeals and I am directing my specific questions leading up to a discussion on the rights of a person applying for membership to have an adverse decision by the counsel reviewed by another authority in order to create that opportunity for people denied arbitrarily, unfairly or wrongly, a right to have an appeal. That is the direction in which I'm heading.

Now if the committee wants to suggest that I shouldn't go in that direction we can debate that but that's where I'm going and that's where I said I was going and that's where I indicated I was intending to go at the time we first heard the . . . Now do I go or don't I?

MR. CHAIRMAN: Have you got the answers that you wanted from the institute?

MR. CHERNIACK: No, not yet.

MR. CHAIRMAN: Not yet.

MR. CHERNIACK: Do I keep on going or do we debate?

MR. SHERMAN: Mr. Chairman, I'm not trying to be arbitrary. I think that we're getting bogged down here in a full scale re-examination of the principle of self-governing professional autonomy in the profession of Chartered Accountancy and we could be some considerable time in exploring that area. We're dealing with the series of proposed amendments to an existing bill. I think if we're going to try to insist that every self-governing profession govern itself according to the same rules down to the letter and the same methodology down to the letter as all others then we can be engaged in that debate for a long time. As long as the principle of accountability is there, then I see no objection to some variation, profession by profession or discipline by discipline and I would hope that we could move speedily back to the clauses at issue.

MR. CHERNIACK: Well, let's get back to what Mr. Sherman said. I'm not concerned about the letter or the procedure here. I'm talking about the rights, the principle, the basic principle of a person denied membership to appeal and have the denial reviewed. Now, that's pretty basic. That's got nothing to do with the procedure or the method or anything else.

That has to do with a basic right, which we have given to the profession of chartered accountants, self-governing rights, including the rights to determine membership application. I have found, as Mr. Sherman must recall, that there is no provision for a person who is not a member to have an appeal of the decision made on his membership. That's the principle we've adopted in every other bill that we've dealt with and that's why I'm raising it now.

MR. CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, it may be helpful, the member has his made his point, I believe. I don't think he's going to convince anyone one way or the another if that's what he's attempting to do and I'm trying to be helpful with this recommendation, that if he has a suggestion to give those people who are refused into the organization an appeal mechanism, then I would suggest maybe he would like to introduce an amendment to allow that and do it now or at the appropriate time, so we can proceed to deal with the question and make the decision on that point as a Committee.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, Mr. Chairman, of course I could bring in an amendment and I will in order to deal with that matter. I didn't know that it had been explored. I know that at the last time we were discussing it, I had raised it to Mr. Thompson and he said, well, no, because they are not restricting others from doing their kind of work and they're an exclusive kind of a club and they reserve the right. I will want to bring that to a vote and if Mr. Downey feels that we are now answered fully; I didn't think we were, but if it is absolutely clear that the decision on inclusion as membership has no appeal function, if that's clear, then by all means I would want to bring in an amendment and it may yet be that the organization itself will agree that a person should have that right and I was hoping they would, in which case there wouldn't have to be a big argument. Now, if you want to bring it to head I would ask representatives of the chartered accountants whether they are prepared to provide an appeal right to persons denied membership?

MR. CHAIRMAN: Mr. Domino, did you wish to enter the discussion.

MR. DOMINO: Mr. Chairman, this matter was discussed when the Institute first came forward and made a presentation to the Committee several days ago, it seems like years ago now. I believe Mr. Cherniack entered into a discussion with Mr. Thompson; Mr. Thompson outlined the institutes position, which is that they don't believe that it's necessary to have an appeal when membership is denied because they are not asking for exclusivity. They don't deny a person the right to enter into this profession and earn a living using the skills which he has acquired in the course of his education, as for instance the law society or the Medical Association, doctors or other groups do. Because of this they think that their procedures are fair and have worked and worked well for a hundred-odd years in the Province of Manitoba. I can't recall and I believe Mr.

Thompson indicated during his earlier discussions that there have not been cases where individuals have come forward and indicated that they have been treated in an arbitrary or unfair manner, that the Institute has attempted to be very careful to be fair in matters of this sort and they don't believe that it's necessary to change the legislation. I agree. I don't know how the other members of the Committee feel, but I think that at this time we could entertain Mr. Cherniack's amendment. That would give the Committee an opportunity to see exactly what the other members feel.

MR. CHAIRMAN: Mr. Cherniack, would you propose an amendment at Committee Stage or at Third Reading?

MR. CHERNIACK: I'd propose it at this Committee. (Interjection)— Just in order to make it clear, the logical place I think for a change is in Section 14 of the Act, it is not in the bill. Now, I can comply with a rigid interpretation if you want to amend the bill only and not deal with the Act. There are two ways of doing it. Either we can provide for dealing with an amendment to the Act or I could come under 6 and say Subsection 17(1) of the Act is repealed and replaced by and then I can bring in that kind of and I'll do either way. The logical place I think is under Section 14.

MR. CHAIRMAN: Which is not in the amending bill.

MR. CHERNIACK: That's right.

MR. DOMINO: Why don't we work through the bill before us, through Section 6?

MR. CHAIRMAN: We are at Clause 6.

MR. CHERNIACK: All right, it'll bring in the principle, it would not be the wording that I think that I would want to bring in, but then in order to comply with a strict interpretation I would add the following words at the end of Section 6, which reads Subsection 17(1) of the Act is repealed and I'll say, "and is replaced by" and then I'll say, "Section 17(1)" and I'll say, "any person denied membership shall have the rights to appeal the decision firstly to the Council and thereafter to a court under Section 21(2)".

MR. CHAIRMAN: Alright, to the members of the Committee, have you followed Mr. Cherniack's amendment as he's been reading it out at the same time as writing it down? Are you ready for the question?

MR. CHERNIACK: No, I'm not. Now I want to speak of my amendment.

MR. CHAIRMAN: All right, Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we have adopted principles in legislation up to now in some maybe eight bills that we've reviewed in the last two years, whereby we recognize that we are granting powers to professional bodies, which give them self-disciplinary and self-regulatory rights. The important distinction that we have made is the recognition that

in some cases we create an exclusivity of practice, which is the case in the medical bill, that was the most obvious one, and the pharmaceutical bill, and in others where we recognize the right to use the title, reserve of title only. In all cases we have made sure that people are not denied in any arbitrary fashion the right to become members. In all cases it appears in the legislation; in all cases the Legislature which grants the right also determined the way it shall be used and the potential abuses of these rights. That has been done knowingly as a recognition of the responsibility of the Legislature to protect the public. The reason we're concerned about protecting the public is to make sure that the professional body which acquires the right does not become an exclusive body to the extent where it can deny the services that it offers to various people by restrictions and restraints which are not fair and not proper in the interests of the public and then, of course, in the interests of the individual who wants to join.

Now in these various bills we've dealt with, it's been spelled out much more extensively than I am proposing here but I'm doing this to establish a principle. If the principle I am talking about is accepted, then committee would want to I assume spell it out more correctly but even if it accepts the principle as I have determined, in another year, in another 20 years, it may spell it out more or it will be spelled out in by-laws. But at least accepting the principle that I am suggesting, the by-laws will flow from meetings that will be held by a responsible organization. I don't want it suggested for a moment that I think that the chartered accountants are less concerned about service to the public and high standards than any other profession, but the Legislature has a responsibility.

I'll go a little further and point out to you that we've had some discussions in this committee on the provision in Human Rights legislation which makes sure that no one is denied access to professional bodies because of the various classifications that are discussed in the Human Rights legislation. That has become part and parcel of I think every health bill we've dealt with in the last two years. It was then pointed out that it might not be necessary because the Human Rights legislation itself says that there shall not be any denial of admission to an occupational association, I think, is the phrase used which I think covers the professional bodies who have exclusivity of practise. But Mr. Balkaran and I had a discussion — whether it was on the record or not, I don't recall — as to whether or not that Human Rights provision applied to a body which has only reserve of title such as this body. The reason I have doubts that it does cover is the way Mr. Thompson reacted to my questions when I was questioning him about it. When Mr. Thompson was responding to the rights of a person to become a member, then he said, "Well, we don't grant them the right of an appeal" — I'm quoting him and I want him to jump up and stop me if I misquote him — "that we don't grant to a non-member the right to determine that he shall be a member by an appeal function because we do not deny him the right to do those things that we do and earn a living thereby." I think that was the distinction he made that although it is a body of people who do accounting, anybody

else is permitted to do accounting for hire, but is denied only the right to call himself a chartered accountant or a C.A. If his argument is valid, then I believe that the Human Rights provision which is designed to protect people does not apply to the chartered accountants, if I interpret Mr. Thompson's response correctly.

If there is no protection under Human Rights legislation and there is no protection under The Chartered Accountants Act, then it means that people may be denied membership of the Chartered Accountants Institute on any basis which is not subject to review and I say that's wrong. If we give them a power to self-regulate, we should make sure that within their own laws there is provision for appeal. Mr. Thompson said they do not have it for people who apply for membership; I think they should be forced to have it and I will not at this stage, although on provocation I could, discuss the history of the Chartered Accountants Institute dating back some time ago when I believe there were reasons to think that the kind of provision I am now suggesting would have had validity. I don't say it hasn't now but I say it should be there as a matter of principle. When Mr. Sherman said if I want to discuss the various features of what represents proper legislation for professional bodies, indeed, I do and indeed, I have up to now. We have put it in every bit of legislation we've dealt with. It's not here; I think it ought to be here.

MR. CHAIRMAN: Are we ready for the question on Mr. Cherniack's amendment? Mr. Walding.

MR. WALDING: Mr. Chairman, I wonder if I might ask Mr. Gilmore a question or two? I'm not absolutely clear from the answers given of the actual procedure.

MR. CHAIRMAN: Is that pertaining to the bill or pertaining to the amendment?

MR. WALDING: Yes, very much so.

MR. CHAIRMAN: To the amendment?

MR. WALDING: Yes.

MR. CHAIRMAN: Mr. Gilmore, are you in a position to try and answer a question for Mr. Walding? Would you come to the microphone, Mr. Gilmore?

MR. WALDING: Mr. Gilmore, further to the answers that you were giving to Mr. Cherniack a few minutes ago, I want to be sure that I understand the sequence of events. You mentioned that a perspective student applies for a job with an accounting firm and then he becomes a student in accounts, is that correct?

MR. GILMORE: That's correct.

MR. WALDING: Is he then a sort of conditional member of the institute?

MR. GILMORE: No, he is a student in accounts, he's not a member.

MR. WALDING: Not a member.

MR. GILMORE: Until he passes the uniform final examination and fulfills a period of service requirement.

MR. WALDING: You mentioned there were certain conditions to be met before he is able to take the exam. Is that in certain courses or a certain length of time or a certain standard?

MR. GILMORE: Depending on your academic background, you would have to take 17 courses or four. The maximum is 17; the minimum is four, and when you've passed all those provincial exams, then you are eligible to present yourself to write the uniform final examination which is written by over 300 students across Canada at the same time during the month of September.

MR. WALDING: If the student is successful at that examination, is membership in the Institute then automatic?

MR. GILMORE: Yes. He must fulfill his period-of-service requirements. Many students write after a year of service with a practising firm; they write in advance.

MR. WALDING: Prior to their articles being completed?

MR. GILMORE: We don't call them articles. They used to be known as articles, we call it period-of-service requirements fulfilled. They've passed the uniform final examination; they've fulfilled their period of practical training experience; then they're admitted to membership.

MR. WALDING: That is then automatic?

MR. GILMORE: Yes.

MR. WALDING: Then where does the judgment of the habits and moral character come in? At which stage then?

MR. GILMORE: When they apply to write the uniform final examination, the application form as I explained previously was very similar to our membership application form. They are proposed by two members, they have three references, and if we haven't followed the procedure we maintain the right to write the references and ask them if, in their opinion, the person is a fit and proper person to be admitted to the Institute.

MR. CHAIRMAN: Mr. Walding, do you have any questions?

MR. WALDING: Mr. Chairman, I'm trying to understand that because Mr. Gilmore has told me that entry to the Institute is automatic following successful completion of the exam and a term of experience.

MR. GILMORE: If there is something drawn to our attention we would not let — you know, in the 15 years I've been there I'm not aware of it. I've researched all the minute books right back to 1886. There's nothing in our Council minutes that reveal a

student who has followed all the courses, has been successful in the exams and adhered to all the by-laws along the way, has not been admitted to membership. There could be situations, I suppose. It's never happened, but if a person who is coming up to write his uniform final examination for one reason or another becomes involved in a criminal case, the employer has the obligation to tell us about it if he's aware of it, and Council would determine whether — or the Professional Conduct Committee would determine whether it would review the matter and detertime whether a charge should be laid against the student, and his case heard.

MR. WALDING: I'm still not clear where this matter of discretion by the institute on habits and the other words that were in there, is it when the student applies to take the exam?

MR. GILMORE: The final exam, yes. The uniform final exam?

MR. WALDING: Yes. Because I'm just wondering whether Mr. Cherniack is right in his reference when he's speaking of the appeal. You said that once the exam is taken and a certain amount of experience that membership is then automatic.

MR. GILMORE: That's right.

MR. WALDING: So the refusal would not come at that stage. The refusal and the discretion by the Institute would apply at the time of application to take the exam. Do I understand that correctly?

MR. GILMORE: If I understand your question correctly, that might happen, but it would have to be extenuating circumstances that I just outlined, where it came to our knowledge before he wrote that exam that he had been found guilty of some criminal act. Then the Professional Conduct Committee would review it and see if there was anything to the matter, but it's never happened. I'm not aware of it anyway.

MR. CHAIRMAN: Are we ready for Mr. Cherniack's amendment?

MR. WALDING: No, Mr. Chairman, I'm failing to understand where the matter of discretion by the Institute comes in on the matter of the habits of a member plus the other words.

MR. CHERNIACK: It's fitness, moral character and habits.

MR. WALDING: Fitness, moral character and habits. Now does that come on a formal application to become a member and if so, at what stage is that formal application made? Is it before the exam or after the exam and the period of experience?

MR. GILMORE: You're talking about a student, is that correct? A student in accounts?

MR. WALDING: I'm speaking of the time that someone makes application and the Institute judges on the fitness, moral character and habits of the applicant.

MR. GILMORE: Well, there's two situations. There's one with students and one with members of other

provinces or other foreign countries. Which one do you want the explanation on? The student?

MR. WALDING: Yeah, let's take them both. Take the student first.

MR. GILMORE: Well, I think I've said before that when a student who has passed, successfully completed all the provincial courses and examinations, he or she then presents themselves to write the uniform final examination. They fill out an application form which says they want to write and they indicate on that application form when they expect to complete their period of service. Then it goes on and the rest of the application form is similar to our membership application form. It gives three references of persons, not necessarily members, and it's signed by two members of the Institute as required by our by-laws. To be admitted as a member of the institute, the application form must be proposed and seconded by members. The student then writes the exam and the application forms are accepted unless there is something that comes to our attention that requires our investigation; a member advises us that the persons presenting themselves to write has been found guilty of some criminal offence; we would investigate it and I guess at that time determine whether or not the person has the moral character and habits to be a fit and proper person to be admitted to membership in the institute.

MR. WALDING: What you're telling me then is that there is not a separate application to take the exam and to become a member. It's one form they fill in.

MR. GILMORE: That's correct. It's one form for students.

MR. WALDING: So when you make your judgment at that stage on the fitness, moral character and habits, if that were denied the student could not even take the general exam?

MR. GILMORE: The only reason, as I said before, that he couldn't take the general exam is because if something came to our knowledge and an investigation found that it was a fact that he's found guilty of a criminal offence.

MR. WALDING: But that's where the discretion comes in, before he takes the general exam.

MR. GILMORE: I guess that's right.

MR. WALDING: Okay, thank you. Now I understand.

MR. GILMORE: You got it?

MR. CHAIRMAN: Are we ready to deal with Mr. Cherniack's amendment? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, firstly, in the light of Mr. Walding's discussion, I'd like to change my amendment slightly. I don't know who has my amendment, I don't know if it's been recorded. Mr. Domino has a copy he says. I will just read the amendment as I would like to present it at this stage: "and is replaced by Section 17(1) any person denied

membership” and I’m adding the words “or admission as a student shall have the right to appeal the decision firstly to the council and thereafter to a court under Section 21(2).” Mr. Domino has written it out.

I want to point out, Mr. Chairman, that in The Physiotherapy Act which we passed yesterday there is only, and we made sure — there is only reserve of title in The Physiotherapy Act. They cannot deny anyone else the right to do what they do. There’s absolutely no difference in my consideration of it between The Chartered Accountants’ Institute and the physiotherapists organization with whom we dealt yesterday.

So therefore what we did for the physiotherapists should be just as applicable to the chartered accountants as that because they’re both in the same position. It seems to me that we ought to treat all alike and set out the law as we think it ought to be. I point it out strongly to those people who argue strenuously and I recognize their argument although I don’t agree with it — that we don’t need an entrenched Bill of Rights because it’s the Legislature that protects the rights of the individual. Now I don’t agree; I believe we need an entrenched Bill of Rights. But to those who believe that it is the Legislative function which is there to protect people I urge strongly that until we get that other kind of legislation which I believe in, which they don’t and I don’t fault them for it because I know the logic — they have much logic on their side — that this is the opportunity to protect the rights of individuals. I also marvel at the thought that the institution didn’t until now see the need to protect those rights. I would hope that there is still an opportunity to make that kind of provision.

MR. CHAIRMAN: Mr. Domino.

MR. DOMINO: Mr. Chairman, I apologize for not catching all of what Mr. Cherniack said. However much of what he says is certainly valid. The institute would like in some way to supply the protections that were referred to by Mr. Cherniack to members and people who are planning to be members but at the same time maintaining their ability to enforce the very vigorous standards because it must be obvious to this committee that all they have that separates them from other chartered accountants is their set of standards.

MR. CHAIRMAN: From other accountants.

MR. DOMINO: From other accountants, pardon me, other accountants.

It has been suggested to me, I’m not sure if Mr. Cherniack just mentioned this that in The Physiotherapists’ Act which we just passed that there was Section 7(4) — An appeal upon refusal of a registration, and 7(5) Discrimination prohibited, that I believe that those two sections if they were adopted into Bill 40, if we could fit them in at some place and I’m not sure where it would be appropriate, that might solve some of his concerns at least.

MR. CHERNIACK: It would solve my concerns.

MR. DOMINO: I believe that the members of the institute are willing to accept those two additions to

their legislation. I certainly think it would be an excellent idea if legislative counsel might be able to assist me in suggesting where we could fit these in, I would suggest that we defeat Mr. Cherniack’s amendment and then proceed to find some way to make these additions.

MR. CHERNIACK: Mr. Chairman, I would gladly withdraw my amendment on the understanding that we get something along those lines which I think would be better than my amendment which was just haphazardly brought in.

MR. DOMINO: Mr. Chairman, I would move that — we’re dealing with Section 6 — that there be an addition to the present amendment and that addition would allow for Sections 7(4) and 7(5) of Bill 21 to be added to Clause 6 of Bill 40, to be added and to be considered Section 6, and that further to that we renumber all the remaining sections of Bill 40.

MR. CHAIRMAN: Are we ready for the question?

MR. CHERNIACK: 7(4), 7(5), is that of the Physiotherapists Bill?

MR. CHAIRMAN: Yes. Are we ready for the question?

MR. DOMINO: We might also add just for further point of clarification that this would include some necessary changes in wording so that the legislation fits the Act.

MR. CHAIRMAN: Are we ready for the question? All in favour of Mr. Domino’s amendment. Agreed? (Agreed) Section 6 as amended — pass; New Section 6 — pass. Now Clause 6 has to be renumbered and it’s now 7. So Clause 7 which is on the bill in front of you as 6 is now 7 — can we pass that? Pass.

To Mr. Cherniack, legal counsel has suggested that I follow the paper or the bill in front of us and he’s going to make the changes as go along; so that we all know what we’re dealing with we’ll follow the format in front of us.

Clause 7(a) — pass; 7(b) — pass; under 7(b) there is an amendment. Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move

THAT Clause 7(b) of Bill 40 be struck out and the following clause substituted therefor:

(b) by striking out the words “the institute may, by by-law, provide for the suspension or expulsion of the member” in the 7th and 8th lines thereof and substituting therefor the words “under the by-laws of the institute, the institute, acting by the council or a committee appointed by council, may by order expel or suspend or reprimand or impose payment of a fine or impose conditions on, the member or student in accounts.”

MOTION presented and carried.

MR. CHAIRMAN: Clause 8.

MR. CHERNIACK: I don’t know whether Mr. Balkaran would have to look closely at what we’ve just passed, 7(4). Does that stand by itself or do we

have to make changes in other appeal provisions in the bill or the Act because of the 7(4) appeal right? If you look at 21(2) it says "where an order has been made under Subsection (1). I'd be happy to leave it to him to determine.

MR. CHAIRMAN: Mr. Balkaran.

MR. A.C. BALKARAN: The two subsections from The Physiotherapists Act that we just agreed to insert deal only with the . . . one subsection deals with the right of appeal from a denial or refusal of membership into the association. The other is an anti-discrimination clause. 21(1) deals with disciplinary matters and an order of discipline which might be made and the right of appeal under 21(2) as proposed is from that order.

MR. CHERNIACK: So there's . . .

MR. BALKARAN: Two distinct matters.

MR. CHERNIACK: Yes, so that there's no provision now for the right of appeal beyond 7(4) of the physiotherapy. It's not covered then under the Act?

MR. BALKARAN: From the refusal?

MR. CHERNIACK: Yes.

MR. BALKARAN: Not in this Act.

MR. CHERNIACK: So what we've agreed to under 7(4) which makes me less enthused about it is that there's no appeal from the council.

MR. BALKARAN: That's right.

MR. CHERNIACK: Under 7(4) there's an appeal to the board and no appeal beyond that.

MR. BALKARAN: But I would suspect, Mr. Cherniack, that since it's an administrative decision, that is open at any time to further appeal to the courts without expressly saying so by way of certiorari.

MR. CHERNIACK: Okay. Well, I'll accept it anyway. I'm pleased that we've gone as far as we have.

MR. CHAIRMAN: Clause 8 — pass; Clause 9 — pass; Clause 10 — pass; Clause 11, 21(6) — pass. Mr. Kohnats, do you have a motion now for 21(7)?

MR. KOVNATS: Mr. Chairman, I move

THAT section 11 of Bill 40 be amended by adding thereto immediately after proposed new subsection 21(6) to The Chartered Accountants Act the following subsection:

Application of subsection (6) to member, etc. 21(7) In the case of an inquiry concerning a member or a student in accounts that is being conducted by council or any committee of the Institute, subsection (6) applies mutatis mutandis to (a) the member, or (b) the student in accounts, or (c) the complainant, for the purpose of attaining a court order for the production of documents and things under the circumstances of that subsection."

MR. CHERNIACK: I don't understand it.

MR. KOVNATS: Do you want an explanation?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, as I understand it, I believed Mr. Green raised this matter in the House —(Interjection)— I think it was Mr. Green, I stand to be corrected, and he asked the question, what if the Committee of the Institute or indeed the Council of the Institute has the right to an exparte order for production of documents, so should a member if he thinks that the obtaining of those documents will assist him in an appeal. So, there is a complementary right by the addition.

MR. CHERNIACK: Is it clear? I thought that's what you were saying, but is it clear that it is the right of these ABC's to obtain the order or I thought it might be interpreted that they are subject to having to provide it. If Mr. Balkaran is satisfied it's clear, then of course I won't quarrel with it. I would have thought that it might have a few words added saying that the right to apply shall apply to these, the right to apply to a court shall extend to these three. If Mr. Balkaran is satisfied, I'm happy; if he's not maybe . . .

MR. BALKARAN: I would have thought, Mr. Chairman, in order to avoid the repetition of a lot of the language that's in 21(6) as printed, the phrase mutatis mutandis would bring into play that right to apply in the new 21.

MR. CHERNIACK: That's why Mr. Kohnats put it in.

QUESTION put, MOTION carried.

MR. CHAIRMAN: 29(7) — pass. Clause 11 as amended — pass; Clause 12 — pass; Preamble — pass; Title — pass; Bill be Reported — pass.
Mr. Thompson.

MR. THOMPSON: On behalf of the members of the Institute I thank you for your considerations and we are delighted to have had the participation of Mr. Cherniack.

BILL NO. 25 — THE REGISTERED RESPIRATORY TECHNOLOGY ACT

MR. CHAIRMAN: All right, can we now deal with Bill 25, The Registered Respiratory Technologists Act? Bill 25, Clause 1, definitions. Mr. Anderson.

MR. BOB ANDERSON (Springfield): Before we deal with Clause 1, I have an amendment to the title.

MR. CHAIRMAN: Mr. Anderson would you move your amendment.

MR. ANDERSON: Mr. Chairman, I move that the title to Bill 25 be amended by striking out the word "TECHNOLOGY" therein and substituting therefore the word "TECHNOLOGISTS". It is a typographical error.

MOTION presented and carried.

MR. CHAIRMAN: Are the Members of the Committee prepared to carry on page-by-page? (Agreed) Clause 1 — pass; 1(1) — pass.

MR. CHERNIACK: I want to just clarify in advance now. This is only a reserve of title we're involved in, like the physiotherapists. I'd like confirmation so that we look at it from that standpoint.

MR. CHAIRMAN: Mr. Anderson.

MR. ANDERSON: That's correct.

MR. CHERNIACK: The reason, Mr. Chairman, I'm mentioning that is that I think we need to be less concerned with the definitions of what the practice is and what respiratory technology is, if it's only reserve of time.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: 11(1), Mr. Cherniack?

MR. CHERNIACK: Are we going to run into the same problem with the physiotherapists?

MR. BALKARAN: No, because registered means the person was registered . . .

MR. CHERNIACK: You mean by that, and we'll save time if I may ask it, you by that that I could hold myself out to be a respiratory technologist without offending the Act. Is that?

MR. BALKARAN: That's right.

MR. CHERNIACK: Wow!

MR. CHAIRMAN: But you can't be a registered.

MR. CHERNIACK: I know, I know, like a registered nurse, I understand that. I could be a nurse and say I'm a nurse as long as I don't say I'm a registered nurse and that is the distinction, is it? Because that sure simplifies things.

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: Just on that point I notice there are two similar definitions for member and for registered respiratory technologist and I'm wondering if the same question doesn't arise here that arose with the physiotherapists? Perhaps we can word them so that they were similar to . . .

MR. CHAIRMAN: Can we turn to legal counsel for the respiratory technologists and consult him? Mr. Hall can you . . .? Mr. Sherman.

MR. SHERMAN: I just want to check Mr. Walding's point. Certainly the definition of member conforms with the amended definition of member under The Physiotherapists Act. The definition of registered respiratory technologist may not conform to the definition of the physiotherapist, so it's the definition of registered respiratory technologist about which Mr. Walding raises the question. Is that correct?

MR. WALDING: That's right.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Walding, any further questions or . . .

MR. WALDING: I think the legal counsel was about to comment on that one.

MR. CHAIRMAN: Mr. Hall, did you have a comment.

MR. HALL: Not if your prepared to go on.

MR. CHAIRMAN: 1(1) — pass;

MR. WALDING: Just a minute, Mr. Chairman. In addressing my remarks to Mr. Balkaran I had hoped we'd save a bit of time to give his assurance that the definitions would be brought into line with what we've decided on the physiotherapists.

MR. BALKARAN: All I can say, Mr. Chairman, is we've spent almost two hours, if not more, after we amended those two definitions into The Physiotherapists Act and we got stuck on Section 9, on the question as to whether there was exclusivity or not. I believe that while they appear to be synonymous, it might make it simpler when we get to 11(3), where we have reserve of title only. I don't know that much harm is done in leaving it as it is. I think we're getting back to the principle of uniformity for the sake of uniformity.

MR. WALDING: Okay. I didn't want us to go into that old same argument for two hours. I just wanted to make clear that what we intend here is what we did in The Physiotherapists Act. If you'd give me the assurance that that's what is happening there, then fine, let's move on.

MR. BALKARAN: It's relatively fine.

MR. CHAIRMAN: 1(1) — pass; 1(2) — Mr. Cherniack.

MR. CHERNIACK: I said early that if we're talking only about reserve of title and especially in this case the word includes registered which really makes this act almost unimportant. I hate to put it that way. I don't mean it that way but I mean that it has no impact on other people involved in the field. I'm wondering about, firstly, I have not studied the difference of the amendment suggested or requested by Ms. Seidel, which is extensive. I don't know how much of a change she's proposing.

Secondly, why do we need it and why is it important to the organization or to the public or to the individual members to have it all spelled out to this extent. I think one of the problems is that I told Mr. Hall that I have records to show that he's been involved with governments. I have it back to 1975; he tells me it's back to 1968, I think he said — (Interjection)— '69 when he started with the previous Conservative Government. One problem is that the longer he's had it in his hands, the more I think he keeps promising and adding, so that we now have a 26-page document.

To what extent is this important to anyone that we have to study, and I suppose we do, the proposal of the MHO as compared with the proposal of the

technologists themselves and why is it necessary to have it in the Act and I'm wondering if we can ask that of Mr. Hall?

MR. CHAIRMAN: Mr. Hall.

MR. HALL: Thank you, Mr. Chairman. I think we don't have a strong feeling, I suppose, that it stay in, but one of the questions that's constantly asked is what does a respiratory technologist do, just what is a respiratory technologist? The further definition, we feel, adds by example those areas that respiratory technologists work in. Most people don't have a working familiarity of what respiratory technologists do.

I'd also point out this is one area where the bill does deviate from The Registered Nurses Act as well. Their definition is not nearly as broad ranging as this. I'm sorry I didn't point that out the other night but it is another area of variance.

MR. CHERNIACK: Well, Mr. Chairman, with the preamble I gave you, you can recognize that I'm not too worried about the extent of this description and if you feel it'll be better for public knowledge or education and even that of your own members, fine. Could you point out the difference between the MHO proposal and yours and whether you're in disagreement with it or why do they want it? I don't recall their telling us, but they distributed this . . .

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Just for clarification so we all know what Mr. Cherniack is talking about. Is he talking about the amendment, the single amendment that was proposed by the MHO with respect to Clause 1(3)?

MR. CHERNIACK: 1(2).

MR. SHERMAN: 1(2).

MR. CHERNIACK: There is more than that though.

MR. SHERMAN: But that's what I'm asking.

MR. CHERNIACK: Well, you said the single one, there is another one. 4(1), 7(2), 9(2), it's in the bundle they gave us, but at the moment I'm talking about the single one of Sec. 1(2), which is a complete substitution and I haven't studied it.

MR. SHERMAN: Which really calls for an amendment to Clause 1(3). That's my point.

MR. CHERNIACK: No, it says substitute. Are we looking at the same thing?

MR. SHERMAN: Well, that's my question, Mr. Chairman.

MR. CHERNIACK: Well, I'm reading, it says delete Sec. 1(2) and substitute therefore and then there is a lengthy document, which I haven't read. I admit I haven't read it, but I'm somehow assuming Mr. Hall not only read it but is an expert on it.

MR. HALL: I'm not an expert on it. I saw it the other night but the amendment that was proposed to be

brought forward on this section only referred to, I think, it was (d) and (e).

MR. CHERNIACK: No, the wording is different. As a matter of fact (d) is identical. Come and look at it. Apparently Mr. Hall wasn't given a copy and I just gave him one.

MR. SHERMAN: . . . I think is the problem, but it's rectified if Mr. Hall has got a copy of it, Mr. Chairman.

MR. CHAIRMAN: Mr. Hall.

MR. HALL: What appears to have been proposed here is that the initial definition under 1(1) of Respiratory Technology is simply combined with the further definition as they proposed, that the first section deletes the definition of practice of respiratory technology, and respiratory technology; I think it strikes me that it's primarily of a drafting nature. They're saying get rid of three definitions; combine them into one.

MR. CHERNIACK: You're saying that the preamble portion of 1(2) is not changed materially.

MR. HALL: That's how it appears to me on reading this and the two definitions plus 1(2).

MR. CHERNIACK: I will take Mr. Hall's word for it knowing that he's going to live longer than I am and, as long as I'm alive, I'll remember what he said.

MR. HALL: Thank you, Mr. Chairman.

MR. CHAIRMAN: 1(2) — pass; 1(3) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT subsection 1(3) of Bill 25 be amended by striking out the letters "(a), (b), (c), (f)," in the 1st line thereof and substituting therefor the figure and letters "(2)(a), (b), (c), (d), (f),".

MOTION presented and carried.

MR. WALDING: Is this a government amendment, Mr. Chairman?

MR. SHERMAN: It's a sponsor's amendment but it conforms to a suggestion made by the MHO and certainly most of us I think on this side of the table are in agreement with it.

MR. WALDING: May I ask why the (g) and (h) are taken out and imply exclusivity to respiratory technology?

MR. SHERMAN: They're not taken out, they're left in. It's just the first line of 1(3) that's amended. The second line remains the same so that (g) and (h) remain there.

MR. WALDING: Oh, so you're adding (d).

MR. SHERMAN: We're adding (d).

MR. WALDING: Okay.

MR. CHAIRMAN: 1(3) as amended — pass; 2(1) — pass. (Interjection)— All right, can we make a correction to strike out the (1)? Because there's only a Section 2, it's not necessary to have the (1). As amended and corrected — pass; 3(1) Board of Directors — pass — Mr. Anderson.

MR. ANDERSON: Oh, sorry, it's not till (4) I think.

MR. CHAIRMAN: 3(2) — Mr. Walding on 3(2).

MR. WALDING: No, on 3(1).

MR. CHAIRMAN: 3(1).

MR. WALDING: Did we not make a change in one of the other Acts to take this out of the hands of the Cabinet and just leave it with the Minister?

MR. CHAIRMAN: Mr. Sherman, can you shed some light on that question?

MR. SHERMAN: We did that, Mr. Chairman, and there's no reason why it shouldn't be done here. It makes it easier all around.

MR. CHAIRMAN: All right. Mr. Anderson, move the amendment.

MR. BALKARAN: Is it to strike out Lieutenant-Governor-in-Council and substitute the Minister? Then may I suggest that we do that in (2) as well?

MR. CHAIRMAN: The next clause, see where it says Lieutenant-Governor-in-Council in 3(2)?

MR. CHERNIACK: Oh, you mean Sub (2).

MR. BALKARAN: Sub (2), yes.

MR. CHERNIACK: Mr. Chairman, is there not a contradiction between Sub (1) and Sub (2)? Sub (1) says shall by a Board consisting of eight members; (2), the number of the members shall be governed by the by-laws. Did they mean of at least eight members in (1) and that provides for (2)?

MR. BALKARAN: That was done last night too.

MR. CHERNIACK: No, but there was a different reason for that.

MR. CHAIRMAN: Mr. Hall, could you . . . ?

MR. HALL: It's a good point, Mr. Chairman. It's funny, you know, you can read these things over and over and things don't surface until someone else points them out. There is no reason why the board should be both fixed and not fixed; it's inconsistent and we can certainly live with eight as provided in 3(1).

MR. CHERNIACK: So you want to change (2) by deleting the word "number", and just say the manner of election? Which do you want? Whatever you want is what we should do?

MR. HALL: I think 3(1) is suitable for us.

MR. CHERNIACK: Then under 3(2), you would want to change that by saying "the manner of the appointment of the members of the board shall . . ."

MR. HALL: Yes, we would need an amendment to take out "number of the members of the board and".

MR. CHERNIACK: It's not good enough . . .

MR. HALL: The manner of the appointment or election of the members of the board.

MR. CHERNIACK: Of the members — there's one thing that bothers me then. I don't like to think that the members of the board who are not lay people should be appointed. I think they must be elected, I wouldn't mind seeing it . . .

MR. HALL: Elected is fine; that was the intention.

MR. CHERNIACK: So you say the manner of the election of the members other than members appointed by the Minister shall be governed.

MR. HALL: Yes, that's fine, Mr. Chairman.

MR. CHERNIACK: I wonder if Mr. Balkaran is clear on that, Mr. Chairman.

MR. CHAIRMAN: Mr. Balkaran, are you . . . ?

MR. HALL: Although I would point out that under 3(2) of The Nurses Act, they provide for election or appointment.

MR. CHERNIACK: Well, if we weren't perfect last year, we try to be better this year.

MR. HALL: That's fine with us.

MR. CHAIRMAN: Mr. Balkaran. Mr. Cherniack, are we ready to — Mr. Balkaran has a . . .

MR. BALKARAN: I wonder if we have this . . .

MR. HALL: I think the reason for appointment, through the Chair to you, I think the reason for the word "appointment" is occasionally, when you have a Board of Directors elected, for one reason or another a director sometimes resigns or dies in office or what have you and there's provision for the appointment of a replacement for the expiration of the term. I think that's the reason why that may be there.

MR. CHERNIACK: Mr. Tallin gave me a better one; he said you may want ex officio members like the past president appointed.

MR. HALL: I think we would probably do that by invitation.

MR. CHERNIACK: And no vote?

MR. HALL: Right.

MR. CHERNIACK: Well, I wouldn't quarrel with that, whatever you want.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I think it would be better anyway, Mr. Chairman, because we don't need to go back to

last year to find inconsistency. We would only have to go back to yesterday if we were just going to change this to "election".

MR. HALL: Or earlier today.

MR. CHAIRMAN: All right. Mr. Balkaran wants to check with members of the committee to see if his understanding is the same as ours.

MR. BALKARAN: I want to know if I've got the amendments correctly now. 3(2) would then read as I have it "the manner of the appointment or election of the members other than the members appointed by the Minister shall be governed by the by-laws of the association."

MR. CHAIRMAN: Is that agreed? Moved by Mr. Anderson — pass; 3(1) — pass; 3(2), as amended — pass; 3(3) — pass; 3(4) — pass; 4(1), do you want to go by the letters, each line, or do you deal with 4(1) in its entirety?

MR. CHERNIACK: No, you got to go to (k) for sure.

MR. CHAIRMAN: All right. 4(1)(a) to 4(1)(f) were each read and passed; 4(1)(k) — Mr. Anderson — sorry, I can't even see it right yet; 4(1)(g) — pass; 4(1)(h) — pass; 4(1)(i) — pass; 4(1)(j) — pass. Now I found (k), 4(1)(k) — Mr. Walding.

MR. WALDING: Mr. Chairman, before (k), the indication in my bill that the reference to the welfare of the association and its members should not be in there. I think maybe this was the suggestion that came from the MHO.

MR. CHAIRMAN: Well, we have an amendment on (k).

MR. WALDING: No, this is (i).

MR. CHAIRMAN: Oh, you want to do it on (i) — Mr. Cherniack.

MR. CHERNIACK: On (i), this is a copy of The R.N.S Act of last year but in The Physiotherapists Act they deleted those last two words "and for promoting the welfare of the associations members of the respiratory technology profession." I think Mr. Walding makes the point; I don't know who else may have made it but it's here. I think we ought to delete those two lines even though it's in the nursing bill, it's not in the physiotherapy bill because, as someone said, they have another association that looks after their welfare. It doesn't have to be the licensing body.

MR. CHAIRMAN: Mr. Hall.

MR. HALL: That's acceptable to us, Mr. Chairman.

MR. CHERNIACK: The motion is to delete . . .

MR. BALKARAN: . . . go to association, the second line.

MR. CHAIRMAN: All agreed to Mr. Cherniack's amendment — pass, as amended — pass; (i) is

passed; (j) — pass. Now we're down to (k) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT clause 4(1)(k) of Bill 25 be amended by striking out the words "social and economic" in the 1st line thereof and substituting therefor the words "and social".

MR. CHERNIACK: I think there's no question about the "economic" being removed. I thought we had also agreed that the word "social" doesn't belong and I'm just searching my memory and I guess my file . . .

MR. SHERMAN: We did take the word "social" out of, I believe, it was the Physiotherapists, either the Physiotherapists or the Dietitians, one of them — the Dietitians, but it is in most of the others so it's been a question of inconsistency, Mr. Chairman. It's been a matter of inconsistency. I don't think there's any necessity for the term "social" to be in there.

MR. CHERNIACK: Could we take it out then? I wonder if Mr. Anderson would agree to change the amendment to —(Interjection)—

MR. BALKARAN: All we need to do would be amend . . .

MR. CHERNIACK: I know, just don't substitute.

MR. BALKARAN: . . . and substituting therefor the words "and social".

MR. CHERNIACK: Yes, you take that out.

MR. BALKARAN: In the notice of motion.

MR. CHERNIACK: Yes, strike out the words "social and economic" in the first line thereof, period.

MR. BALKARAN: That's right.

MR. CHAIRMAN: Moved by Mr. Anderson; all in favour of the amendment — pass; (k), as amended — pass; (l) — pass; 4(1) as amended — pass; 4(2)(a) — pass; 4(2)(b) — pass; 4(2)(c) — pass; 4(3)(a) — Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I'm wondering whether in 4(2)(a)(ii) and (iii), the year 1980 in each case shouldn't be changed to 1981 if Mr. Hall agrees.

MR. CHAIRMAN: Mr. Hall.

MR. HALL: Yes, Mr. Chairman, this bill was actually started in 1980 with the early sitting of the House and now we're into '81. It should be '81. Also in the 4(2)(b)(iii) below when you reach that, a similar change in date, to 1981.

MR. BALKARAN: In (b)(iii)?

MR. HALL: Yes.

MR. CHAIRMAN: Agreed? (Agreed). Moved by Mr. Anderson, 4(2)(a) as amended — pass.

MR. CHERNIACK: I can't help but comment that they don't worry like the accountants do about fitness or habits.

MR. CHAIRMAN: 4(2)(b) as amended — pass; 4(2)(c) — pass; 4(2) as amended — pass; 4(3)(a) — pass; 4(3)(b) — pass; 4(3)(c) — pass; 4(3)(d) — pass; 4(3) — pass. Mr. Walding.

MR. WALDING: Still under 4(2), the fact we've changed these dates and the bill is to come into effect on proclamation; in the event that the government is busy with other things and doesn't proclaim the Act until the end of the year, what effect would that have on these dates? Would it preclude people from applying before that?

MR. CHERNIACK: No, it would be a great-grandfather clause.

MR. BALKARAN: It would go back to '75.

MR. CHAIRMAN: 4(4) — (Interjection)— Before we go any further — Mr. Balkaran.

MR. BALKARAN: I wonder in 4(3)(d), the first word "had"; I wonder if we shouldn't change that word to "has".

MR. CHAIRMAN: Instead of "had paid", make it "has paid". Moved by Mr. Anderson.

MR. BALKARAN: On page 5.

MR. CHAIRMAN: Mr. Anderson moves it so it's 4(2)(d) as amended; 4(3) now as amended — pass; 4(4) — pass; 4(5) — (Interjection)— Mr. Hall

MR. HALL: Mr. Chairman, excuse me. On 4(5) I think the last numeral in the section reference "to subsection 3" should be "to subsection 4". That's a typographical error. It refers to having the by-laws coming into effect upon confirmation by members. It has no reference to sub 3; that should be 4.

MR. CHERNIACK: What section is that?

MR. HALL: 4(5); the very end of the line.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: 4(5) as corrected — pass. Clauses 4(6) to 5(1)(d) were each read and passed. Mr. Walding.

MR. WALDING: You're going too fast for me, I'm still on 5.

MR. CHERNIACK: 5(2) is the one we changed; we had all that discussion about. Is that what we're on now, (2)?

MR. CHAIRMAN: 5(1)(e) — pass; 5(1)(f) — pass; 5(1)(g) — pass; 5(1)(h) — pass; 5(1) — pass. Now we're at 5(2) — Mr. Sherman.

MR. SHERMAN: 5(2) should be made to conform in wording to section 5(2) of Bill 20.

MR. CHAIRMAN: Agreed to Mr. Sherman's amendment? (Agreed) Let legal counsel catch up.

MR. BALKARAN: What's Bill 20 again?

MR. CHAIRMAN: Bill 20 is The Registered Dietitians Act. That's the one you were referring to, right, Mr. Sherman?

MR. SHERMAN: Yes, it provides for the minimum 30 days' notice to the membership.

MR. CHAIRMAN: 5(2) as amended by Mr. Sherman — pass. We have an amendment on 5.

MR. ANDERSON: Mr. Chairman, I move

THAT section 5 of Bill 25 be amended by adding thereto immediately after subsection (2) thereof the following sub-section:

"Standards to be adopted

5(3) The standards for education of registered respiratory technologists prescribed by regulation under clause (1)(d) shall be consistent with the standards of education for students of respiratory technology adopted by The Canadian Society of Respiratory Technologists".

MR. CHAIRMAN: Everyone familiar with the motion by Mr. Anderson? Agreed? (Agreed). 5 as amended now — pass. On 5, Mr. Walding?

MR. WALDING: Mr. Chairman, we've just been checking something here and it raises a question as to why membership and other fees are a matter of regulation under this bill, when in other bills it's a matter of by-law, including the physiotherapists.

MR. BALKARAN: Mr. Chairman, as a matter of fact if you look at 4(1)(a), I think the point is covered there to be done by by-law.

MR. CHERNIACK: 4(1)(a) "fix the method of setting the amounts and provide for the collection." It's certainly better there.

MR. WALDING: In that case why is it also in the regulations?

MR. BALKARAN: It should come out.

MR. CHERNIACK: It should come out?

MR. BALKARAN: In all the other bills the question of fees is done by by-law.

MR. CHAIRMAN: 5(1)(g) has been deleted and (h) now becomes (g). Agreed? (Agreed) 5 as amended now — pass. Mr. Anderson's motion to include 5(3). Question on it? Agreed? — pass; 5 as amended — pass. Now we're onto 6. 6(a) — Mr. Cherniack.

MR. CHERNIACK: No, I don't see that elsewhere. I want to study it, Mr. Chairman. It's not in the other bills so I'd like to check it.

MR. SHERMAN: Are you talking about 7?

MR. CHAIRMAN: We're on 6, Mr. Sherman.

MR. CHERNIACK: 6 is not in the nursing bill in that order. Maybe it's somewhere else; nor is 7; nor is it

in the physiotherapists. I don't know just where. It looks familiar but I don't know where it came from.

Mr. Chairman, here I've received an assurance which I think was properly done so under 11(1), that we're only concerned with registered respiratory technology, but suddenly 6 purports to permit me to give respiratory therapy in urgent need without hire again. Who are they to tell me that I have a right to do something which they have no right to restrict me from doing; if I make my point?

MR. HALL: We've just been discussing this. Mr. McKen believes this is in the nurses' Act but if it is not in the nurses' Act, we're prepared to have it come out.

MR. CHERNIACK: Well, it's not in that order anyway. I think it's in The Medical Act maybe.

MR. SHERMAN: I don't believe it is in the nurses' Act, Mr. Chairman.

MR. HALL: Legal counsel has suggested that we leave it in but take out (b) and (c) and stop (a) after the word "need" so that it would read, and this would be for I think, clarification. "The provisions of this Act do not prevent any person from giving necessary respiratory therapy in case of urgent need."

MR. CHERNIACK: My question still applies. Who are you to tell me that I can't give respiratory therapy under any other circumstances? Because you're not claiming that right under 11(1). I would like to delete 6 and I would certainly like to delete 7(2), because it imports that the Act does deny certain rights and therefore you're granting them. Since I interpret the Act as not denying rights to others, except for the use of the name registered, etc., then I don't think it belongs here.

MR. SHERMAN: The provision is not in the nurses' Act, at least I can't find it. However, Mr. Hyde has pointed out to me that it is in The Medical Act.

MR. CHERNIACK: Well, sure.

MR. SHERMAN: And that's the source from which it would have been drawn. But it is not in the nurses' Act.

MR. CHERNIACK: So it's the right of practice.

MR. SHERMAN: I recognize Mr. Cherniack's point about the exclusivity differential between the two fields. I think though, it was taken from The Medical Act — and I'd have to ask the association about this — and suggested for inclusion in this Act simply to reinforce and underline the fact that they are not seeking exclusivity and in the case of urgent emergencies, there should be no misunderstanding and nobody should be under any misapprehension about doing something for which they might be held liable under this Act. I think it's there for reinforcement and reassurance of that right vested in anyone to administer emergency treatment in the best way one knows how without having to fear that they're contravening this Act.

MR. CHERNIACK: Mr. Chairman, I need help from the lawyers present to remind me of the wording of

some Latin phrase which suggests that the more you exclude, the more you include. *Exclusio* — you know it in French, no doubt.

MR. HALL: *Expressio unius est exclusio alterius.*

MR. CHERNIACK: You see, aren't we glad we have them here? What does it mean, Mr. Hall?

MR. HALL: The expression of one is the exclusion of the others.

MR. CHERNIACK: Does that sort of make this appear as if, by excluding certain ones you're implying that others are covered by it?

MR. HALL: We can agree with the explanation of the Minister of Health but it was put in to emphasize that it was not exclusive.

MR. CHERNIACK: Could you agree with me that by putting it in you're implying that there are other people who are still excluded from it?

MR. HALL: That interpretation is possible to take from that.

MR. CHERNIACK: Mr. Chairman, in spite of the explanation given for including it, I really think it ought to come out, both 6 and 7(2). I have the concern that it implies that it might be exclusive right of practice to have it here and that beautiful act and phrase, which I just heard and forgot again — (Interjection)— that's not the way he put it, he varied it because he's a younger graduate than you and I are. (Interjection)— I see. The distaff side of his parents comes from Minnesota, so that is further south.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: This proposed clause found its way into the bill as a result of considerable input into the organization and preparation of the proposed legislation by specialists in the field of respiratory medicine by one distinguished respiratory physician in particular, who has national prominence and performs a national function in administration of respiratory procedures and development of respiratory medicine standards.

It was his feeling and there was considerable discussion as to whether this should be in the bill or not. It was his feeling that the desirability of having it here rests in that situation that I referred to, the emergency situation, and in particular in rural areas where he felt it was desirable to have the reassurance for all concerned that where emergency respiratory activity is needed and there is not a registered respiratory technologist there, that any other health professional or in fact any other individual could give that emergency treatment without doubts, without anxieties about contravention of any legislative provision. So it came from that source. It didn't come from for example the bureaucracy in the Health Department. The association advises that they can live with it either way, but this was a recommendation from a prominently placed respiratory medical source.

MR. CHERNIACK: Mr. Chairman, I really fully respect the reasoning of that prominent recognized

person but I say, and I do say it with deference, that what we need is a legal interpretation, not his concern, which is very practical. What he's thinking of is very practical and logical from the standpoint of maybe a nurse that says, gee, I mustn't do this thing, but from the legal side of it, I think that, looking at 11(1) which is the only one that restricts the reserve of title, it's not necessary, and not being necessary the inclusion of it makes it appear as if certain other people are continued to be restricted. I really think it's the legal opinion we ought to seek, not the medical opinion on the interpretation of the Act because we're dealing with law and I suspect that Mr. Hall is — obviously he has something to say otherwise he wouldn't be where he is.

MR. CHAIRMAN: Mr. Hall.

MR. HALL: Thank you, Mr. Chairman, I think the purpose is to give comfort to people operating in other areas; doctors, for example, physiotherapists and so on. I'm wondering if a wording along the lines of "without restricting the generality of the foregoing" the provisions of this Act do not prevent or something to indicate that this is in addition to the general permission extended to others to do things. It's really to give comfort that it's there.

MR. CHERNIACK: I don't know whether Mr. Hall would feel comfortable as a lawyer faced with the problem of wanting to give respiratory therapy even for money, to say, well gee I'm barred here from holding myself out as a respiratory technologist, which he is not barred. The fact that 7(2) does not list The Law Society Act would make him believe possibly that he has no right to practise respiratory therapy and I believe that this Act does give him that right. So, the comfort that he wants to give to the doctors is denied others who should have the same comfort and if you say, "notwithstanding the foregoing," as a matter of fact we were talking about 11(1) which comes after that, you might want to say, "notwithstanding the provisions of this Act".

MR. HALL: Notwithstanding the provisions of Section 11 or words to that effect.

MR. CHERNIACK: Well, you know I have to turn to legislative counsel and ask them whether they think it's advisable to put it in. Since we all agree it's not needed, I question the advisability of keeping it in. If they say, leave it in, I'll accept that but I really think it's good not to have it in.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, with respect, I don't agree with Mr. Cherniack. I don't think it's for me to say if that should be there. I think this is a policy matter that should be considered by this Committee and if the association insists that they want to have it in, I think you people must make that decision.

MR. CHERNIACK: The reason I turned to Mr. Balkaran is that the Latin phrase that I refuse to remember, maybe it's on principle, to me it applies and makes it appear as if some persons have to be cautious because they don't fit into these categories.

I don't think that we have a right to tell them that they mustn't do these things just because they don't fit in. That's why I think it doesn't belong and I certainly won't press it. If Mr. Hall wants it in for the sake of the respiratory technologists, I'm not concerned about the comfort to the other people mentioned, but if he thinks he needs in it in order to get them greater acceptability for whatever reason, I won't fight it; I oppose it but I won't fight. I've stop fighting now.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, Mr. Cherniack's point, I think, is well taken, worthy of consideration and I will undertake with the sponsor of the bill and the association to give it continuing consideration. I would like to propose that it remain in through this stage of examination of the bill. I really have very strong medical advice to that effect, that there is a danger of a discouragement to somebody who might otherwise assist someone in an emergency situation if there is any feeling on anybody's part that anything in this legislation confers any degree of exclusivity and we want to emphasize the fact that it doesn't and we're dealing here with life and death situations and for the time being I would like to propose that it remain in.

MR. CHAIRMAN: One more question, Mr. Cherniack.

MR. CHERNIACK: I don't agree but I accept that. Do you think then that you should leave in the point under (a) "without higher gain or hope of reward"?

MR. SHERMAN: Well that can certainly be taken out. I don't think that has to be in.

MR. CHERNIACK: Well, let's take that out. I still don't agree but I accept it. If that therapy is given without higher gain or hope of reward.

MR. SHERMAN: . . . that sub-sub-clause after "need" and then put in "or".

MR. CHAIRMAN: All right, as amended by Mr. Sherman 6(a) — pass; 6(b) — pass 6(c) — pass; 6 — pass as amended. Do you want a registered vote or not? On division, 6 as amended — pass, on division.

Before we go on to 7 they tell me that there's a Chevy Stationwagon outside with the lights on, CHG 703. If it belongs to anybody they may want to turn their lights off.

MR. SHERMAN: My guess would be, Mr. Chairman, that it belongs to some member of this Committee.

MR. CHERNIACK: I would not normally do this, but I have a family function during the lunch hour and I'm wondering whether we can't call it 12:30, which it is, and come back at 2:00.

MR. CHAIRMAN: Sure, it's 12:30, Mr. Cherniack. Committee rise until 2:00 P.M. and we'll start on 7. Committee rise.