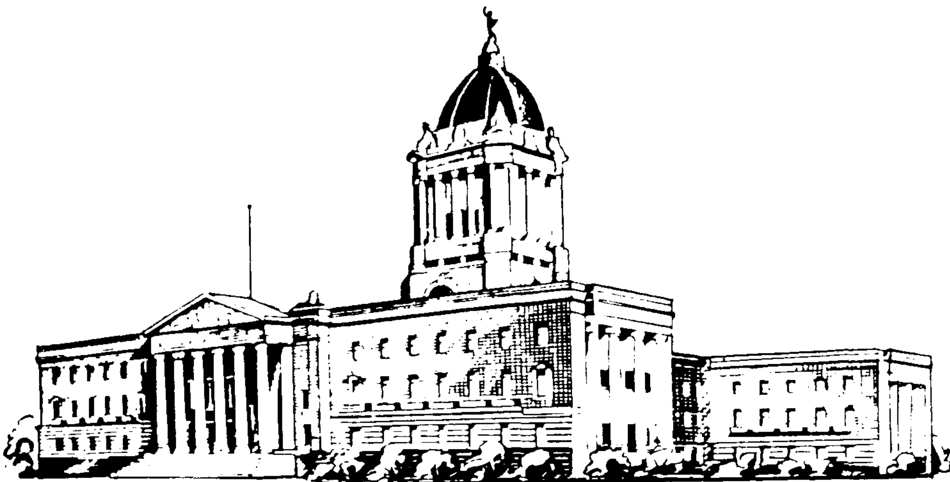
Legislative Assembly of Manitoba

HEARINGS OF THE STANDING COMMITTEE

ON

LAW AMENDMENTS

Chairman
Mr. William Jenkins, M.L.A.
Constituency of Logan



8:00 p.m., Thursday, June 3, 1976.

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
STANDING COMMITTEE ON LAW AMENDMENTS
8 p.m., Thursday, June 3, 1976

CHAIRMAN: Mr. William Jenkins.

MR. DUGUAY: Thank you, Mr. Chairman. I did want to indicate to the members that the Manitoba Teachers' Society is very pleased with the amendments announced this morning by the Minister of Education. We're very happy with them; we think that they finally resolve the problem and all of the cases that we've brought to the members.

I would like to add just one comment that the members of our Teachers' Society, particularly the division association presidents, wanted me to pass on to you, their appreciation for the way they were received by the MIAs. They felt that they couldn't deal with people who were more accessible and more prepared to deal with the information they wanted to bring to you. So I pass that on to you with the addition as well, that our teachers - one of the objectives of education in this province is to pass on to students that the democratic way of life is a good way of life. I think that our faith in the democratic system has been confirmed and we're very pleased that you heard us and we're happy with the resolution of this bill. Thank you.

MR. CHAIRMAN: Thank you, Mr. Duguay, on behalf of the Committee.

I'll just draw to the attention of the Committee Bills that are before the Committee right now:

No. 37, The Corporations Act;

No. 54, an Act to Amend The Teachers' Pensions Act, which we are not going to deal with this evening;

No. 58, an Act to Amend the Civil Service Superannuation Act;

No. 62, an Act to Amend the Human Rights Act;

No. 64, an Act to Amend the Civil Service Act;

No. 70 an Act to Amend the Mortgage Brokers and Mortgage Dealers Act;

No. 72, an Act to Amend the Change of Name Act;

No. 75, an Act to Amend the Public Health Act.

Bill No. 76, an Act to Amend the Health Services Act.

Is it the order of the Committee that we proceed with Bill No. 37? (Yes) Bill No. 37 the Corporations Act.

BILL NO. 37 - THE CORPORATIONS ACT

MR. CHAIRMAN: There are amendments to the Bill, it is my understanding.

MR. TURNBULL: Yes, Mr. Chairman, there are some amendments to the Bill which I would like distributed.

MR. CHAIRMAN: What is the will of the Committee how to deal with this Bill? Page by page? Well, there are 215 pages. Do you want to deal with it page by page? Order please.

MR. SPIVAK: Yes, if I may, and I think it would be appropriate to direct a question to the Minister before we start. And I have seen the amendment understanding of the fact . . .

MR. CHAIRMAN: Order please.

MR. SPIVAK: My understanding of the fact is that this Act is the work of a select group of professionals who along with the members of his department prepared this Act after a study over a number of years. I think I'm correct on that. And to a large extent it was modelled after the Federal Act that was studied over many years and is now the Business Corporation Act, I believe, and other provincial acts.

As far as I know, and I'd like this before we begin . . . this Act itself has not been approved by the members of the Law Society, notwithstanding the fact that there were several members of the Law Society who were members of the Committee, nor has it been approved by any other professional group, and again I'm not sure the Minister's position in presenting this Act, as an Act of Government . . . this Act is the consolidation of work of people who contributed their talents to try and improve the existing Corporation

(MR. SPIVAK cont'd) . . . . . Act, and I wonder whether the Minister in presenting it takes the position and the responsibility for this Act as Minister. Now, I recognize that obviously everything presented by the government, or presented by the Minister is his responsibility, but I at this point want to know whether the Minister takes the position in presenting this bill that his department is satisfied with this Act, that he understands the contents of this Act, and that in effect it is the government's intention to produce this as a political document representing their consensus and thinking, and if that is the case, then I want to be in position then to ask one other question. I want to determine that first before we proceed.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, I'm always continually amazed by the Member for River Heights, he seems to want some statement of faith on my part about my relationship to those who drafted the Act, my understanding of the Act, and the government's attitude towards the Act.

This bill is presented as a government measure, that is clear. There's no ducking the responsibility for it, of course. When he says that no professional group, I gather in Manitoba he was referring to, has approved this bill. That may be so. I do not believe there has been a formal endorsation of Bill No. 37 by the Manitoba Bar. However, this bill draws upon the concepts that are embodied in the Federal statute, and the Federal statute was approved by the Canadian Bar Association. So there has been a professional group that has endorsed the concepts of this Corporations Act.

If he wants me to somehow commit myself to a complete understanding of every section of the bill, then of course I have to tell him that this bill is the product of lawyers. I am not a lawyer, nor am I a corporate lawyer, and for me to presume that I understand every section of the bill just would be misleading and I will not, say that; but the concepts have been worked out over many many years in this province and in other provinces and at the Federal level, and from the distribution of material on this bill and some seminars that have been held on this bill, I gather there is not, in Manitoba, any substantial opposition to the bill. As a matter of fact, as far as I can make out the bill has been well received. Some 110 or more businessmen received a brochure explaining the concepts of this bill, the majority of them wrote back and said that they approved of the measures that would be undertaken; that the bill has been distributed to the public of Manitoba for six weeks, during that six week period, members of the business community and the law community were in a position to be able to go over the bill, the result of their presumed review of the bill was one representation here on it, and that representation was basically in favour of Bill 37.

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Mr. Chairman on a point of order, we are not debating this Bill.

MR. TURNBULL: That's right.

MR. GREEN: . . . and they're going through the bill clause by clause, presumably debate would take place on the motion to report the bill.

Mr. Chairman, we are not debating this Bill. The Bill has been approved in principle in second reading in the House. I suggest that the order of the Committee is to proceed clause by clause.

MR. TURNBULL: Right on. Page by page.

MR. SPIVAK: Mr. Chairman, to . . . what the Minister of Mines has said. My intention isn't to commence a cross examination, but I think it's fair to say that before in this committee we have allowed for some latitude in explanation, either of part or in whole of the presentation of the bill and I think that the Minister has been fairly frank in his answer, and I think there are certain comments that should be made and I intend to make at the time when we deal with the reporting of the bill, but it does, I believe, have some bearing, and I say this to the Minister, with respect to particular sections, to really search and determine whether in fact, and I then just put this as a caveat on what I've said, and . . .

MR. GREEN: Pardon me, Mr. Spivak, could you get another mike . . . because I'm having difficulty in hearing what you're saying. I'm sorry.

MR. SPIVAK: I'll try and speak a little louder. I suggest that I am not sure

(MR. SPIVAK cont'd) . . . . . that the bill has been distributed in the way that the Minister believes it has been distributed, and I'm not sure that it really has achieved any understanding on the part of the people who are going to be directly affected. I think there is some objectives that have been agreed to without question, but I am not sure that the contents of the bill are really understood and we'll deal with that at greater depth as we deal with the particular sections.

MR. TURNBULL: Okay, Mr. Chairman, you can proceed.

MR. CHAIRMAN: Page 1--pass. Page 2--pass. Page 3, I believe there's an amendment. Mr. Adam.

MR. ADAM: Mr. Chairman, I move that clause 1(1)(2)(111) of Bill 57 be amended by striking out all the words after the word "Canada" in the second line thereof.

MR. CHAIRMAN: Clause (iii) . . . after the word "Canada". The motion as moved. Agreed? (Agreed)

MR. TURNBULL: Mr. Chairman, the purpose of the deletion of the words after "Canada" is to make it clear that those individuals who have interest in a directorship of a corporation, even though they do not take out citizenship but live here will be able to continue in their director's role in the corporation. That is what the deletion accomplishes.

MR. CHAIRMAN: Any further discussion on the motion? (Inaudible) The motion before the committee as moved. Agreed? As amended--pass. Page 3 as amended--pass. (Pages 4 to 18 were read and passed.) Page 19, I believe there's an amendment. Mr. Adam.

MR. ADAM: Mr. Chairman, I move THAT section 24 of Bill 37 be amended by numbering the present subsection (6) as subsection (7) and by adding thereto immediately after subsection (5) thereof the following subsection:

Transitional.

24(6) Where conditions attaching to shares of a corporation incorporated before the commencement of this Act refer to par value, the reference shall be deemed to be the equilvalent of par value as stated in the articles.

MR. CHAIRMAN: The amendment as moved. Any discussion? Passed. Page 19 as amended--pass. (Pages 20 to 27 were read and passed) Page 28, Mr. Adam.

MR. ADAM: I move THAT subsection 42(1) of Bill 37 be struck out and the following subsections substituted therefor:

Prohibited loans and guarantees.

42(1) Except as permitted under subsection (2), a corporation or any corporation with which it is affiliated shall not directly or indirectly give financial assistance by means of a loan guarantee or otherwise

(a) to an individual shareholder, director, officer or employee of such corporation or affiliated corporation or of an associate of any such person for any purpose, or . . .

MR. CHAIRMAN: Order. Order. I wonder with some of these amendments being so long, if it would be desirable for the committee for the member that is moving the amendment to move the amendment as printed. Would that be agreeable to the committee? It will be recorded in Hansard.

MR. JOHNSTON: But as long as there's some explanation.

MR. SPIVAK: As a matter of fact I think the exercise of repeating this is very important and I would not agree to that. I think it's essential that if there are any changes that they be understood. I know that there is a tendency on the part of everyone here to want to rush them past us within five minutes, but I think you know the extra two or three minutes is justified. Well these sections themselves have severe implications and the comparisons are necessary and I . . .

MR. CHAIRMAN: Okay, proceed with the reading, the honourable member.

MR. ADAM: Proceed? Thank you, Mr. Chairman. (b) to any person for the purpose of or in connection with the purchase of a share issued or to be issued by the corporation or a corporation with which it is affiliated, where there are reasonable grounds for believing that

(c) the corporation is, or would after giving the financial assistance be unable to pay its liabilities as they become due, or

(MR. ADAM cont'd) . . . . .

(d) the realizable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, would after giving the financial assistance be less than the aggregate of the corporation's liabilities and stated capital of all classes.

MR. CHAIRMAN: The motion as moved. Is there any discussion on the motion. Mr. Spivak.

MR. SPIVAK: Mr. Chairman, just as a matter of interest and I ask Mr. Braid the question, I think the Minister should put it as a matter of record. The amendments that are being proposed here, were they discussed by the committee that drafted this Act?

MR. TURNBULL: The committee as I am sure the Member for River Heights realizes is not one that can be got together easily . . .

MR. SPIVAK: No, I appreciate that.

MR. TURNBULL: But it's my understanding that these amendments that we're now on, were discussed by members of that committee, yes. And we have, in fact, Mr. Arthur Braid here tonight who has been on that committee for some time and can give explanation on this amendment if you wish.

MR. SPIVAK: As a matter of principle, I think that we should know those matters that are housekeeping matters in which the . . .

MR. TURNBULL: Well, Mr. Chairman, it's my understanding that 42(1) and (2) are really of a housekeeping nature in the sense that they are intended to clarify what already is in the printed bill.

MR. SPIVAK: Well I think it should be indicated here those matters are not housekeeping matters.

MR. TURNBULL: I think they will become obvious as we go along.

MR. SPIVAK: Well they're obvious to me even by looking at them . . . but I think just so that we're in a position to understand the government's reasons for change . . . You consider this a housekeeping . . .

MR. TURNBULL: This is a matter of clarification and housekeeping, yes.

MR. CHAIRMAN: Any further discussion on the motion? Agreed? Pass. Page 28, 42(2). The honourable member.

MR. ADAM: Mr. Chairman, I move that subsection 42(2) of Bill 37 be amended by striking out the words, "Notwithstanding subsection (1)" in the first line thereof.

MR. CHAIRMAN: Order please. Order please. Now the honourable members wanted this thing read, every one of these amendments. And what do they proceed to do? You all proceed to have a conversation amongst yourselves down at the end of the table. Damn it all, do one thing or the other. Would you repeat that please.

MR. ADAM: Mr. Chairman, I move THAT subsection 42(2) of Bill 37 be amended by striking out the words "notwithstanding subsection (1)" in the first line thereof.

MR. CHAIRMAN: Motion as moved. Is there any discussion on the motion. Agreed? Pass. Page 28 as amended--pass. Page 29. Mr. Adam.

MR. ADAM: Mr. Chairman, I move THAT section 43 of Bill 37 be amended by adding thereto immediately after subsection 43(3) thereof the following subsection. Liability continued.

43(4) Except as provided in section 36(1), a shareholder of a corporation incorporated before the commencement of this Act remains liable for any amount unpaid in respect of an issued share and the corporation may call in and by notice in writing demand from a shareholder the whole or any part of the amount unpaid on a share and if the call is not paid in accordance with the demand, the corporation may forfeit any share on which the call is not paid.

MR. CHAIRMAN: The motion, before I put it, I would ask members to make a slight correction in the first line thereof. Except as provided in section 36, it should read subsection 36(1). Mr. Spivak. Mr. Turnbull.

MR. TURNBULL: Yes, Mr. Chairman, I'd like Mr. Braid to explain this.

MR. CHAIRMAN: Mr. Braid, would you explain please.

MR. BRAID: Yes, thank you, Mr. Chairman. Basically this is to correct an omission in the Act. We have before the coming into force of this Act, certain shares upon which the whole purchase price has not been paid. Now we have to ensure that if it's not paid there's some means of enforcement of it, hence the right of the company to have the share forfeited. It was just missed out and in fact it's correcting a lacuna in the statute.

MR. CHAIRMAN: With that explanation . . .

MR. SPIVAK: Mr. Chairman, could I ask Mr. Braid, when the corporation may call in and by notice in writing demand, based on the terms of the demand, there's nothing that indicates that they can call in and demand as a result of this section which would supersede whatever rights exist within the corporation for normal call and normal demand.

MR. BRAID: The right to call is at the option of the corporation, otherwise it would be called a payment of share by instalments. This is a true share issued subject to call, which according to the law is always, it seems to me, subject to the right of the company to make the call any time it needs the money.

MR. SPIVAK: Do you mean to say that there would be no terms or conditions that would in any way affect a call and would not be superseded by this which would give a corporation right of call and thus the ability for non-payment for forfeiture really.

MR. BRAID: I'm not aware of any such conditions on any shares. Perhaps Mr. Snider could answer that.

MR. CHAIRMAN: Mr. Snider.

MR. G. SNIDER: There are very few shares ever issued unpaid but on occasion a company enters into an issue where there are calls that could be made but this is merely, on section 43(4), continuation of the present law which has existed for fifty years with respect to calls.

MR. CHAIRMAN: The motion as moved. Agreed? Page 28 as amended--pass; 29 as amended--pass. (Pages 30 to 43 were read and passed) Page 44, I believe there is an amendment. Mr. Adam.

MR. ADAM: I move THAT subsection 65(4) of Bill 37, be amended by striking out the word "in" in the second line thereof.

MR. CHAIRMAN: The motion as moved. Pass?

MR. TURNBULL: If Mr. Spivak wants an explanation on that, I am told that the word "in" appeared as a result of printer's error. It's been now taken care of.

MR. CHAIRMAN: Page 44 as amended--pass. (Pages 45 to 58 were read and passed) Page 59 . . . Mr. Adam.

MR. ADAM: I move THAT section 100 of Bill 37 be amended by adding thereto, immediately after subsection 100(2) thereof the following subsections:
Residency.
100(3) A majority of directors of a corporation must be resident Canadians.

MR. CHAIRMAN: Mr. Green, would you come to the microphone please.

MR. GREEN: I really believe that that is an error, that the way it reads it could be interpreted as resident Canadians . . . and it is residents of Canada.

MR. TURNBULL: Canada, yes. Well if you refer back, Mr. Green, to the definition, resident Canadians is defined in the definition section as . . . an individual is a Canadian citizen ordinarily resident, a Canadian citizen . . .

MR. GREEN: . . . that is exactly what I'm objecting to. It is not my understanding that it was to have been resident Canadians but residents of Canada.

MR. CHAIRMAN: Mr. Green, would you use the microphone please. You're not being recorded.

MR. GREEN: It is residents of Canada not resident Canadians, and you could define Canadian as Canadian citizens, that's exactly as I feared, and that what, I understood, I believe that this is in error, that it must be a drafting instruction error, because it was to be residents of Canada. It's a big difference.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, the intent is to have it drawn so that we're talking about the directors as a majority being residents of Canada and in the definition section we would have to go back and alter that to "resident of Canada means an

(MR. TURNBULL cont'd) . . . . . individual who is ordinarily resident in Canada or is not ordinarily resident in Canada but who is a member of a prescribed class of persons."

MR. GREEN: Mr. Chairman, you only need read the definition section if you have a definition, if the words don't require the definition section, and I submit that they don't, then it could read, a majority of directors of the corporation must be residents of Canada. And that's it.

MR. TURNBULL: Right. I would think that there's two problems here, one, I should really let the lawyers argue this one out, I would think you would still need a definition of "resident of Canada".

MR. GREEN: No.

MR. TURNBULL: And in any case . . .

MR. GREEN: That's not correct.

MR. TURNBULL: . . . we do need some definition here because it's my understanding this definition section does apply to Section 321(6).

MR. GREEN: But, Mr. Chairman, if there is no definition of resident of Canada in the definition section then resident of Canada is taken to mean resident of Canada. I would state my legal career on that, that is so simple, and therefore a majority of directors of a corporation must be residents of Canada would define the phrase; then if you went to the word residents in the definition section and it gave an interpretation different from the ordinary meaning that would be a problem.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wonder if the two members of the government could explain to us what the intention was. When I'd raised this point in debate the basis upon which I raised it was the requirement for uniformity with the Canada Corporations Act and the Ontario Corporations Act which very specifically indicated that they would be Canadian citizens. Now, Mr. Chairman, I realize that this is not Mr. Green's interpretation but obviously the amendment is being proposed by the Minister and I think we could clarify it if the Minister could tell us if in fact the intention of the amendment is in fact to bring it into uniformity with the Canada Corporations Act as we discussed Act as we discussed during second reading. If that's the intention then this reads properly.

MR. GREEN: Mr. Chairman, I've indicated, and I do believe that I've indicated what the Minister has confirmed to be the intention of the government, that it is "residents of Canada" . . . and the Minister had confirmed that, so I do not know why we should have an argument about it.

MR. AXWORTHY: No, no, Mr. Chairman, that's not right. Mr. Green is interpreting the Minister. I'm asking the Minister if in fact the intention of the amendment, the purpose of the amendment, following through from the second reading debate was to bring this into uniformity with the Canada Corporations Act. And if so, then the way it reads in the amendment is proper, if that was the intention of the amendment.

MR. TURNBULL: Mr. Chairman, I have already indicated that 103, the amendment we're now on, should read, you know the intention there is to have "resident of Canada". What it reads of course is resident Canadians which refers back to a definition section. Now the definition section, which is the point that Mr. Green and I are concerned about at the moment, is one that I believe would need to be altered to read resident of Canada and then define it as a person ordinarily resident in Canada, and then also with sub(2)(i) there. That is the drafting.

MR. GREEN: Well can we have the draftsman go back. I disagree. The definition section refers to resident Canadian, not residents of Canada; therefore you would not go back to resident Canadian to find out what residents in Canada are. The two phrases are not related and therefore one would not apply to the other. But in this section what we want is residents of Canada.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well again this is an amendment that's proposed. Was this something that was considered by the group who drafted this Act or, --(Interjection) -- that's another matter I realize and you're going to have to try and solve that drafting,

(MR. SPIVAK cont'd) . . . but I'm now asking in terms of the amendment itself. I want to know whether this was something that was considered by the group that drafted this, whether this amendment has been seen by them and whether this was something that was discussed and rejected.

MR. GREEN: Mr. Chairman, a member is moving an amendment and the question as to how that member got to make that amendment is really of no concern. The desire is to have, regardless of who considered it before or what, a majority of directors of a corporation to be residents of Canada. That is the desire. If you want that, you vote for it, if you don't want it you vote against it.

MR. SPIVAK: As a means of understanding the proposal because it's not contained in the original Act, I again ask the Minister whether this was something that was considered by the group that drafted this Bill and was rejected or is this something that was not considered by them?

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, I think that there are some points about drafting here that Mr. Braid could address himself to and we can . .

MR CHAIRMAN: Mr. Braid.

MR. BRAID: Can I refer to Mr. Green's question. His point I think is this, that if you use the term "resident of Canada" in the text that has an ordinary natural meaning, that means someone who is physically present in Canada and that is capable of evidence and capable of proof in that way. Well that would be fine if that's all it meant, but it's intended that the resident of Canada have an extended definition beyond that which would ordinarily be applied to it. For example, Mr. Green, in the regulations to the Federal Act which are going to be paralleled I understand in this bill, a resident of Canada has an extended definition, as including, and I'll just give you some of the examples . . .

MR. GREEN: you're going to redefine resident of Canada in the definition section I understand, then I don't need further explanation.

MR. BRAID: That's right. Then that's what's to be done.

MR. GREEN: Fine. So long as it doesn't make them have to be a Canadian.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: . . . a very confusing move by the government frankly, because there is a very clear definition in the Canadian Corporation Act which has a very specific meaning to the term "resident Canadian" and the meaning that comes out of it is that one must be a Canadian citizen or a landed immigrant. Now, if I may continue, the amendment follows that wording exactly, which means that it goes back to the issue that I raised in second reading about the question of Canadian majority directorship, and that's what I'm asking the Minister, is it the intention of this amendment to bring the Manitoba Act in line with the Canadian Act?

MR. GREEN: You've been told that.

MR. AXWORTHY: No, I haven't been told that, because the meaning of this amendment is exactly similar to the Canadian Corporations Act which in fact does imply very specifically and very explicitly that in fact it means that someone who holds Canadian citizenship or as a Canadian citizen not already resident in Canada, is a member of a prescribed class or a landed immigrant within the meaning of the Immigration Act. Now that is what the Minister has not said or indicated; in the original Act he brought into the House there was no mention whatsoever of citizenship. That point was debated, an amendment has come forward that seems to follow that date in terms of bringing this Act into uniformity. But that is the way the amendment reads, Mr. Green. So, Mr. Green, I'd like to finish --(Interjection)--

Mr. Chairman, I think that Mr. Green should follow the rules of this committee, frankly --(Interjection)-- well follow the rules of the committee.

MR. CHAIRMAN: Order!

MR. AXWORTHY: Mr. Chairman, I'm trying to determine and elicit from the Minister because it's not clear, all I've heard so far is Mr. Green's interpretation and frankly I don't accept his interpretation. I want the Minister, it's his bill and I would like . . .

MR. GREEN: A point of privilege, it's within the rules. You have heard my

(MR. GREEN cont'd) . . . . . interpretation and then the Minister confirmed that it's intended to mean residents of Canada, it's not intended to follow the other. You were told that on three occasions.

MR. AXWORTHY: No, that's not true, Mr. Chairman.

MR. GREEN: Mr. Chairman, all of the members here heard it said . . .

MR. AXWORTHY: Mr. Chairman, if Mr. Green could just restrain himself for a while, I know that this rubs him the wrong way. I'm trying to find out because it's a very important part of the Act, and the Minister has not yet stated what the intention or purpose of the amendment as he brought it in was. If he had no intention of bringing uniformity then no amendment was required at all. Obviously something was intended because if he wanted to simply mean "resident of Canada" there wasn't any requirement for an amendment. If, however, it was to be brought into line with the Canadian Act then this amendment is perfectly in order, but it does not follow the interpretation of Mr. Green's interpretation of what the Minister is saying, and therefore I think it's incumbent upon the Minister of Consumer Affairs to tell us what the purpose of this amendment was.

MR. TURNBULL: Mr. Chairman, I'll try to be more patient than some of my colleagues in dealing with this repetitive request for a statement of what the government intends. I have said twice already that the purpose of Section 103, as the heading of that section indicates, is residency, and the intent is to have the majority of directors be residents of Canada.

Now the words that are before us, of course, are "resident Canadians", that does get back to the definition section; and the definition section in our bill will have to be altered to accommodate the intent of having the majority of directors be residents of Canada. That's the third time, I believe, that that explanation has been extended to the Member for Fort Rouge. We can argue the point I suppose repeatedly, Mr. Chairman, but I think that perhaps we should vote on Section 103 and have the draftsman come back with changes to 1(1)(z).

MR. AXWORTHY: Mr. Chairman, I now understand what the Minister said, I'm now just surrogate. I think, Mr. Chairman, though that the issue then is when he's talking about resident of Canada would he mind explaining does he mean that there is no implication then that a resident of Canada must carry Canadian citizenship, it can be a citizen of any country as long as they happen to be, at that point in time, physically domiciled in Canada.

MR. TURNBULL: That is the intent.

MR. AXWORTHY: And that has not been in uniformity with the Canadian Corporations Act?

MR. TURNBULL: That is correct.

MR. AXWORTHY: So the result is there's not uniformity then?

MR. TURNBULL: On that point yes.

MR. AXWORTHY: Okay.

MR. CHAIRMAN: The motion as moved. Mr. Walding.

MR. WALDING: On a point of order. Do I understand from what the Minister said that Mr. Adam is now changing his amendment to read "resident of Canada"?

MR. CHAIRMAN: No.

MR. TURNBULL: Well that would be necessary, Mr. Chairman, if we can have agreement from the Committee for that alteration to the amendment that you have before you. We then have the drafting problem on definition section which draftsmen will clear up and we'll change them. We've passed the definition section.

MR. WALDING: So it will then read "residents of Canada".

MR. TURNBULL: Of Canada, in 100(3).

MR. CHAIRMAN: With that change . . . Order please. Order please. With the change, the proposed amendment now "100(3) a majority of the directors of the corporation must be residents of Canada." Is that agreed? (Agreed) Mr. Johnston.

MR. F. JOHNSTON: I'd just like to ask one question on that point and maybe I'm in left field and I would like an answer. It says, "resident of Canada". What if you're a Canadian citizen resident of the United States? What if you're a Canadian citizen living anywhere?

MR. TURNBULL: The point is that we're talking of majority here. This

(MR. TURNBULL cont'd) . . . . . section does not preclude a Canadian citizen living abroad from being a member of the Board of Directors, it only requires that a majority of them be.

MR. F. JOHNSTON: That's what I want to know, as long as it doesn't, fine.

MR. TURNBULL: Yes.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: I wonder if I can ask the legislative counsel how many days he would determine residency in Canada, what would he determine residency in Canada to be in number of days? How would the court define it, is there an Act or any interpretation section that would in any way define this?

MR. BALKARAN: There's no interpretation section in provincial legislation as far as I'm aware, Mr. Chairman. I believe the Income Tax Act had a definition of residency.

MR. SPIVAK: And your assumption is that the Income Tax Act would be the one that would apply here?

MR. BALKARAN: I don't know. I don't know what government would . . .

MR. SPIVAK: I think before we think that we've achieved something significant and before we walk away assuming that we've now settled the matter, I'd like to understand what residency in Canada really means for the purposes of this Act. --(Interjection)-- Well, if it's in the Election Act then I would like to know that the Election Act is going to define this. I'd like to understand what we're really talking about as far as residency in Canada is concerned.

MR. CHAIRMAN: The motion as moved.

MR. SPIVAK: Well, no, Mr. Chairman, I think this is extremely valid and I'm going to make the point again.

MR. CHAIRMAN: The motion has been passed.

MR. SPIVAK: Well having said that the motion's been passed, at this point I still, for the purposes of understanding, because at one point we're going to have to ask again the question whether this bill should be received or not, I want to ask the legislative counsel, because there seems to be an agreement it should have been residency in Canada. What does residency in Canada really mean?

MR. TURNBULL: Mr. Chairman, we have the problem of defining the resident of Canada section which is what Mr. Spivak is asking about, but I think in the Federal Canada Business Corporations Act and Regulations 1976 Edition on Page 169 there are spelled out there some criteria for resident Canadians and we're now talking about residents of Canada, and they would be there.

MR. SPIVAK: You're saying that that will apply for residents . . .

MR. TURNBULL: In any case, Mr. Spivak, we have to redraft the definition section and bring it back for Committee's approval. At that point I think we could debate your definition.

MR. SPIVAK: Let me understand . . .

MR. TURNBULL: That's what I'm saying, we have a drafting problem and we will have to define residents of Canada.

MR. SPIVAK: As well as resident Canadian or resident Canadian . . .

MR. TURNBULL: No, resident of Canada.

MR. SPIVAK: But resident Canadian is still going to remain?

MR. TURNBULL: Where it appears I'm assuming it will have to be changed, but that is the drafting problem that I'm alluding to.

MR. CHAIRMAN: Point of order. Mr. Walding.

MR. WALDING: It's not a point of order, Mr. Chairman, but it's to the point, and it deals with the term "resident Canadian". I asked the Minister earlier today what in the Act the term "resident Canadian" referred to. He was not able to tell me at that time, but he mentioned this evening that it comes under Section 321(6) where the term occurs again exactly as the amendment was originally put to us. Now I would like to know where that term "resident Canadian" occurs elsewhere in the bill and whether we will be faced with the same problem when we come across it.

MR. TURNBULL: I'm advised that the word "resident Canadian" appears only in those three sections as it's presently printed, that is the printed bill, the definition

(MR. TURNBULL cont'd) . . . . . clause (z) and the Section 321(6) that I mentioned. Now in the typed amendment that you have before you "resident Canadian" appears a number of times. Those will have to be changed to "resident of Canada".

MR. WALDING: All right. Is there a duplication in the printed bill 321(6) and the amendment that was proposed to us? They say the same words, do they refer to the same thing though?

MR. TURNBULL: No, 321(6) applies to Trust and Loan Corporations and we are now talking here in 103 and the subsequent sections in the typewritten amendments of corporations generally.

MR. WALDING: Thank you.

MR. TURNBULL: Well can we pass 103, Mr. Chairman, resident of Canada.

MR. CHAIRMAN: 103 has been passed.

MR. TURNBULL: Yes, okay.

MR. CHAIRMAN: 104.

MR. ADAM: Mr. Chairman, I'm not finished yet with that motion. It's the same motion, Mr. Chairman.

MR. CHAIRMAN: You're on . . .

MR. WALDING: The honourable member had not completed his motion when it was voted upon.

MR. CHAIRMAN: 100(4). The honourable member. As you read it would you make the change that they be residents of Canada in the second and third line thereof.

MR. ADAM: Exception for holding corporation.

100(4) Notwithstanding subsection (3), not more than one-third of the directors of a holding corporation need to be resident of Canada if the holding corporation earns in Canada directly or through its subsidiaries less than five percent of the gross revenues of the holding corporation and all its subsidiary bodies corporate together as shown in the most recent consolidated financial statements of the holding corporation or the most recent financial statements of the holding corporation and its subsidiary bodies corporate.

MR. CHAIRMAN: The motion as . . .

MR. TURNBULL: Mr. Chairman, as long as we understand that the change from "resident Canadians" has to be to "residents of Canada" we're okay on that section.

MR. CHAIRMAN: Residents of Canada.

MR. SPIVAK: Can I ask why this section is now . . .

MR. TURNBULL: Mr. Braid would you like to comment on that?

MR. BRAID: Why this section is in?

MR. TURNBULL: Yes.

MR. BRAID: It parallels the Federal Act..

MR. AXWORTHY: Pardon me, it does not. I'm sorry, Mr. Chairman, that is a wrong statement, unless he's using a very different definition which is what we've been told six times. So it does not parallel the Federal Act.

MR. CHAIRMAN: Mr. Braid.

MR. BRAID: Well to the extent that the Federal Act deals with resident Canadians and this deals with residents of Canada it does not parallel the Federal Act, but with respect to the five percent and holding corporations it does parallel the Federal Act.

MR. AXWORTHY: Well, Mr. Chairman, I agree that the operative phrases do, but the real meat and substance of it is very different from the Federal Act and I think it's important if the Manitoba Act is going to develop a new definition for corporate directorship called "resident of Canada" then it must be very clear the implications of that, and it's not the implications that are in the Canadian Act which puts the citizenship requirement for the majority of the Board of Directors, which this has nothing to say about.

A MEMBER: That's right.

MR. CHAIRMAN: Any further discussion on the motion? Mr. Spivak.

MR. SPIVAK: Mr. Chairman, before we pass this I would like to understand that everyone here understands the implications of what the Member for Fort Rouge said and understands the difference between the Federal Act and the Provincial Act. I doubt it. --(Interjection)-- I really do, I doubt it, I doubt that the . . .

MR. CHAIRMAN: Order please. Order please. I wish the honourable members would address their remarks to the Chair and not have two or three meetings going on, we're having a difficult enough time as it is. The motion as moved--pass. Page 59 as amended--pass; Page 60--pass; Page 61--pass; Page 62. The Honourable Mr. Adam.

MR. ADAM: I move that subsection 106(1) of Bill 37 be amended by adding thereto, immediately before the word "subject" in the 1st line thereof the following: "notwithstanding subsection 109(3), but".

MR. CHAIRMAN: The motion as moved--pass. Page 62 as amended--pass; Page 63 - Mr. Adam.

MR. ADAM: I have nothing on 63, I have 64.

MR. CHAIRMAN: Page 63--pass; Page 64 - Mr. Adam.

MR. ADAM: Mr. Chairman, I move that section 109 of Bill 37 be amended

(a) by numbering the present subsections (3), (4), (5), (6) and (7) and subsections (5), (6), (7), (8) and (9) respectively, and by adding thereto immediately after subsection (2) thereof the following subsections:

Canadian majority.

109(3) Directors, other than directors of a corporation referred to in subsection 100(4), shall not transact business at a meeting of directors unless a majority of directors present are residents of Canada.

MR. USKIW: Mr. Chairman, I believe the member in moving the motion meant after the first number (7) to state "as" rather than "and", is a different meaning altogether.

MR. CHAIRMAN: Yes, "as" subsection. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, just to stay consistent, I think it's necessary also to change the sub-title. I think "Canadian majority" is now a misnomer, it should be residents of Canada majority or whatever.

MR. CHAIRMAN: Point of order has been raised. Mr. Walding would you state your point of order.

MR. WALDING: I believe there is more to the motion on the next page.

MR. CHAIRMAN: Well can we deal with 109(3) and then with 109(4), otherwise we're going to get . . .

MR. WALDING: I believe it's all the same motion.

MR. CHAIRMAN: All the same motion?

MR. : Yes.

MR. CHAIRMAN: Oh, well, can we have the rest of it read then?

MR. ADAM: Transaction of business.

109(4) Notwithstanding subsection (3), directors may transact business at a meeting of directors where a majority of resident Canadian directors is not present if

(a) a resident of Canada - is that the wording?

MR. CHAIRMAN: That will have to be changed.

MR. USKIW: You will have to change 109(4) to resident of Canada.

MR. ADAM: Mr. Chairman, we're having some difficulty here because . . . Mr. Chairman, do you wish me to read it as it is written?

MR. CHAIRMAN: Yes.

MR. TURNBULL: We're asking the member to make some changes here to accommodate the intent of the Committee, so this should be "the majority of resident directors who are residents of Canada."

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Point of order. I had raised an issue and you passed on without dealing with it concerning the titling of Canadian Majority which I said was a misnomer. Has that been altered?

MR. CHAIRMAN: No, we're still dealing with this one - this is all entailed in one motion.

MR. AXWORTHY: In one motion? I'm sorry, Mr. Chairman.

MR. TURNBULL: Now, I think we've got the wording for 109(4) and then we get to (a). It should read "a director who is a resident of Canada" - I hope the Member for Ste. Rose is following this - "a director who is a resident of Canada" . . .

MR. CHAIRMAN: I wonder if we could have this section just laid over until legal counsel can redraft it so we can make some sense out of it. Is that agreed?

MR. TURNBULL: Fair enough, Mr. Chairman.

MR. CHAIRMAN: Because I'm not making any sense here whatsoever trying to read this . . .

MR. TURNBULL: Okay. Mr. Chairman, we'll lay over Section 109 of Bill 37.

MR. CHAIRMAN: That may have been a faux pas, but I agree that I really am not making any sense, and I don't think anybody else is either.

MR. ADAM: Well, Mr. Chairman, 110(1) has the same wording at the bottom, it's resident Canadians, and we were told that this appeared only twice in the amendments, or in the book, now we're finding . . .

MR. TURNBULL: Mr. Chairman, perhaps it would be more simple and easier for the member moving the motion and other committee members if we just for the moment laid aside 109(3) and (4) 110(1) and 110(2), we'll make the wording changes that would be in accordance with the consent of the committee, and then have them back I hope later tonight.

MR. CHAIRMAN: Is that agreed? (Agreed) Page 65 then. Well we can't pass 65 either because part of it's there too.

MR. USKIW: Mr. Chairman, just on that point of order. I'm wondering whether it can be acceptable to the committee that having made the first change that the changes that are required in subsequent sections would follow automatically. I mean, why do we have to go through that every time? We've accepted that.

MR. CHAIRMAN: Well it is my understanding from legal counsel that it is a consequential amendment each time that this appears and it's something that people may want to discuss. So I think in that case, in fairness to members of this committee that you're not binding yourself to something without debate or even vote, that when the re-drafting of this, that then you would have the opportunity to debate it. That's my under-standing. I would like to deal with it any way that the committee will go along with because there's still an awful lot of pages here and I'm initialling each page.

I understand that part of this laps over on to Page 65, so we'll leave Page 65 and go to Page 66. (Pages 66 to 68 were read and passed) There is an amendment on Page 69, 116(a). Mr. Adam.

MR. ADAM: I move that clause 116(a) of Bill 37 be amended by striking out the figure (2) in the last line thereof and substituting therefor the figure (3).

MR. CHAIRMAN: That amendment as moved--pass. Page 69 as amended--pass.

MR. WALDING: Mr. Chairman, just a small point on that. On the last line the figure (2) does not occur, it's the word "two".

MR. CHAIRMAN: 116(a), subsection . . . and it's the last line, the figure (2) does appear in the bill that I have.

MR. WALDING: You're right, I'm sorry.

MR. CHAIRMAN: Page 69 as amended--pass.

MR. SPIVAK: Mr. Chairman, just so I understand. 116(a) will substitute, should be subsection 110(3)?

MR. CHAIRMAN: Yes, in the last line.

MR. SPIVAK: There is no 110(3)?

MR. CHAIRMAN: We are going back to that, that's the amendment that we've left out before waiting for redrafting.

MR. SPIVAK: But in the amendments that I have, redrafting is shown as only 110(2).

MR. TURNBULL: But they're renumbered, eh?

MR. CHAIRMAN: Yes, renumbering the present section, subsection (2) thereof as subsection (3).

MR. TURNBULL: See it in 110(b) here . . . have you got it?

MR. SPIVAK: Okay.

MR. CHAIRMAN: 69, as amended--pass. Page 70. Mr. Adam.

MR. ADAM: Mr. Chairman, I move that subsection 117(3) of Bill 37 be struck out and the following subsection substituted therefor:

No exculpation.

117(3) Subject to subsection 140(4), no provision in a contract, the articles, the

(MR. ADAM cont'd) . . . . . by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach thereof.

MR. CHAIRMAN: The motion as moved--pass; Page 70 as amended--pass. (Pages 71 to 84 were read and passed.) Page 85. Mr. Adam.

MR. ADAM: I move that Bill 37 be amended by adding thereto immediately after subsection 140(4) thereof the following subsection:
Filing of notice of agreement.

140(5) Where a unanimous shareholder agreement is executed or terminated, written notice of that fact togetherwith the date of the execution or termination thereof shall be filed with the director within 15 days.

MR. CHAIRMAN: Pass? Page 85 as amended-pass. (Pages 86 to 91 were read and passed) Page 92 - Mr. Adam.

MR. ADAM: Mr. Chairman, I move that clause 154(1)(b) of Bill 37 be struck out and the following clause substituted therefor:

(b) the gross revenues of which, as shown in the most recent financial statements referred to in section 149, exceed $10,000,000.00 or the assets of which as shown in those financial statements exceed $5,000,000.00.

MR. CHAIRMAN: The motion as moved--pass? Mr. Spivak.

MR. SPIVAK: On second reading of this bill I opposed the bill on the basis of the principle that a private corporation as opposed to a public corporation should not be put into the position of having to disclose its financial statements to the director and being exposed to the marketplace because of that position.

I recognize that the amendment now that's proposed will now conform with the Canada Corporations Act or the Business Corporation Act, and to that extent it may be considered an improvement because the amounts are higher. But, Mr. Chairman, at this point I would like to understand the rationale for the need for private corporations as opposed to public corporations to disclose their information. Now I recognize, of course, that in terms of the interpretation section of the Act that there is not a distinction between a private and a public corporation, realistically the corporation's defined, but there is a distinction in the Federal Act and that distinction is clear and the Act provides for it, refers specifically to private corporations.

Mr. Chairman, I think that this is an important matter, I believe there are certain tests that have to be used in determining whether in fact this requirement should apply to those corporations that are private as opposed to public in the conventional sense, not as interpreted in the Act as it now stands, and I am concerned because of its implications. Now before I present what I think are the arguments for not including private corporations, I would like to understand the government's position at this point in asking that this be introduced.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Mr. Chairman, I'd like Mr. Braid to deal with this particular point.

MR. CHAIRMAN: Mr. Braid.

MR. BRAID: Although I certainly do not pretend, Mr. Spivak, to speak for the government, I can tell you what lay behind the federal bill and what lay behind the committee that made these proposals, in fact, you're probably aware that the committee has suggested that the limits be lower than what is now proposed at this committee meeting. Basically I think it's a matter of philosophy and when someone is given the privilege, and indeed it is a privilege in respect of limited liability, that is the ability to carry on a business and limit one's risk and one's loss only to the investment that one has put into the corporation, into the enterprise, is something which is not available to all persons. The state gives to individuals the right to carry on business in incorporated form and gives to it, as I say, the benefit of limited liability. Now that is a benefit which is not given to the sole proprietor or partner but to any number of partners. Now as a result of that, I think there should be a concomitant on the other side, certain things perhaps should be given up because the state has given limited liability, immortality, all sorts of benefits. And one of those things I think that should be given in exchange is perhaps some lessening of the absolute secrecy in the manner in which that enterprise, that artificial body carries on its activities.

(MR. BRAID cont'd) . . . . .

Now it's recognized therefore that some of these bodies perhaps ought to give up some of their privacy. Now I think given that statement, one has to ask the question, well which of the bodies ought to give up their privacy and to what extent should they do so. Well the privacy that was thought to be given up was perhaps the financial secrecy, not other secrets, not trade secrets, not confidential information as to processes and methods and these sorts of things, what happens in a board room, but just the matter of the financing, the wealth of the corporation, the power of the corporation, the nature generally of its businesses. Now even within the Act, of course, even with respect to the disclosure provisions, there is provision for exemption from disclosure by the court. If a certain disclosure is felt would harm the business corporation then there is provision in the Act for an exemption from disclosure; and indeed this has operated satisfactorily in Ontario where this kind of provision has been enforced - not exactly the same but certain kinds of provisions.

Now with respect to public companies, I might add, that deals I think partly with the rationale for having some kind of disclosure. The actual limits of disclosure - let me talk about that just for a second and tell you what the thinking was. Eaton's of Canada is a private company, Eaton's of Canada, one of the largest corporations carrying on business in Canada, need not file their accounts, no one knows what their accounts are except perhaps some of the shareholders; they are not made public, they are a private company. Almost all the wholly-owned subsidiaries of American parents are private companies and would not normally be required to file their accounts; they're huge. These are large, impressive, economically powerful corporations that are required, federally, to file their accounts, not because it has one shareholder or two shareholders or a million shareholders, not because the company has offered its shares to the public, but for one reason only - economic power as measured by income or by assets. Now on that basis it was thought that perhaps these larger corporations that have an impact on the business life of Canada, or indeed on the business life of Manitoba, ought to reveal to those persons who are setting policy, who are dealing with those corporations, who created those corporations, some of its business activities, not particulars of it but just the financial affairs and even then the disclosure is as those set by the Canadian Institute of Chartered Accountants' guidelines set out in their handbook. But that basically is the philosophy behind it, that there should be a disclosure of financial affairs but it should not harm the smaller corporation, the family corporation, the small, closely-held corporation, but those corporations that have an economic impact on the economy ought to reveal to not only the shareholders, but to government officials, to reporters who want to go down and have a look and see what's going on, indeed even nosy busybodies if you wish, to have a look to see what these corporations are doing. It's the old fishbowl philosophy which I think is coming more and more to the fore, and that's the rule federally, it's going to be the rule very soon in Saskatchewan, it's the rule very soon, I understand, in B.C. if not done so already, it's been the rule in the U.S. for a large length of time in various jurisdictions, and it's a trend which I'm afraid has passed the Rubicon.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: There are a number of matters that I'd like to discuss with Mr. Braid if I could and then I would like to come back to Eaton's and see where Eaton's stands today, because if I'm correct they have moved from the federal jurisdiction to the Ontario jurisdiction and there's no disclosure. And one of the problems you have without uniformity of legislation is you have shopping jurisdictions which is really one other additional problem to discuss later on.

Now as I understand it in terms of the philosophy, the position is that because in effect there is limited liability and it's created artificially as a result of the actions of the state, that there is therefore an obligation because of that to ensure that those who deal with the corporation know what the position is. But, you know, Mr. Chairman, I think in discussing this matter with some members of the committee, and I don't want to get involved with individuals, I understood different positions, and I think Mr. Braid will acknowledge that there are different positions and different reasonings for the introduction of this.

(MR. SPIVAK cont'd)

The biggest problem we have in this country is the trend towards big government and big business --(Interjection) -- No, the biggest problem is big business and big government. And the difficulty we have is how do we revert the trend that if it continues will simply eliminate the small person, and the small person is not just the person who is a corner grocery store, he's already eliminated pretty well, but anyone who has any entrepreneurial skills and is in a position to develop something within the economy and be able to pursue it and to be able to finance it and be able to develop it to a point where it would become a profitable margin.

The Minister of Industry and Commerce is not here but I would hope that he would come before we finish the section because I want him to say and to state to this committee that this section even with the change will not harm business in Manitoba, because I know the kind of efforts (Oh, he's here and I'm glad that he's here) I should say to the Minister of Industry and Commerce that he's on cue. I've indicated with respect to the changes of disclosure of 10 million dollars of business or $5 million, I know that the effort that is put forward to try and entice business to remain in Manitoba, to entice business here, to convince business to remain in Manitoba, where in fact there are developments, and one of the problems with disclosure and probably one of the unintended effects is, I believe, the acceleration towards big business which is one of the trends that I think has to be stopped. I want to indicate this in a very direct way because disclosure means a number of things.

To the person who is going to be doing business with the company because the financial position has been disclosed they may very well be in a position to determine with a greater degree of accuracy the kind of credit arrangements they want to make, the personal arrangements that they are going to have between themselves and the corporation because there has been disclosure. But to the competitor, to the conglomerates who have unlimited resources and are capable of altering their operations or changing and applying the resources to whatever is successful, it will give them the opportunity for corporate snooping and in addition for the ability to be able, at any time, to marshal their resources in such a way as to cause loss leaders, to in effect place a corporation in jeopardy simply because it disclosed.

Now, when we talk in terms of $10 million or $5 million of assets the assumption is that that's a great deal of money, and it is, but one has to recognize that there are different component units that would make up sales. If one has a restaurant selling meals at two or three dollars obviously there are a number of units to realize $10 million. If one sells farm machinery, farm machinery that goes from $40,000 to $100,000, you don't have to sell a lot to be in the position of the $10 million. If one has land and buildings at today's prices and weren't fortunate to be in a position to acquire them years earlier, you would be in a much more difficult position. One can have $5 million worth of assets and have a mortgage of $4,800,000 very easily, and still that person who is still a small businessman attempting to try and struggle in the economy in which the conglomerates, the multi-national corporations, has access to resources, has the ability to be able to clobber him at any given time and who has difficulty, and this I think the Minister of Industry and Commerce can confirm, in trying to arrange his finances in today's world, that person is put in jeopardy.

So I have to suggest that while I recognize the principle that there is limited liability in terms of the risk of the people doing business with a private corporation, the reasons for not disclosing is simply because private corporations have the ability then to be private in the manner in which they handle themselves and have the ability to handle their affairs in such a way that they're not exposed to the kinds of activity that will occur if they are put in jeopardy, and I suggest they will. If someone was to make a new widget and as a result would have tremendous sales in one given year that would be reflected in the balance sheet and the profit and loss statement and it would be very possible then for any corporation who wants to to mobilize to go into that business. A private corporation may be known to be doing business and may have accounts all over the world, may be exporting, but that's their own private affair; once you produce that balance sheet so that a corporation can look at it, they then are in a better position to compete. And I simply state that although there is a need for uniformity the uniformity

(MR. SPIVAK cont'd) . . . . . doen not exist throughout Canada, there are other jurisdictions that do not have it and it would seem to me that with respect to Manitoba we are placing smaller business, private business, in greater jeopardy.

And I again throw the ball back to the Minister of Industry and Commerce, if he doesn't support this position then I'd like him to say that but if he does support this position I'd also like him to say that, because I know what kind of struggle there is, and in today's marketplace what this will mean for those corporations who reach this standard will mean, I believe, further jeopardy unnecessarily, and I do not believe that the results that are to be accomplished, that Mr. Braid referred to, justify that kind of jeopardy in relation to the kind of industry and business undertakings we have in this province.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: Well, Mr. Chairman, you know Mr. Spivak's argument really rests on the idea that multi-national conglomerates will raid, in Manitoba, raid the market of Manitoba-based companies on the basis of looking at their profit and loss statement. I would think that a multi-national moving in would do so for a variety of other reasons, examination of patents, examination of advertising, just what's going on in the marketplace if they happen to be interested, and there's all kinds of signs, indicators, that could enable multi-nationals to move if they so wished. To think that some change in this Act will in some way prohibit or prevent multi-nationals from moving in, some change in this Act will protect the private companies here more so than they might otherwise be protected, I don't think is all that real an argument. In any case, in trying to recognize the need for private corporations to have as much scope as possible to develop their markets, the amendment does raise the limits from $2 million to 10 million and from 1 million to 5 million; it does bring it in line with federal jurisdiction, there is uniformity in these particular financial limits.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I was just wondering, does not the provision pertaining to the right of one to seek an order from the court to prevent the examination of the records of the company if it is felt that the disclosure would be detrimental to the corporation, does that not meet the concerns that Mr. Spivak has? --(Interjection)-- Yes, 151(3).

MR. CHAIRMAN: Mr. Johnston.

MR. FRANK JOHNSTON: Mr. Chairman, there's a point Mr. Spivak's making here and it's valid in my opinion and concerning me and from the point of view of Western Canada or Manitoba. A company in Manitoba who is doing well and having a good sales picture just on a product, let's just say a product, and he's shipping into eastern Canada and that larger company has the ability to find out what the assets or the reserve funds of this company is in Manitoba, operating capital, and if they sit down and say to themselves we can put this fellow in a position of near bankruptcy and maybe buy him out in a couple of years by knowing his financial statements and status, that is a possibility of happening to a Manitoba company as far as the larger people in eastern Canada are concerned or anywhere else. Now that is a concern to me as far as Manitoba companies are concerned. Now whether there is that protection for Manitobans against larger companies, and I'm speaking from a little experience myself, I am a manufacturer's agent and represent companies, and I can assure you that there are times when these fellows if they thought we had something here and they knew that the reserve or the capital of that company was such that they couldn't carry on with a real whack of competition in a hurry, it could be bad for the Manitoba company.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well I wonder if the Minister of Industry and Commerce is prepared to reply on these.

MR. CHAIRMAN: Mr. Evans.

MR. EVANS: Mr. Chairman, the honourable member is attempting to put me on the spot. I did have the Departments of Industry - I had the research staff look the draft bill over some many many weeks ago and this point was not raised by the staff, they went over it, they did not offer the opinion that it would place small or medium-sized business in jeopardy. Now that's their opinion. There's no doubt that, if certain

(MR. EVANS cont'd) . . . . . information is made available on a particular small company there's no doubt it certainly doesn't strengthen that company's position vis-a-vis its competitors, there's no doubt about it. On the other hand, as the Minister of Consumer Affairs indicated, there are many many factors that one can take into account right now in deciding on how to deal with one's competitors. The fact is that large companies are buying out small companies whether they be Canadian or American multinationals, they are moving in and they are moving in without the availability of this particular information. There are all kinds of documents, Mr. Chairman. I would refer you to the Dun & Bradstreet documents. I don't know how reliable they are but some people think they are pretty reliable and they give you quite a bit of information on companies, large and small, and I would think that if a large company was really wishing to move in . . .

A MEMBER: You don't have to give Dun & Bradstreet information.

MR. EVANS: They get it, somehow or other they get it. They get it through the banks, they get it through other creditors, they get it. I know we've had no difficulty, at least my experience is we've never had any difficulty in getting Dun & Brad reports on any companies that we were going to deal with and wanted to make sure that we were dealing with reliable people, etc., we wanted to have some information. The information is available, and generally speaking it's fairly reliable, that's been my experience. So I don't know whether we are going to be providing any information that companies that could be competitors or would be conglomerates that might take over small businesses, whether we are really providing them with some substantially additional information that's going to put them in jeopardy. If a large company wants to take over a small company I think there are many ways and means of judging that, the large company has many many pieces of information that it can make its decision on. I mention Dun & Brad but there are other means as well.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Well, you know, first of all Dun & Bradstreet may produce information of credit rating and a company that can have great financial difficulty still may be able to maintain a credit rating that's high because of the nature in which they make their payments and they may have built a history even though they have financial difficulty in attempting to finance; but nevertheless because they've tried to be good businessmen and knew that credit was important to them they maintained that basis and on the basis of their past history of payment people will deal with them.

I want to cite an example which I think is a good one and to indicate to you the difficulties that arise.

MR. CHAIRMAN: Order please. Would the members down at the end of the table please try and keep your tone of conversation down. It just comes through here like a bunch of bees buzzing down there. Mr. Spivak.

MR. SPIVAK: I want to mention this company but in mentioning it I know that it will cause some fervor on some people's part and it's not intended to do that. I want to show the example because I think this is the kind of thing we're talking about. I want to talk about Versatile Manufacturing. I want to indicate that Versatile entered a field that was very competitive in which there realistically have been only several major main line companies; they built a unit which was better and competitive with the main line companies and they began to enter the market and became pretty important in Western Canada and it was a Manitoba-based company. I'm not so sure had their financial position had to be disclosed almost immediately, and we know some of the difficulties they had, that they would have been able to have continued, because I have no doubt about what the main line companies would have done recognizing that there was an innovation that was taking place that was affecting their market sales at a time when the market started to depress.

MR. GREEN: The shares were on the open market.

MR. SPIVAK: Yes, the shares were on the open market . . .

MR. GREEN: . . . it was disclosed. Anybody could buy a share. Their shares were on the open market, what are you talking about.

MR. SPIVAK: Yes, I think you're right. I'm sorry, the Minister's right with respect to Versatile and the shares were on the open market but I want to then point out

(MR. SPIVAK cont'd) . . . . . if this company had been a private company what the situation would have been. They would have had to be forced to put in a position of disclosing their information, they were competing with a main line company who would have been capable at any given time of, in effect, fighting them, and in the course of doing that the company then is put in jeopardy, and you know you can talk all you want but in reality this is what is going to happen. You can cite in Manitoba the number of private companies that have been successful, have been able to create job opportunities here, have been able to enter the markets outside of Manitoba and western Canada, either in the national market in Canada or the foreign market or the market in the United States and whose volume now, as a result of much of the effort of the Department of Industry and Commerce will achieve the ten million dollar figure in terms of sales volume, who are going to have to disclose. And I suggest to you that you are putting them in jeopardy unnecessarily, and you are putting them in jeopardy on the basis really because in effect the Federal Government has provided this and other jurisdictions are following - but not everyone. Now we come to the whole question of the ability for jurisdictional shopping, that exists, and for any company that wants to get around this situation they are going to be quite capable of entering and registering in other provinces, head office in the other provinces and doing business in other provinces. And for those companies that are in fact in jeopardy they are going to do it, and it would seem to me that at this point with a developing industry made up in the main of small businesses, who in effect have always had difficulty in credit arrangements, who have always had problems with financing whether it be the banking institutions who always look through depression coloured glasses to Manitoba, the industrial credit associations, who always have been cautious in dealing with Manitoba and who have had to fight over the years to build industrial development in this province, what you are saying to them at this point is that we are in the same league as everyone else therefore we're going to play by the same rules. But the reality is we're not, our business is not and they require the ability to be able to manage in private without having to be exposed in such a way that the kind of lost leader or activity can be undertaken in which they can be directly affected.

I suggest to you that by this section, notwithstanding the additions that are being put, you are putting much of small business in Manitoba in jeopardy and putting it unnecessarily, and really because of the rationale which is almost a somewhat academic approach, that in terms of the fact that there is limited liability, that there is a greater need for accountability, but I suggest to you that the principle of accountability which is necessary is far more fundamental in discussing all business and not just small business, because I suggest to Mr. Braid that the time will come, based on that principle, that lawyers then should publish their financial statements and law offices should have to publish their financial statements and accountants should have to publish their financial statements, so that in effect those who deal with them will know the exact nature of the obligation; not because there isn't a liability but because the whole question of accountability arises. At that point then I think you've basically provided that the state is now becoming more involved in the affairs of people than it should. In doing this I suspect that what we're doing is hurting small business rather than helping it, and I do not believe this section should be proceeded with.

MR. CHAIRMAN: Motion before the committee. Mr. Green.

MR. GREEN: Mr. Chairman, I wonder what the Member for River Heights, what would be the validity of his argument here, that we run the danger of opening up where others keep closed and therefore people go to the ones that are closed, I gather. What would he consider if we enacted the bill but said this section would not come into force until it was proclaimed and that we made sure that unless it was done universally so that there was no edge over Manitoba, that we would not do it either.

MR. SPIVAK: I'd accept that.

MR. GREEN: All right, you would agree with that, or will consider that. In the meantime . . .

MR. SPIVAK: I want to point out that I disagree with that in principle, but I recognize that if that, you know, . . .

MR. GREEN: If everybody else goes and there is another . . .

MR. SPIVAK: . . . if there is uniformity as far as Canada is concerned I would accept that but . . .

MR. GREEN: We can get uniformity by putting in an exemption clause similar to the Canadian exemption clause; and also a clause indicating that this particular section will not come into effect until it is proclaimed, and then we will make sure that we are not doing it unless there is the understanding - when it was drafted as uniform legislation I presume that all provinces understood that it would come in together and if the others renege then we do not have to proceed with the total bill.

MR. CHAIRMAN: Mr. Turnbull.

MR. TURNBULL: The exemption clause that I was looking at would be similar to the Federal Act, and it is this: "that a corporation may apply to the Director for an order authorizing the corporation to omit from its financial statements any item prescribed or to dispense with the publication of any particular financial statement prescribed, and the Director may if he reasonably believes that disclosure of the information therein contained would be detrimental to the corporation, permit such omission on such reasonable conditions as he thinks fit." Now that we could work in here and then make the total section come into effect on proclamation. That would cover your point.

MR. SPIVAK: That would cover that point, but I just want to know from Mr. Braid, in terms of uniformity at this point how many jurisdictions do not have this section? Are you in a position to indicate that?

MR. CHAIRMAN: Mr. Green.

MR. GREEN: Well, Mr. Chairman, I believe that the clause has some value. I, on the other hand, don't want to be ambushed. If Mr. Spivak is making a point that Manitoba has enacted it, Saskatchewan, Ontario have not, and our head offices move where they do not have to disclose, I don't want to be a patsy. If they go ahead together uniformally and require the disclosure, I disagree with the Member for River Heights, I think it has value. The value that it has is that if a company has limited liability, then the people who are dealing with it are entitled to know just what kind of equity it has in terms of being able to deal with its creditors. I'm not so wound up with the economic power argument, but I believe that there is some value. Now if we provide the same exemption that's provided federally and provide that the section won't come into effect until it is proclaimed by the Lieutenant-Governor-in-Council we can protect ourselves and still have the value of the section. I gather that the Minister is prepared to do that.

MR. TURNBULL: Yes, Mr. Green. Okay, Mr. Spivak. I can bring the amendment at third reading, you know that's the intention. There is, to the extent that what you have described might occur as a result of the non-inclusion of the exemption clause, we will close the gap by putting in the exemption clause.

MR. CHAIRMAN: The motion as moved--pass. (Pages 92 to 141 were read and passed) 142--Mr. Adams. Oh, Mr. Walding.

MR. WALDING: Mr. Chairman, I move THAT Section 221 of Bill 37 be amended by adding thereto at the end thereof the following subsection,
Registration:

221(3) Any certificate of dissolution or revival under this part has ipso facto the effect of cancelling or reviving the registration of the corporation under Part 16 as the case may be.

MR. CHAIRMAN: The motion as moved--pass. (Pages 142 to 157 were read and passed) Page 158, amendment, Mr. Walding.

MR. WALDING: Mr. Chairman, I move THAT subsection 261(2) of Bill 37 be amended by adding thereto at the end of clause (a) thereof the words "force; and".

MR. CHAIRMAN: The motion as moved--pass; Page 158 as amended--pass; Page 159--pass; Page 160--pass; Page 161, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that subsection 267(1) of Bill 37 be amended by adding thereto at the end thereof the following words: "and the corporation shall restrict its undertaking to one that is only of a patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like."

MR. CHAIRMAN: The motion as moved--pass; Page 161 as amended--pass; Oh, another one? Sorry.

MR. WALDING: Yes. Mr. Chairman, I move that Section 268 of Bill 37 be amended by striking out the words and punctuation "if any" in the first line of clause (a).

MR. CHAIRMAN: The motion as moved--pass; Page 161 as amended--pass; (Pages 162 to Page 173 were read and passed) Page 174, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that clause 315(a) of Bill 37 be amended by striking out the words "or a trust and loan corporation" in the 1st and 2nd lines thereof.

MR. CHAIRMAN: The motion as moved--pass; Page 174 as amended--pass; Page 175--pass; Page 176--pass; Page 177 . . .

MR. WALDING: Mr. Chairman, I see that 321(6) has the expression "resident Canadians" in it. I would like to move that those words be changed to "residents of Canada".

MR. CHAIRMAN: 321(6) be amended, been moved by Mr. Walding that a majority of the directors - everybody knows what it means.

MR. WALDING: In conformity with the previous amendments.

MR. CHAIRMAN: Conformity - "residents of Canada". Motion as moved--pass; Page 177 as amended--pass; Page 178, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Clause 322(1)(c) of Bill 37 be amended by striking out the words "official guardian, official administrator" in the 2nd line thereof and substituting therefor the words "guardian".

MR. CHAIRMAN: The motion as moved--pass; Page 178 as amended--pass; (Pages 179 to 214 were read and passed) Page 215.

MR. WALDING: Mr. Chairman . . .

MR. BALKARAN: Mr. Minister, I wonder if you would hold that last amendment.

MR. TURNBULL: 374?

MR. BALKARAN: Yes, the retroactive sections will be added to that.

MR. TURNBULL: Yes. In relationship to 154 you mean. 374, the Legislative Counsel says we should hold because we now have another retroactive proclamation date relating to Section 154. So if the committee is agreed we can do that.

MR. CHAIRMAN: Agreed that Legislative Counsel be instructed to bring an amendment to that effect? 215 as amended--pass. Now we have to go back to the pages that . . .

MR. TURNBULL: We can get back now to the definition section on Page 3, and the consequent sections, 100(3) etc., which are now being distributed for you.

MR. CHAIRMAN: I will now refer honourable members to Page 3 where we are going to have to make some changes in section 1(1)(z) of Bill 37. The Honourable Member for St. Vital. Mr. Walding, are you prepared to move an amendment?

MR. WALDING: Mr. Chairman, I move that clause 1(1)(z) of Bill 37 as amended be struck out and the following clause be substituted therefor:

(z) Resident of Canada means an individual who is (1) Ordinarily a resident in Canada, or (2) Not ordinarily resident in Canada, but who is a member of a prescribed class of persons.

MR. SPIVAK: Mr. Chairman . . . explain what "ordinarily resident" means?

MR. TURNBULL: Well, Mr. Chairman, there is from a layman's point of view some concern about what an ordinary resident in Canada would be. I'm going to let Mr. Braid give the legal interpretation here, but it is my understanding that ordinarily resident in Canada is a question of fact. It would be what would normally be considered to be ordinarily resident in Canada, but . . .

MR. SPIVAK: What you're really saying, Mr. Chairman, is we're going to have a series of case law determing this, that's what you're really saying.

MR. CHAIRMAN: Mr. Braid.

MR. BRAID: Yes. First of all, if someone is not ordinarily resident in Canada he can still be a resident of Canada under the regulations, and that will be prescribed under the regulations consistent with what is done federally, and there is about seven extended definitions of that, but there is no definition in the Federal Act as

(MR. BRAID cont'd) . . . . . to who is ordinarily resident in Canada. The same terminology is used, and they have not seen fit in their wisdom to define it further than just to say someone who is ordinarily resident in Canada, leaving it, presumably, up to the courts to determine that is a question of fact.

It's a bit dangerous to go into the precision that you do in Federal Income Tax law which has certain other consequences, but basically I think what the committee thought was that we would follow the federal definition and if the Feds. saw fit not to expand on it we wouldn't tread where they wouldn't.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, a point of order. Mr. Braid is not again being very accurate in his description to the Committee, because he is saying that we will follow again the definition set out in the Canadian Corporation Act. The Canadian Corporation Act, and I'm reading from Page 169, uses the term "resident Canadian" which imputes Canadian citizenship and then puts a prescribed class of people who work for government agencies, who are in universities outside the country, who are members of international associations, organizations, but the premise is that these are people who are Canadian citizens. Now that does not apply because the government here is not using that as its definition, therefore this prescribed class has no application, because their prescribed class in the federal regulations are all defined as Canadian citizens, however, who may be outside Canada working in international organizations, universities, or government Crown agencies or corporations, and therefore we need an entirely new definition of this "prescribed class" in order to fit this peculiar definition that we've arrived at tonight.

MR. CHAIRMAN: Mr. Braid.

MR. BRAID: The Federal Act has two qualifications for directors:

(a) They must be Canadian citizens,

(b) They must be ordinarily resident in Canada. Canadian citizen is defined to some extent in the Act and has been given a specialized definition. To that extent the bill as it's now going to be amended will not follow that part, and indeed it's different; but insofar as the second qualification is concerned, the fact that the director must be ordinarily resident in Canada, this bill parallels what has been done federally, and that is what I'm saying is parallel here, not the Canadian citizenship requirement, of course it isn't. That's been said five times. It's the resident requirement which is parallel.

MR. AXWORTHY: I'm sorry, Mr. Chairman, I'm reading directly from the federal description of what is under "classes of persons prescribed", and that is on Page 169, and it says, "For the purposes of paragraph (b) the definition of resident Canadian in subsection (2) under the Act, the following . . .

MR. TURNBULL: That's Canadian.

MR. AXWORTHY: May I be allowed to complete. If you want the definition, I'll read it to you.

MR. TURNBULL: Of what.

MR. AXWORTHY: Of what is used by the definition of a prescribed class, and they're saying "the following classes of persons, persons who are full-time employees of the Government of Canada or province, of agency of such government, persons who are full-time employees of a body corporate, which has a majority of directorate of which are resident Canadians, persons who are full-time students at a university or other educational, and have been a resident outside of Canada for less than ten consecutive years, persons who are full-time employers of an international association, and persons who on reaching their 60th birthday, ordinarily resident in Canada have been outside less than ten consecutive years."

Now again, Mr. Chairman, the point I'm making is that if we're using this as a definition, you must go on the basis that you're utilizing the resident Canadian concept that applies in the amendment is simply those who are outside Canada but fit that definition, so you simply need another . . .

MR. TURNBULL: You know, Mr. Axworthy, you've described, you know, the difference between resident Canadian and resident of Canada, and I accept there is a difference, and to the extent that the citizenship or nationality provisions in the Federal

(MR. TURNBULL cont'd) . . . . . Statutes are not adopted in this bill they will have to be changes in the definition of resident of Canada. Apart from your describing the difference, I'm not sure what you're point is.

MR. AXWORTHY: Well, my point is that because we've got ourselves into a curious convolution anyway, we might as well try to maintain some logical consistency, and that is that there is no point in having a prescribed class, because only reason they have a prescribed class under the Federal Act is to define those circumstances under which Canadian citizens who don't happen to reside in Canada can be members of boards. We are not using that as a criteria, I shouldn't say we, you are not using that as a criteria, so that you're simply saying, the only criteria that you're using is resident in Canada, so there is no such thing as a prescribed class that's involved.

MR. CHAIRMAN: Any further discussion on the motion? MOTION as moved--pass?

MR. CRAIK: No microphone (inaudible)

MR. AXWORTHY: That's what we're doing now, Don. That's what we're discussing.

MR. TURNBULL: That's your big question, Mr. Craik. That is what we're trying to get at.

MR. CRAIK: What happens if you have directors of a company who may be older and retired and go out of the country during the winter, those conspicuous consumers that take four months south or elsewhere, perhaps living in Florida for the months of December, January, February, March or whatever it is, would they in that case have any difficulty qualifying?

MR. TURNBULL: Were you here when Mr. Braid gave the explanation of what ordinarily resident would mean?

MR. CRAIK: Perhaps I wasn't. I'm trying to look at some examples, of . . . that maybe perhaps an example of when a person is out of Canada, he may be away on a sabbatical or he may be away as a person retired. Would that person that may be out of the country say four months fall into a prescribed class?

MR. TURNBULL: You know we did deal with that earlier when we were on this point, about two hours ago, or three hours ago, whenever it was, and you know this clause really would apply, like in Section 100(3) to the majority. Now, your individual could still be a director, such people could not constitute a majority but one such person or several obviously could still be directors. We are talking here in 100(3) of those directors who would be a majority and we're saying that a majority should be residents of Canada.

MR. CRAIK: Did you define in your discussion who would be excluded under the definition by that classification?

MR. TURNBULL: The definition in discussion has not occurred, no. We are talking of ordinarily resident in Canada, and my understanding is that that would be interpreted on the basis of fact by a court, and we leave it at that.

MR. CRAIK: All I'm trying to ask is what people typically would not qualify, average sort of sample cases of people . . .

MR. TURNBULL: For a majority . . . to constitute a majority?

MR. SPIVAK: I just want to cite this one example, and I've already put it to Mr. Braid but I want to get it into the record and recognize the problem. A person in order to meet the income tax requirements for taxation purposes may very well be out of the country the minimum number of days to be in a position not to be caught within the income tax jurisdiction of the Federal Government - and I believe that's six months, 180 days, I'm not sure exactly what the figure is, but whatever the figure is - now that person who may reside anywhere in the world, and therefore would be exempt under the Income Tax Act, will he be considered ordinarily resident in Canada. If someone was to call the Deputy Minister and ask him, what would his answer be, he wouldn't know. That's what you're basically saying. So if there's no certainty in what we're doing, really is there a point?

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I just want to make the same point. Obviously there is some attempt to compromise between the original position by the

(MR. AXWORTHY cont'd) . . . government, the position taken by our group which was that there should be a majority of Canadian citizens on the board. The old saying about a camel is a horse created by a committee certainly fits this definition exactly. I think that we're getting ourselves so wound up by trying to work out some legal definition for a compromise which just doesn't make any sense, I simply want to state that I think we have been trying to play this kind of game. The government should either go back to its original definition - rather than going through the funny business of saying a resident Canadian is a resident Canadian, which is the way this is going to read, which makes absolutely no sense, the government should either be going back to its original position, which is they didn't care what the citizenship was, or follow the Canadian Corporation Act which was to state that a Canadian citizen is a majority, those are the two positions; not try and fool around with this idea of defining when is a resident in Canada a resident in Canada which seems to be, we're getting ourselves into a tautology of a very absurd sort and I think you're simply going to give rise to a large amount of litigation.

We raised the point legitimately in the House that we felt that the issue should be one of Canadian citizenship on the boards. I can understand the reason why the compromise was arrived at in this curious way, but I would simply suggest that if the government can get agreement on the idea of Canadian citizenship then they'd be a lot wiser to go back to their original position rather than get into this kind of very awkward definition, which I think will just end up . . . will make the bill a very difficult bill to administer.

MR. CHAIRMAN: Any further discussion on the motion? Hearing none, all those in favour--pass?

I now refer honourable members to Section 100(3). 100(3) Page 60. Mr. Walding. Page 59?

MR. WALDING: I move THAT Section 100 of Bill 37 be amended by adding thereto immediately after subsection 100(2) thereof the following subsections.

Residency.

100(3) A majority of directors of a corporation must be resident of Canada.

MR. CHAIRMAN: That must be "residents"?

MR. WALDING: Resident in Canada?

MR. TURNBULL: "Residents". "Residents" that should . . .

MR. WALDING: No, it says "a majority", it's singular. Resident of Canada.

MR. TURNBULL: "Residents".

MR. WALDING: No. "A majority" which is singular.

MR. BALKARAN: "Must be residents of Canada".

MR. WALDING: No, it's not "residents".

MR. BRAID: It must be "residents". Most of the people who look at it say that it is . . . the directors, a majority of whom must be residents . . . If you read it that way you'll see that it's "s" at the end.

MR. WALDING: "A majority" is a collective noun.

MR. TURNBULL: Well there's two lawyers telling you it should be residents, so would you move the motion.

MR. CHAIRMAN: We have the motion here now that Mr. Walding has moved. "A majority of directors must be resident of Canada". We seem to have an argument whether it should be "resident" or "residents".

MR. WALDING: Residency. 100(3). "A majority of directors of a corporation must be residents of Canada."

Exception for holding corporation.

100(4) Notwithstanding subsection (3), not more than one-third of the directors of a holding corporation need be residents of Canada, if the holding corporation earns in Canada directly or through its subsidiaries less than five percent of the gross revenues of the holding corporation and all its subsidiary bodies corporate together as shown in the most recent consolidated financial statements of the holding corporation or the most recent financial statements of the holding corporation and its subsidiary bodies corporate.

MR. CHAIRMAN: Motion as moved, is there any discussion--pass; Page 59

(MR. CHAIRMAN cont'd) . . . . . as amended--pass. I refer honourable members to Page 62, I guess, 62 right. Mr. Walding.

MR. WALDING: Mr. Chairman, I move that subsection 106(1) of Bill 37 be amended by adding thereto immediately before the word "subject" in the 1st line thereof the following: "Notwithstanding subsection 109(3), but".

MR. CHAIRMAN: The motion as moved. Any discussion--pass; Page 62 as amended--pass; now Page 63, I guess. Page 63, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that Section 109 of Bill 37 be amended:

(a) by numbering the present subsections (3), (4), (5), (6) and (7) as subsections (5), (6), (7), (8) and (9) respectively, and by adding thereto immediately after subsection (2) thereof the following subsections:

Resident Majority.

109(3) Directors other than directors of a corporation referred to in subsection 100(4) shall not transact business at a meeting of directors unless a majority of the directors present are residents of Canada.

Transaction of Business.

109(4) Notwithstanding subsection (3), directors may transact business at a meeting of directors where a majority of directors who are residents of Canada is . . .

A MEMBER: "are".

MR. WALDING: Now be consistent. If "majority" is singular then this is correct. If "majority" is plural then you need "are".

MR. BALKARAN: You speak of a majority "is" present, but a majority of whom are residents or a majority who are residents not who is resident. So "is" is correct in this context.

MR. WALDING: You're referring to a majority.

MR. BALKARAN: "Is".

MR. WALDING: "Is".

MR. BALKARAN: Right.

MR. WALDING: But in the previous two motions you said "a majority are".

MR. BALKARAN: Read it through . . . no.

MR. CHAIRMAN: Continue please, Mr. Walding.

MR. WALDING: I still don't think you're right. I'll start again.

109(4) Notwithstanding subsection (3) directors may transact business at a meeting of directors where a majority of directors who are residents of Canada are not present . . . is not . . .

MR. CHAIRMAN: Is not present.

MR. WALDING: All right, is not.

(a) A director who is a resident of Canada and who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting, and

(b) A majority of directors who are residents of Canada would have been present had that director been present at the meeting, and (b) . . .

MR. CHAIRMAN: Just a moment, Mr. Walding. We have already passed these sections. We have changed that already by motion previously. So if you just stop there I think that would carry out the intent, because they're already passed, striking out in the second line of subsection 109 . . .

The motion as moved. Any discussion? -- pass; Page 84 as amended. No we still have something on 184, Section 110. Pardon me, it's blurred here, it looks like an 8. 64. I believe we have a further amendment on Page 64.

MR. WALDING: Mr. Chairman, I move that Section 110 of Bill 37 be amended:

(a) by striking out the present subsection 1 thereof and by substituting therefor the following subsection:

Delegation.

110(1) Directors of a corporation may appoint from their number a managing director who is a resident of Canada or a committee of directors and delegate to such managing director or committee any of the powers of the directors.

(b) by renumbering the present subsection (2) thereof of subsection 3 and,

(MR. WAIDING cont'd)

(c) by adding thereto immediately after subsection (1) thereof the following subsection:

Resident Majority.

110(2) If the Directors of a corporation other than the corporation referred to in subsection 100(4), appoint a committee of directors, a majority of the members of the committee must be residents of Canada.

MR. CHAIRMAN: Motion as moved--pass. Mr. Balkaran tells me that 116(a) was already passed. First let me pass 64 as amended--pass; Page 65--pass; Page 66--pass. Well I see no more amendments.

MR. SPIVAK: That doesn't include amendments yet to be drawn. Is that right?

MR. TURNBULL: That's right, Section 154 and the 374 at the end, right.

MR. SPIVAK: You may need a definition section I assume, I don't know. You may need something, a definition with respect to private corporations . . .

MR. TURNBULL: Well can we move the bill be received, I don't . . .

MR. CHAIRMAN: Preamble--pass; Title--pass; Bill be reported . . .

MR. SPIVAK: Mr. Chairman, on the bill being reported I would like to . . . this has been a very lengthy exercise, we've been here several hours. I think we've gained a great deal but . . .

MR. TURNBULL: Well you have.

MR. SPIVAK: Well I say we've gained a great deal and I in one sense am happy with the proposals that have been put forward . . . a particular matter that I brought to the Legislature's attention. But, Mr. Chairman, I have to say at this point that when one realizes the impact of this bill, one recognizes the complexity of the bill, one understands the difficultues of interpretation notwithstanding the fact that many lawyers have looked at it, I am at this point questioning whether the business community who are going to be directly affected by this, understand this bill, have had an input into this bill, would not be in a position to offer some comments and criticisms that would be worthwhile in simply making the bill better than it is. Again if we follow the procedure of what the Federal Government did, the bill that was introduced in the House after the report of the committee was only presented for first reading and then was referred to a committee for a year, in which there was public discussion, followed by, I believe, the final bill that was ultimately amended again, when it was presented to the House, which became the Business Corporation Act. It would seem to me that there is logic, Mr. Chairman, without in any way trying to impede or deter the objectives here for a much wider discussion of this bill.

Now I don't know what methods are available in this committee other than to report the bill or not to report the bill. I'm not suggesting that the bill should not advance. What I am suggesting is that it be dealt with in a way in which there can be greater public debate and an opportunity for a greater public input because I believe as a result of that, that the bill would be a better bill. We've dealt with a few sections that a few people have mentioned. I would suggest to you that there are probably numbers, many many numbers of sections, lists of sections or particular items that in fact should be debated, and if in fact they were, you would have a better bill, and I question really the wisdom of proceeding and passing it without that public debate. I do not accept that that public debate has taken place and I do not accept the fact that only one lawyer appeared here representing Canadian Bankers Association means that there's wide acceptance of this. I accept the principle, and I think it's true, that most people do not believe that they can affect or touch government in any way, and it has nothing to do with the political stripe of the government, it has to do generally with the attitude of the individual and of the person who is affected by legislation who does not believe that there is an ability to affect what's happening and simply has to accept it.

It would seem to me that there is a need for an outreach on the part of government to all elements of the community with respect to particular bills. And I know that in many cases this argument will be presented, whether it be the Corporation Act or others, and the arguments will be that if we continue to do this we will have nothing but intersessional committee meetings dealing with bills that were not dealt with

(MR. SPIVAK cont'd) . . . because there had to be greater debate, but the reality is that this is a major change and probably has many worthwhile factors to it.

I suggest, Mr. Chairman, that I do not understand the full implications of this; I'm sure that most members do not understand the full implications of this. I believe that most members are relying on the capability of the Minister and the capacity of the people around him to produce something that is positive and worthwhile. And having said that, that's probably what happens in many cases. But I see the real necessity for a much wider ranging discussion and I believe the bill should pass the test of criticism among the very people that it's going to affect, not just the professionals who, in fact, advise these people and who have some professional understanding. I believe this is what should be undertaken and it would mean probably if that was followed that the bill would be presented several times during the next period of time and would be presented next year and would be a better bill.

I mention the fact that the Consumers Protection Act was done under this basis and I think that the Act that was produced was a far better Act than was first proposed and is working effectively. I do not propose this as a means of stalling or delay or not trying to achieve the objectives of the bill, I'm simply saying that it needs a much wider understanding by the people who are going to be affected and I believe there would be a contribution made as a result of that.

MR. TURNBULL: Well, Mr. Chairman, you know one could cite the different groups that have met with members of the committee that drafted this bill. I don't think that will convince Mr. Spivak but I have to say for the record after his speech that no other bill that I am aware of has had such public discussion and such exposure in conceptual terms and in wording terms as the words and the concepts that are embodied in Bill 37. It has been widely discussed in Canada for years.

MR. SPIVAK: Yes, Mr. Chairman, consumer protection was widely discussed in Canada as well and consumer protection went through the kinds of procedures that I suggested, and in fact I would suggest probably it was even more widely discussed, and there isn't necessary uniformity but what was produced - and if I'm correct, Mr. Snider can indicate that better than I can - in terms of the years, I believe that we're talking a four or five year period for the final Consumer Protection Bill that was introduced by this government and which has proved to be a very workable and a worthwhile bill in which there has been a substantial contribution of the industry involved. --(Interjection)-- Well, at the same time I'm not aware that it's not working and I have to go on the basis of what I believe is the case today, and certainly with a substantial input and substantial debate in this committee, you know, going over days not just an evening, which ultimately created and developed the bill. I think that kind of consideration should be given and I would like to make that point at this point. I do not believe that the bill should be proceeded to third reading and passed within the next 24 hours to 48 hours. I think that as laudable as the objectives of the bill are it would be a mistake. This has long-term implications for business and for small businesses in the province and I think that there are many sections that could be debated at length in the way in which we've debated the sections today, and I think that that consideration should be given.

MR. CHAIRMAN: Shall the Bill be reported? Bill be reported.

MR. SPIVAK: Well, Mr. Chairman, can I have a vote on that at this point?

MR. GREEN: . . . bill be reported, yes.

MR. CHAIRMAN: A recorded vote?

MR. GREEN: Well I think you could just take a hand vote of the committee.

A COUNTED VOTE was taken, the result being as follows:

Yeas 16; Nays 3.

MR. CHAIRMAN: Declare the Motion carried.

MR. GREEN: There is one bill, I don't know how long it will take us to deal with it but the Minister and the civil servants involved have been here two nights running hoping that it would be dealt with. I would be prepared to leave but if the Ministers would give that consideration to these people, I would appreciate it. It's the Human Rights Bill. It's not one that will go through just like pass, pass, pass, but with another 15 or 20 minutes I think we could pass that Bill and deal fairly with the people

(MR. GREEN cont'd) . . . . . who have been waiting for it.

MR. CHAIRMAN: Is that agreed? What Bill No. was that . . . 62.

BILL NO. 62 - AN ACT TO AMEND THE HUMAN RIGHTS ACT

MR. CHAIRMAN: The Human Rights Act. I believe there are some amendments. Are all the amendments distributed? Bill No. 62, An Act to Amend the Human Rights Act. Page 1--pass. Page 2, Mr. Walding.

MR. WALDING: Mr. Chairman, I move that proposed new subsection 4(3) as set out in section 4 of Bill 62 be struck out and the following subsection be substituted therefor:

Accommodation may be restricted on basis of sex.

4(3) Nothwithstanding subsections 1 and 2 occupancy of all the housing accommodation in a building, except that of the owner or his family may be restricted to individuals of the same sex.

MR. CHAIRMAN: The motion as moved. Is there any discussion? -- pass. Page 2 as amended--pass; Page 3. Mr. Walding.

MR. WALDING: I move THAT the proposed new subsection 7(2) of the Act as set out in section 11 of Bill 62 be amended

(a) by adding thereto immediately after the word "sex" in the 2nd line thereof, the words "family status", and

(b) by striking out the word "if" in the 3rd line thereof, and substituting therefor the word "of".

MR. CHAIRMAN: The amendment as moved. Mr. Axworthy. Mr. Pawley.

MR. PAWLEY: Andy, this is a technical change. I don't know the particular reason for . . .

MR. BALKARAN: One is a technical change, Mr. Chairman, but the first insertion the words "family status"...Sub (1) refers to family status and someone from Great West Life pointed out that to be consistent we should add family status in sub (2) as well.

MR. CHAIRMAN: The amendment as moved--pass.

Page 3 as amended--pass; Page 4, there's no amendment. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, coming back to one of the issues I raised in the second reading debate with the Minister was this question of information, and the right of the Executive Director, and there is a significant amendment here taking away . . . where previously information would be given on the consent of those who were involved, that power is now eliminated. The Minister indicated at that time he would look at that particular proposal. I wonder if he would be able now to - I notice he has made no amendment to it - give a more precise explanation as to why it stands as is.

MR. PAWLEY: Mr. Chairman, the present problem is that any publicity can only be given in connection with any particular violation if there is the consent obtained by the Executive Director or the Commission from the parties involved. Now it's not the wish of the Commission, of course, to widely publicize each and every case that they deal with, but there certainly are serious cases from time to time and serious violations which they're unable to ensure publicity of because of the restrictive provisions now in the legislation. So in fact, what is being proposed here is that there can be publicity given in the discretion of the Executive Director. This would be in an instance where there would be a serious breach or violation under the Human Rights Act.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: I would like to ask the Minister this: Considering the powers under the Act to obtain a variety of information about any individual on either side of the case, what kind of control, if you like, is there in terms of the discretionary powers of the Executive Director.

MR. PAWLEY: If I could just make it correct. I erred, I should have said the consent of the Commission, not of the Executive Director.

MR. AXWORTHY: Oh, I'm sorry. Okay. So it would have to be decided by the full Commission?

MR. PAWLEY: Yes

MR. AXWORTHY: Okay. The only other technical question, and perhaps legal counsel or the Minister, is that has this particular provision been checked against the Privacy Act to determine whether the use of the evidence or information thus acquired and distributed by the Commission or with the authorization of the Commission, would in fact constitute some abrogation of the Privacy Act that we have, the 1971 Privacy Act.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, this is a rather lethal weapon and I think we have to understand that; you know, it's ten to twelve and I know it's late but we've got to appreciate what this really means. On the other hand it may very well be that it's necessary for a lethal weapon to be in the hands of the Commission, and that I think is something we have to discuss, and it's really an important matter because as I understand it, the Commission now would be in a position as a result of this to communicate to the media a particular case, a particular situation and identify a particular individual or firm or group of people who have violated the Human Rights Act and in the course of identifying it would be basically attempting to create a deterrent either for similar groups or for the group or individual involved.

Now I think that that really is what we're talking about at this point, if I'm correct, and I think we should discuss that because I guess there is a need for some checks and balances on this because judgments are made here and judgments could be wrong and people could in fact suffer as a result of it, no matter how good the intentions of the people involved.

Now, again, I want to understand this correctly. Am I right in what I'm saying, in terms of the ability for the Commission to communicate, or as a result of this to communicate, to try to achieve the objectives that I've set forward.

MR. PAWLEY: Of course we're dealing with boards of adjudication, there is no limitation of course as to the publicity that can be given, so that we're dealing only with settled cases, settled cases at the present time under this provision. Now I'm informed that there is no other province in Canada, no other Commission that works under the same type of restriction as our existing Human Rights Act in this regard, that all the other commissions in Canada do have this provision by which it is possible for this type of information to be communicated publicly in regard to those cases that are settled or resolved by the Commission. I think the Commission feel that this can act as a very important deterrent and can very much be of assistance in respect to their work.

Now at the present time publicity is given to the resolving of cases but, of course, that publicity never includes reference to the names of the parties that are involved.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: But then we go back to the question at this point that an individual, group, a firm, can be named without having been prosecuted just on the basis of the investigation and the naming is intended to in effect be the deterrent because of whatever the judgment of the Commission may be. And there is difficulty in this . . . it's a question at this point of whether there is any kind of check and balance that one could put.

See, I'm not concerned, Mr. Chairman, and I know that this has been expressed sort of privately, I'm not really concerned about the fact that the Commission's work may not be known by the community. There is some concern that it's necessary for the Commission to indicate to the community that they in effect are doing their work and in effect are accomplishing the objectives, that they have in fact improved many situations. And I know that's been expressed to me privately. I'm not really concerned about that. I don't think it's necessary for additional publicity to occur to justify the Commission's work. I think there can be situations where it may be necessary to indicate person, firm, group of people, but at the same time you have to recognize the potency of that and the kind of publicity that could be attached and it can't be done either frivolously and it can't be done without, you know, clear objectives. And this is the problem, at this point it can be done under these sections, no check or balance.

MR. PAWLEY: Mr. Chairman, I think that the wrong emphasis is really being given by the Honourable Member for River Heights in connection with this section because the emphasis throughout is that no information will be divulged, the emphasis is upon confidentiality of material. There is the provision that there will be, from time to time the need for certain particulars to be divulged, but that information cannot be divulged except with the permission of the Commission itself. In other words, a staff member cannot

(MR. PAWLEY cont'd) . . . . . divulge any information, it's very restrictive insofar as preventing the use of information, the release of information, probably much more restrictive than any other board or commission of government even as it stands.

MR. SPIVAK: No, but it's for the purpose of administration and enforcement of the Act, not for the purpose of prosecution or for proceedings before a board, it's for the purpose of administration and enforcement of this Act. Administration of this Act is also the educational value of what the Commission does in indicating what the law is and trying to eliminate all those areas of discrimination; and the difficulty at this point is that even the fact that there may be agreement in the Commission, it is a lethal weapon to be used against someone with whom the Commission has had a number of complaints and is concerned and wants to in effect create the deterrent now without proceeding with the prosecutions, all they have to do is indicate it publicly, by press release. In the course of doing that you've got all the problems that are attendant to it, but along with it is, I think, a general desire, I think I'm correct in this, on the part of the Commission to publicize what it has done and in the course of doing it to indicate not just examples which do not have names attached to it, but cite names, and for that purpose I'm not prepared, you know, really, to agree with this, because I think that that is . . . I'm not concerned with the fact that they are not in a position to cite names, so long as they've cited the examples they have in their report, and I think the report is a good report in those situations, that I think . . . I'm not interested in knowing the companies, I'm just interested in knowing that the work has been undertaken in case (a) and case (b), case (c) and that they've investigated and the kind of determination is made, because those are really the achievement of the objectives of what the Commission was supposed to do. But I'm concerned that it not be used to make the work of the Commission easier, or because of a fit of anger that the Commission may have with an individual, group of people or firm as a result of certain situations without having proceeded the way in which it has to proceed here. And that's the problem at this point. I don't know whether check and balance could be in, they've placed them here but I think that has to be put on the record.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I had raised this issue before, that there's always a balance between protecting human rights but doing so at the danger of invading some civil liberties and I would say I don't agree with Mr. Spivak's point that you can deal with it in the abstract. I think there are times and instances where there's a definite pattern of infraction by a group of individuals or an organization of some kind then that should be publicly discussed, but I want to ensure that that isn't done as he says, and as I said previously, that the potential of abuse that that power has shouldn't be abused.

I seem to recall and perhaps your Executive Director could confirm this, but in the operation of the Human Rights Commission in the United States, when they are going to publicize a specific individual or organization or company, that one of their restraining steps before they do so is to notify that person, individual or organization, and if they so do want to come and present themselves to the Commission in order to argue against it so they would not be trapped in the kind of circumstance where let's say there's a hotshot young human rights officer who figures he's got say a slum landlord by the neck and he really wants to expose this guy and the evidence is there and the Commission looks at it, that it isn't just that one side of the case and the individual, if in fact is going to end up on the front pages of the newspaper, will have some forewarning of that and also ensure that he would be able to, before that takes place, express his point of view in the case or be given very, very, clear option of correcting those abuses before he finds himself sort of publicly hung. So to the degree that that weapon of public exposure should be a weapon of last resort we should not be giving that power in this Act to be used simply at the discretion of the Executive Director or giving advice to the Commission. I think the Commission is going to have to use that weapon with a great deal of care. I'm wondering whether we should not contemplate either writing it in or get the assurance of the Minister in terms of the operating procedures, that in fact it would be a weapon of last resort, but if there was going to be any divulgence of individual's names or details of those kind of cases that it would be done so with fair notice and with fair

(MR. AXWORTHY cont'd) . . . . . resort to the Commission to . . . the Commission would say you've got a chance to clean up your Act before we in fact bring you into public view.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: I want to ask just for clarification. I'm concerned, does this mean that if there is, say, just take an example of 16 cases, that in an annual report the 16 names could appear? What I'm concerned about is under the Human Rights Act if you have 16 cases and rather just call it 16 cases, dealing with, because I can't help but think that when I pick up the Law Society report, it has 78 complaints against lawyers, it doesn't list the lawyers. --(Interjection)-- Well very seldom.

MR. PAWLEY: Oh yes, sometimes, if you're dealing with a very serious disciplinary matter, then the lawyer's name is often referred to.

MR.WILSON: Well, I beg to differ with the Minister. However . . .

MR. PAWLEY: Well it is a fact.

MR. WILSON: Yes, all right, but what I'm saying is, could I just get an answer to the 16 cases. Would it be possible that in your Annual Report you would be listing the 16 cases, like say the Clean Environment Commission does or something?

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Well, Mr. Chairman, if I could just relate back for a moment to what the Honourable Member for Fort Rouge said. I certainly concur that this weapon, if one refers to it in that way, should only be used sparingly. It should only be used in the most serious of cases as a last resort, and again I want to underline that apparently in every province there is this provision that we're proposing. In fact we're the only province that has restricted the use under any circumstances of names.

In answer to the question by the Member for Wolseley, it would be possible for the Commission - again I emphasize the Commission and not staff members - for the Commission to disclose, but only in those cases that would be of a very serious nature, repetitive nature, where in fact I think it would be contrary to public policy that that information not be disclosed but be kept under cover.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: I can't share that, being someone that's in the community, I can't help but feel that the power of the press, that a press release could do to somebody. I think that if you have the right to prosecute, then certainly the determination through the court should be the way to get at this particular person. If you were dealing in true facts, there's nothing to stop politicians from making a public statement. It doesn't have to be mandatory in an Act. I would be more concerned about a power trip of a Human Rights officer who, as the Member for Fort Rouge had said . . .

MR.PAWLEY: The officer won't do that.

MR. WILSON: The Commission that had said it was possible if a person wasn't dealing with the Commission properly that that would be a weapon that they would have, and I can't quite share that because . . . I'm concerned, it is a matter of civil liberty and civil rights and I think that the business community should have some protection. This is too one-sided as it is.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, coming back to the Minister's statement, he indicated that - and which I was glad to hear - that it was going to be used sparingly but I wondered if he would be prepared to agree to the other points, and that is that if there was to be a decision by the Commission about public disclosure that those involved would be so forewarned and have some opportunity, that there be a proper interval of time before that took place so that they could either appear before the Commission to perhaps either indicate why not or certainly be given the opportunity to correct those injustices so that it would not be used, at least there would be a certain time gap before it would be used and that there would be proper forewarning.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Because of the very nature of the area that we're dealing with, in the settlement of cases it would be in those cases which have already been settled and resolved in which there would have been a reference to, so that in fact the individual would have been forewarned, notice would have been given leading up to the time of the resolution of the matter itself.

MR. AXWORTHY: Well perhaps the Minister didn't understand. I don't mean just a warning but that there would be an indication from the Commission that they do plan to make the case public and undertake a presentation of it and that they would then have option to respond to that.

MR. PAWLEY: I would certainly concur that any intention on the part of the Commission to publicize a case, certainly notice should be given to all individuals that are referred to or companies referred to in the release. And I would think, Mr. Motts, that that must be the practice in all the other provinces working under this provision at the present time.

MR. MOTTS: I don't know the answer to that but I suppose it could also be true.

MR. CHAIRMAN: Mr. Johnston.

MR. FRANK JOHNSTON: Well, Mr. Chairman, as the Commission has the authority to do all of these things and take people, put them on the carpet, take them to court, or anything they have to do to have the Human Rights Act be applied, isn't this sort of a by-line type of thing? You know we hear people every day say: "you better do what I say you're going to do or I'm going to phone the by-line and tell on you." Now why on earth, if the Human Rights Commission, and through legislation, can take authority to get things done, are you going to say: "Well, if you don't do it, I'm going to put your name in the paper." Now really I think that's taking it a step too far and I don't think it's a necessary step.

MR. PAWLEY: Mr. Chairman, I think totally, as I said earlier, the whole meaning of this really is being distorted. The intent is to protect the confidentiality of the Commission. That in fact that if there is no provision such as this, protecting confidentiality, there would be nothing to prevent a staff member from releasing information or the Executive Director from releasing information in a public way. This is an attempt to ensure confidentiality and to prevent any release of information except and unless in the most serious cases by the Commission itself and not by staff, including the Executive Director of the Commission.

MR. F. JOHNSTON: But if there's a serious case that's in the courts or something, I'm sure it will be released, the reporters will be there and do it.

MR. GREEN: . . . section, could it be released by anybody. (No mike)

MR. PAWLEY: Yes, it could be released by anyone.

MR. GREEN: . . . there is some control of some description. As the Act is now there is no control.

MR. F. JOHNSTON: Well I'd suggest there's control. If anybody released anything without the authority of the Director, I'd fire him.

MR. GREEN: Well, . . . afterwards too but it would be in the Act.

MR. PAWLEY: But then you're permitting the Executive Director to have that discretion.

(Inaudible)

MR. CHAIRMAN: Page 4--pass?

MR. PAWLEY: Mr. Mott would just like to . . . well okay.

MR. CHAIRMAN: Page 5. Mr. Walding.

MR. WALDING: Mr. Chairman, I move, THAT Section 16 of Bill 62 be struck out and the following section be substituted therefor:

Section 23 repealed and substituted.

16. Section 23 of the Act is repealed and the following section is substituted therefor:

Access to Premises and Documents.

23. For the purpose of carrying out the provisions of this Act and their regulations, the Executive Director, any person with the written authorization of the Executive Director or the Board of Adjudication (a) may at any reasonable time between the hours of nine o'clock in the morning and nine in the evening enter upon or into and view and inspect any land, residence, premises, building, works or property where there are reasonable and probable grounds to believe that a view thereof will assist the investigation of a complaint; or (b) may require the product of and examination of any documents, records, writings, papers, employment applications, payrolls or copies thereof in the

(MR. WALDING cont'd) . . . . . possession of any person where there are reasonable and probable grounds to believe that such production or examination, any documents, records, writings, papers, employment applications, payrolls or copies thereof will assist in the investigation of a complaint; or (c) may obtain information from or take extracts from or make copies of any of the items referred to in clause (b) or (d) may do any one or more of the things mentioned in clauses (a), (b) and (c).

MR. CHAIRMAN: Just a moment before we proceed here. There's a couple of typographical errors here that have to be corrected. In clause (b) the word "product" should be "production" and in the 5th line after the word "examination" insert the word "of".

Now, Mr. Pawley.

MR. PAWLEY: Mr. Chairman, I'd just like to make two points. Under the present Human Rights Act, under Section 22 of that Act, the Commission and any Board of Adjudication appointed under the Act may determine the procedure. Each member of the Board of Adjudication has all the powers under Part V of the Manitoba Evidence Act. The Manitoba Evidence Act in fact does give very wide powers in this respect which reads: "enter upon or into and view or inspect any land, building, works or property, if in their opinion a view thereof will assist in the enquiry and the view may be had if deemed necessary to the enquiry at any time by day or by night."

And Section 23 of the existing Act is also very broad so that in fact under the proposed Section 23, and this is a change too from the amendment that was proposed because there was considerable concern expressed during second reading on this point by both the Member for River Heights and the Member for Fort Rouge. We've inserted hours, between the hours of nine o'clock in the morning and nine o'clock in the evening, which is certainly narrowing it down from the earlier provisions not only in the existing code but also in the amendments first submitted.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I have one question. I think in part this satisfies the concerns I had but again I assume that under these powers then that the owner of the premises that would be so entered, would also be notified of this at some point in the proceedings, either immediately prior to or right after, so in other words, it's not a matter of just a pull, search and seizure, but it is a matter of giving some notice. Is it?

MR. PAWLEY: Yes, there's no seizure. There's only the taking of copies.

MR. CHAIRMAN: Mr. Mott.

MR. MOTT: One of the main reasons for this is we have had powers to investigate in business premises up to this point, but we have had very little power to investigate in housing complaints. And it may be necessary sometimes to get the proper evidence that you might some time in the future have to take to a court of law to actually view the premises of a residence in a housing complaint. This is one of the main reasons for this amendment.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, in particular in a situation where a residence is going to be entered, to what degree is there any notice given to the occupants that this is going to be the case? Do you show up at the door and say, we're coming in, or is there some basic procedure that one would follow, because the way I would read even the amendment, you could basically, any time between the hours of nine and nine, gain access to any place that one would want to, and again that again strikes me as an invasion of privacy.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: Of course there is no procedure outlined in the Act itself but the Commission certainly follows a procedure of making appointments and arranging for times to appear at business premises, etc., at the present time.

MR. AXWORTHY: If I could just clarify that point, Mr. Chairman. It means that when appointments are made should we understand it to mean that there is no entrée or access unless there has been a prearranged time and date and that the occupant or owner is there at the same time? Or does the Director or the Minister see circumstances where an officer of the Commission in pursuing a case could show up at eight o'clock at night and there's no one there and gain access say through a caretaker or something and go inside the premises or is it . . .

MR. CHAIRMAN: Order please. I wonder if we could just have a brief recess while the recorder gets another master tape on. It's not going to be recorded so you just might as well keep quiet.

Okay we are ready to proceed gentlemen, we have the recording equipment back in order. Mr. Axworthy.

MR. AXWORTHY: I was wondering if the Minister is able to answer that particular mode of procedure.

MR. CHAIRMAN: Mr. Pawley.

MR. PAWLEY: I would like to just point out that the words in the post-amendment are "may at any reasonable time between the hours of nine o'clock in the morning and nine o'clock in the evening." The words "at any reasonable time" have been added. Those words don't appear in the existing section insofar as business premises. So that in itself indicates, and I'm advised by the Legislative Counsel to this effect, that if for instance there was an attendance at nine o'clock in the morning and the landlord, say, indicated, no this is not the time that is convenient to me, a reasonable time. Then in fact other arrangements would have to be made with the landlord for attendance at another time that would be considered reasonable on the part of the landlord.

And also there is another provision I would like to just add, that the existing Section 23 (a) (b) and (c) made, in each case, and, and, and, and in fact all three items to be done in a conjunctive fashion. Under the proposed amendment it's not a conjunctive type of operation.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, several years ago in this committee we went through what was referred to as a number of "snooper clauses." They were introduced at that time in connection with The Consumer Protection Act, The Brokers Act, The Investigation Act - if I'm correct - and the basic basis at the time was in effect the request by an administrative body for an administrator to have the same powers. And it was argued then that in most cases people will accommodate in an investigation but if it reaches a point where they're not, there should be the ability at least for some check and balance on that authority by requesting that the person involved, whether it be the Director or whoever, apply to the court for permission to be able to enter and for the purpose of taking documentation.

Now the principle involved was that it would remove any possibility of a frivolous action on the part of an officer in the course of the investigation, demanding documentation or demanding entry when it was refused, and simply said, I have the right and then proceeded. You know, I've got the particular sections. I asked Mr. Tallin to look that up and he's given me a couple of them and I could refer you to them, and I suggest that although I recognize that there are some problems in this and I have some idea of the . . . Commission in respect to the problems that are involved, I would still think that in principle we should agree that snooper clauses generally should be controlled, that there should be the right of access in an investigation and if that access is refused, or in fact documentation is not presented, then the complaint is of a nature that the person involved or the officer feels that there is a requirement, he should have at least have the obligation to go to the court and request that that be done. In doing this we have some check and a balance on an abuse of power, and it is as much to protect the individual's rights, and I know that it may in some cases impede, but I doubt in very many cases it will, the actual administration. And I'd be interested in knowing whether the Consumer Protection Act has really had difficulty as a result of our including these sections, or whether in terms of personal investigation we've had difficulty as a result of it.

MR. PAWLEY: Mr. Chairman, I can't speak in connection with the Consumer Protection Act, but I do know that the Commission has received no complaints as to its abusing the present Section 23 of the Human Rights Act, nor have any complaints ever come to my attention that the Commission has abused that section. Now, my concern about making it a prerequisite that each and every time copies of documents are required, or an attendance must be undertaken at a place of residence, that an application would have to be to the courts. I'm afraid that that would be tying down the Commission, and in a very extensive way.

MR. SPIVAK: It's where we're talking about where there's refusal, and the right should exist - I'm not suggesting that the right shouldn't exist - but if in effect there's a refusal, then in effect the application would have to go to court, and I would think in those cases if the authority would be granted, if there's any basis for the complaint, because obviously a determination cannot be made unless the information is known. As an example, let me cite what was referred to me: If someone says, or someone makes a complaint that I wanted to rent a two bedroom apartment and the Commission has no way or the officer has no way of knowing whether it's a two bedroom or a one bedroom or three bedroom. All he has is the representation of the complainant and he tries to attend and the owner or the person in charge says, you cannot go into the premises; I will not allow you to see the apartment, the legitimacy of that complaint can't be satisfied unless the person does make application, and unless the person gets authority, and I don't see that the court would in any way object. Obviously it might have to be dealt with, and you obviously have to view the premises to know that it was a two bedroom apartment. And in those situations, there would be some difficulty, but there is a check and balance on an abuse of power. And that's what we have to be concerned of as well.

MR. CHAIRMAN: Any further discussion on the motion? We're not going to continue infinitum. Either we're going to vote or we're going to do something or the other. We can't just sit here all evening.

MR. SPIVAK: I would have hoped that there would have been some response from the Minister, and I don't expect --(Interjection)-- Well then, I ask him, why he's changing the Act, if in fact he has the powers now, why are you changing the Act?

MR. PAWLEY: Well, as I indicated

(1) the present power does not include the ability to deal with housing investigations. It does permit the dealing with business premises. So it's extended to that extent.

(2) the present provision deals without any limitations, day or night, to the business premises, and the amendment which we have before us we're dealing between the hour of 9:00 in the morning and 9:00 in the evening, so that we are in fact here restricting the hours; and we're also adding the words at any reasonable time, which is not included in the present provisions.

I'm very very very concerned about narrowing down the present scope, because I have not received complaints of any abuse on the part of the Commission, that even though where there has been a refusal, they have been able to properly handle the matter without having to resort to a court application, and as I indicated before they have the powers under the Evidence Act, presently. They have the powers under Section 23 of the Human Rights Act. In fact I think that I would sooner just leave Section 23 as it is, rather than, frankly, accept the proposal of the Honourable Member for River Heights, that in event of a refusal, application to the court.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, not having the Administrative Practices Act in the province - and that's one of the difficulties here, because I think what we have to try and agree on is some uniformity of investigation and adjudication, and the uniformity of investigation is to give those who are in fact investigating matters, whether they be in Consumer Protection or whether with respect to any other matter, or with respect to the Human Rights Commission, authority to do the things that are required with respect to complaints that are mentioned. No one's quarreling with that, but if in fact there is a refusal on the part of someone with whom a complaint has been made, or to whom a complaint is made, then there should be without question the ability to be able to proceed as necessary, but with some authority from the courts, so that in effect there is a protection. It would seem to me that if you have had no difficulty, then the likelihood of having to go to court would be remote, but that protection should be there and the court will without question give authority if the procedures have been followed and the complaint is based on . . . and the supporting affidavits allow it. I would think that that check and balance is necessary, and it applies to the Human Rights Commission as it implies to any other branch of government. Co-operation exists, it will always exist, there will be times when you'll have someone who will be stubborn, there will be times

(MR. SPIVAK cont'd) . . . . . when there will be a need for the direct action, and you should be able to take it - I'm not in any way suggesting that you shouldn't have that authority, but there should be some check and balance on that.

MR. CHAIRMAN: The question of the motion. All those in favour? Pass. Page 5 as amended--pass; Page 6. Mr. Walding.

MR. WALDING: Mr. Chairman, I move

THAT new subsection 29(1) of the Act as set out in Section 19 of Bill 62 be amended by striking out the figures and letter "28(b)" in the 2nd line thereof and substituting therefor the figures and letters "28(2)(b)".

MR. CHAIRMAN: The section as amended--pass. Mr. Walding.

MR. WALDING: I move, THAT Bill 62 be amended

(a) by adding thereto, immediately after Section 23 thereof, the following section:

Section 36 repealed and substituted.

24 Section 36 of the Act is repealed and the following section is substituted therefor:

Transitional provision.

36 Where prior coming into force of the amendments set out in this Act any matter, application, proceeding, investigation or hearing was commenced, that matter, application, proceeding, investigation or hearing shall be continued and completed in accordance with the provisions of the Human Rights Act, being Chapter H175 of the revised statutes as it stood prior to the coming into force of this Act; and (b) by renumbering Section 24 of the Bill as Section 25 thereof.

MR. CHAIRMAN: The motion as moved--pass; Preamble--pass; Title--pass. Bill be reported. Agreed. Committee rise.