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Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

PRIVATE BILLS

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

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Time — 2:00 p.m.

CHAIRMAN — Mr. Jim Galbraith (Dauphin).

MR. CHAIRMAN: We're dealing with the preliminary run of Bills 65, 66 and 87. We have advanced to Part VII, Appeals. 38(1), agreed — Mr. Cherniack.

BILL NO. 65
THE REGISTERED NURSES ACT

MR. SAUL CHERNIACK: Mr. Chairman, you're ready to go to 38(1). Might I ask leave of you, Mr. Chairman, just to mention that last night at the time we concluded our meeting, I learned of a letter from Ray Taylor which was submitted in lieu of his being able to be present. I read that this morning. It's, to me, a very important statement which I expect will come back to us but 37(2) which is just before you, just before we caught our breath last night, I'd like to be able to refer to one point raised by Mr. Taylor in relation to 37(2), if I may.

MR. CHAIRMAN: Is the committee agreed? (Agreed) Mr. Cherniack.

MR. CHERNIACK: Thank you, Mr.Chairman. The only point that he made, in I think it's his postcript to the letter, was that there ought to be written reasons when there are decisions adverse to any individual and 37(2) might be the place where we would insert something like that, if it were agreeable.

Now, having said that, I don't know if the Minister wants to deal with that or just set it aside, and instruct that when we come back to it . . . I would really like Mr. Balkaran to consider where in the bill, maybe not necessarily 37(2) but somewhere, we could insert a provision that when there are decisions made adverse to any individual that there shall be written reasons for those decisions. I wonder if we could ask that be prepared and discuss it in due course.

MR. CHAIRMAN: Is the committee agreed that be considered?

Mr.Sherman.

HON. L.R. (Bud) SHERMAN: It can certainly be considered, Mr. Chairman. I agree with the reference to Mr. Taylor's letter and, as the committee will recall, I made mention of it Wednesday night when Mr. Taylor had intended to be here but couldn't be here to make his verbal presentation. The whole content, I might say, the whole subject matter of Mr. Taylor's letter is under consideration.

MR. CHAIRMAN: Mr. Adam.

MR. A.R. (Pete) ADAM: I wonder if we could have an explanation of when a complaint is made against a member, is there is any provision where a member could have access to the file on that particular person?

MR. CHAIRMAN: Mr. Sinclair.

MR. MICHAEL SINCLAIR: I'm sorry, could have access to the . . .

MR. ADAM: For the information, I'd presume that there would be a file over the years on pretty well everybody . . .

MR. SINCLAIR: Mr. Chairman, if I understand the question, it's where a complaint is made, can the person whose conduct is complained of have the documents that relate to that complaint? I think that's a matter that Mr. Cherniack raised last night and we agreed that provision would be put into the bill.

MR. ADAM: I think the question last night was that the documents, the solicitor or a counsel for any member could have access, which I suppose would be just as good?

MR. SINCLAIR: Thank you, Mr. Chairman. I think the section reads "the person or his counsel" would have the right to.

MR. CHAIRMAN: We'll return to Appeals, 38(1) (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm wondering as to the reason why there's a limitation of 15 days for an appeal. I can understand a limitation because you don't want to have to wait a year or two and suddenly hear that there is an appeal being launched, but it seems to me that 15 days is not very long for a person to consider, review, consult, maybe even try to review a transcript and then make a decision. I would suggest that I see no reason that this shouldn't be a longer period than 15 days within which Notice of Appeal should be filed. I'm wondering if 30 days or 45 days or something like that, I think is reasonable.

MR. SINCLAIR: I would have no objection to 30 days as the notice period and, Mr. Chairman, having attention brought to that particular section, I note that there's some words in the last line that should be struck out. It should read "from the date of the order".

MR. CHERNIACK: Is that agreeable, Mr. Chairman, 30 days instead of the 15?

MR. SINCLAIR: That is agreeable to the association, Mr. Chairman.

MR. CHAIRMAN: 38(1) (Agreed); 38(2) (Agreed); 39(1) (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the same point. It deals with what has to be filed on the appeal and that should include reasons for the decision.

MR. CHAIRMAN: 39(1) (Agreed); 39(2) (Agreed); 40(1) (Agreed); 40(2) (Agreed); 40(3) (Agreed); 40(4) (Agreed); 40(5) (Agreed); 41(1) (Agreed); 41(2) (Agreed); 41(3) (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on 41(3) it's the same wording as 34(3) and there I think there has been agreement that there should be a stipulation that the solicitor may not have been involved in the investigation or prosecution of the hearing. I assume that it will just be the same, matching what will be done to 34 (3).

MR. CHAIRMAN: 41(3) (Agreed); 41(4) (Agreed); 41(5) (Agreed); 41(6) agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I raised the question yesterday as to costs and I'm just concerned again, as I was yesterday, it says, the board may make an award as it considers appropriate. I wonder if we couldn't ask Mr. Sinclair to consider and to spell out what would be an occasion of the appropriateness of a charge; whether we couldn't in some way be a little more descriptive of what is the justification for a cost being layed against the person who is being complained against. For example, if you have to hire a detective or if you have to hire an accountant, I can understand that. On the other hand, if time of members of the board, or of the office of the officials of the board is taken, I would not think that that would be a justifiable charge. I'm speaking just off the cuff and I'm not sure just what other implications there might be, but I'm wondering if we could ask at this stage, not exactly for clarification but for a subsequent descriptive few words that could possibly limit or spell out the occasions under which it would be appropriate.

MR. SINCLAIR: Mr. Chairman, the intention of the section is not to provide costs to compensate the people on the discipline committee or the board of directors, the intention is to cover costs which the association is put to out of pocket. You may be aware that these discipline proceedings are much like a trial, and in order to protect the person whose conduct is complained of, it is the practice of this association and of all other associations of which I am aware to retain one counsel to prosecute the claim, and there accordingly is a cost of that prosecution, and a second counsel to advise the disicipline committee or the board. So those are two very real costs that an association suffers as a result of discipline proceedings. And it is that type of cost that is sought to be compensated in an appropriate case, which I could only say would be left to the discretion of the board or the discipline committee in each case.

MR. CHERNIACK: Mr. Chairman, that's exactly what I had in mind; I appreciate the way Mr. Sinclair, spelled it out. He related it to a trial, a court trial, and that is a point which I would like to make.

The Society of Manitoba and of Canada, considers that under certain circumstances a person's life liberty will be put at jeopardy and there will be a hearing to consider whether or not there is an appropriate discipline which is required in society. Society pays for that cost. Society pays for the prosecution; it pays for the judge; it pays for the room in which it is being held. It even pays for the reporter who takes down the evidence, and I think it's only right, because you are involved in a pretty important proceeding and it is for the protection of society that this is being done.

I think that there is a comparable situation where the society of 8,000 RN's should be very much concerned to make sure that everything is done correctly, which means not only hiring a prosecutor — and I don't really think that should be the burden on the defendant, if I could call that person that — it also includes the hiring of experts to advise the board or the complaints committee; I think that's very real and logical but I don't that that should be the cost imposed on the person complained against. After all, the board in its wisdom — and I credit it with that — decides to have someone paid to sit there and give them advice on I suppose the nature of evidence; the rules of evidence; whether they have formal rules or those of natural justice; the fairness of it all. I really think that much of this type of cost should be the burden of the society and that society should not be freed of that cost.

Now I do say, as I said earlier, I could understand certain investigational aspects, the hiring of an accountant to check books, the hiring of a private detective if necessary, the hiring of a lawyer to prepare a special brief to the investigating chairman to decide whether or not there should be a charge laid; certain of these aspects I quite recognize should be the charge to the person complained against, but the strongest example, the most extreme, is a person hired by the board to advise it on how to conduct its hearings. Seems to me that should not be weighed on that other person.

That's why I think — yet I don't want to make a decision in advance — I agree that there shall be discretion but I would like to make sure that it is done in such a way that the nature of the costs — not the principle of all costs but the nature of the costs — should be a matter that should be reviewed and justified by the board, not just to use it as it considers appropriate but there should be justification, then each of the natures should be appealable. And I think we agreed that the court should have the right and may have the right in this bill to spell out the costs, but when we come to 42 (2) the question has already occurred — I think Mr. Filmon discussed whether or not that really covers the right of the court to review the extent of the judgment for costs. We were going to come to it again later on, but I'm just talking about 41(6).

MR. CHAIRMAN: 41(6), Mr. Adam. 41 (6) agreed? Mr. Cherniack.

MR. CHERNIACK: No, I don't know what we agreed on, Mr. Chairman. I posed an argument and I've not heard a response. I don't know whether we're agreed that I'm right or wrong.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I have no conclusion to offer on the argument that Mr. Cherniack has advanced. I would defer to the complementary argument of the MARN and the counsel for the MARN may need some time to take that under consideration, in which case we certainly can categorize this clause as one that we will come back to. But by the same token, Mr. Sinclair may have a conclusion that he'd like to put to the committee right now.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Thank you, Mr. Chairman. I think that we have a difference of philosophical approach again. Mr. Cherniack would lay the cost of an individual's wrongdoing on the society of which that individual is a member. It would be my position that the individual should bear the costs of his actions and I would like the section to remain in the form in which it is presently written.

MR. CHAIRMAN: 41(6) agreed to disagree. Mr. Adam.

MR. ADAM: Yes. I'm looking at two bills and now we're in 41(6), but I wanted to talk about 41(2) and it's 42(2) in this Bill 66, so I guess I got thrown off the track, but I think it was agreed, Mr. Cherniack brought this matter up in regard to anyone who was involved in investigation or discipline, would not have a right to vote. Did we agree on that? — because those two sections are different.

MR. CHERNIACK: Which ones?

MR. ADAM: 42(2) and 41(2).

MR. CHERNIACK: 42(2) in which?

MR. ADAM: 42(2) is in Bill 66. In 65 a member of a discipline committee would not have the right to vote, could not participate. But in the other act, the complaints committee would also be excluded.

MR. SINCLAIR: Mr. Chairman, I would agree that the members of the complaints committee should also be excluded.

MR. CHERNIACK: Under 41(2)?

MR. SINCLAIR: Under 41(2).

MR. CHAIRMAN: Now we're back to 41(6) — Mr. Balkaran.

MR. BALKARAN: I'm not so sure I got that, Mr. Chairman.

MR. CHAIRMAN: Okay, could Mr. Sinclair repeat.

MR. SINCLAIR: Under Section 41(2) of Bill 65, it reads, the investigating chairman and any board member who was a member of the discipline committee, can't participate in appeal. There should be added to that a reference to members of the complaints committee, so that the investigation chairman and any member of the complaints committee and any board member.

MR. BALKARAN: Discipline committee . . .

MR. SINCLAIR: Its an addition of the reference to members of the complaints committee.

MR. SHERMAN: Discipline committee, or the complaints committee.

MR. CHAIRMAN: Can we get back to 41(6) agreed to disagree? Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, 41(6), the argument that Mr. Cherniack makes on 41(6) would have to be made with respect to all three bills that are in front of us, 65, 66, and 87, all three of which have been drawn in the same form, and on the advice of different legal counsels, so there are at least three legal opinions that have produced 41(6) in the wording in which it appears in the bill. That being the case, I would have to say that I do not consider 41(6) as a clause that needs reconsideration by the committee. Certainly when we come to clause-by-clause, members of the committee are entitled, obviously, to vote any way they want on that section.

MR. CHERNIACK: Mr. Chairman, I accept the Minister's decision as being his decision. I must point out that all three lawyers at least, who were involved in drafting three bills, were all being paid to do a job on behalf of their specific vested interest professional society, and therefore in recognition of their responsibilities to their clients, it would be perfectly legitimate for them to approve of the wording of 41(6). But going beyond that, Mr. Sinclair did make a distinction from my argument based on philosophy, and that is arguable and will be argued — not now, of course, because we agreed that we're not making final decisions. So I hope Mr. Sherman may yet keep an open mind, may yet change his mind, but I would want to ask Mr. Balkaran if he would consider, on my behalf, a possible amendment that would in some way delineate or clarify the extent to which the board can make an award, and then we can deal with it at a later time.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I'm not trying to pre-empt Mr. Balkaran and I'm sure that Mr. Balkaran will consider such on Mr. Cherniack's request, but I'm just advised by my officials that the provision in 41(6), as it appears before us, is part of every professional Act in Canada. Its counterpart can be found in civil proceedings in the civil courts. I just note that for the record but I'm sure that Mr. Balkaran will entertain Mr. Cherniack's personal request.

MR. CHERNIACK: Mr. Chairman, that's fine. I just want to point out that it does not pertain in the civil courts to the extent of paying the judge's salary, paying all the costs involved in the hearing itself. Civil courts only recognize payment of costs normally on a party and party basis, which is quite limited and does not take in the whole cost, number one. Number two, these in my mind are not civil

proceedings. These are criminal proceedings because they always end up on a plea of guilty and Mr. Sinclair used the word like — I forget which it was, but it was the fault of the person complained against. It is quasi-criminal in my opinion, therefore there is a distinction. However, we'll deal with that in more specifics when we get to it.

MR. SHERMAN: Further to that point, Mr. Chairman, I would suggest that, in the case of the civil courts, most of the costs of the court are paid by the taxpayer, are borne by the taxpayer, that's correct, and here we're talking about a professional association; that the civil courts don't have to concern themselves with where the costs of those actions come from because they come from the taxpayer.

MR. CHERNIACK: This is a fine conversation. It is true, I made the point earlier that this deals with 8,000 members who are collectively disciplining their own group, regulating their own group and, as such, I think that much of the cost should be borne by the entire body, just like the taxpayer pays the cost of maintaining a system of justice properly. The only difference here is that when it's an offence charged in court — and some of these matters would go to court — the general taxpayer will then be paying and should be paying because it would be a criminal charge. But when it is the proceeding within the organization against one of its members, there are certain things, and the best example that came to mind was the one given by Mr. Sinclair where the board employs a lawyer to sit with it and advise it on procedures and on how best to handle such a matter. I think that's a justifiable expense payable by the association, not by the person against whom they are making the charge. I see these distinctions, Mr. Chairman, but as I say, we'll have another opportunity to go at it.

MR. CHAIRMAN: 41(6) (Agreed); 42 (1) agreed — Mr. Adam.

MR. ADAM: Yes, I think 42 (1), the intent of this section would be similar to 43(1) in Bill 66 and they seem to be quite different in the wording. One either is cumbersome or the other one doesn't go far enough, I'm not sure of the wording. Perhaps my colleague could look at it to see.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, to Mr. Adam. I think he's looking at 66 and that is one where we've already discussed the fact that that is inadequate because in the RPNs they're only dealing with the right to appeal on a discipline but not on other matters such as educational qualifications or registration. I think probably we may come back to the RPNs bringing back this, what we're now looking at as 42 (1) in Bill 65, and suggest that it be put into The RPN Act as being broader and therefore greater power to the Court of Appeal.

MR. CHAIRMAN: 42 (1)— agreed; 42 (2)— agreed. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, again I have the recollection but it's vague because we spent a lot of time on this, some of it fairly late at night.

I think Mr. Filmon himself raised or agreed to consider the question as to whether 42 (2) gives the appeal judge sufficient power to vary, or make his own decision, as to the costs awarded under 41 (6) by the board. The wording of 42 (2) appears to me to be limited to the costs of appeal, and I think we just want to make sure that the court does have the right to review the award of the costs made by the board under 41 (6).

MR. CHAIRMAN: 42 (2) agreed.

MR. CHERNIACK: What have we agreed, Mr. Chairman?

MR. CHAIRMAN: Nobody said anything against . . .

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, obviously many of the points that Mr. Cherniack is raising are legal in nature and somewhat technical and there's absolutely nothing wrong with that, it's perfectly valid, but we would have to rely on Legislative Counsel for consideration of some of the points that he raises and I think they can't all be answered immediately.

I'm sure that Legislative Counsel is making note of the points that Mr. Cherniack is raising of this nature. Mr. Balkaran may want to respond at this juncture.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I believe what is raised here goes beyond something that Legislative Counsel could unilaterally correct. It requires direction from this committee to me because there's a matter of principle or policy involved here as to whether or not the cost of an appeal before the board is a matter that can be reviewed by the court, a judgment on appeal, and either reduce, increase or vary, modify that cost.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: That is the point. I think that we have to instruct Legislative Counsel what we wish him to do, and in this particular case, if it is agreed that the point I made has validity, then the committee I think should instruct Mr. Balkaran to prepare such an amendment to take care of the omission that I think exists.

If, however, the committee is not prepared to instruct Mr. Balkaran, then I would have to ask him to do it for me. But I don't think that just by raising it that we can expect of Mr. Balkaran, that he will just proceed to prepare a change based on his decision whether or not I'm right and we have to protect his objectivity.

MR. CHAIRMAN: Mr. Cherniack, maybe I used the wrong word. You made a suggestion. Maybe I should have used the word "considered" in that case. Mr. Sherman.

MR. SHERMAN: Just following up on Mr. Cherniack's point. That's absolutely correct but what I need from Legislative Counsel is Legislative Counsel' opinion as to whether Mr. Cherniack's point does have validity and whether there is the omission that Mr. Cherniack suggests.

Legislative Counsel has now indicated that he believes that to be the case and therefore we will take it under advisement in order to correct it.

MR. CHERNIACK: Fine, that's clear.

MR. CHAIRMAN: 42 (2) to be considered as proposed agreed; 42 (3)— agreed; 42 (4)— agreed; 42 (5)— agreed. Mr. Cherniack.

MR. CHERNIACK: I really didn't need the RPN bill to remind me of the fact that there's no reference here as to whether or not it shall be a trial de novo as is stated in 43 (3) of 66, but I'd like to know whether there's any objection to the thought that the court will hold a trial de novo rather than a review of proceedings before the board. If there are no objections then I believe there ought to be a provision, as in the RPN bill, that it shall be a trial de novo. So we're dealing with an important policy of matter.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, what is contemplated by this Act is that the record of the proceedings before the association should be reviewed, provided that such a record is available, and that the court would proceed on that record and accordingly that there wouldn't be a trial de novo.

MR. CHERNIACK: There would?

MR. SINCLAIR: There would not be a trial de novo.

MR. CHERNIACK: What section?

MR. SINCLAIR: Subsection (4) of Section 42.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Now we're into a very very important point. The RPN bill provides that there shall be a new hearing before a regular court which will review all evidence available at the time, personally view and hear the evidences given and arrive at its own conclusion as to the forthrightness with which witnesses respond and as to the nature of examination. Remember, Mr. Chairman, that Mr. Sinclair was rather concerned that the board should not be bound by the Rules of Evidence of the Court of Queen's Bench and I understand why he said, well, natural justice would prevail. But what he is now suggesting is not that the court will have an opportunity for a complete re-trial of the issues, like the RPNs were suggesting, but rather that the court will receive a bunch of documents and, reading the documents, may come to a conclusion that the decision was wrong, based on the evidence that was given on that occasion, or whether there was an infraction of the concept of natural justice in that there wasn't sufficient or adequate opportunity given to the defendant to present or to have the case reviewed.

It is a very important principle and I think that here we have an association which wishes to conduct its hearings in camera, and I have already expressed my view on that, and so far, in the absence of other members, just the board itself, hearing a complaint, not being bound by the Rules of Evidence, as they are known in the court, arriving at a conclusion, and what Mr. Sinclair is saying, all the court will have a right to do is to bring in the documents and the transcript and look at it. Now that's, I think, Mr. Chairman, a very drastic reduction of the rights and powers of the court itself. And I thought it would be an automatic response, I honestly did, to say well we'd better put that into the bill, since it doesn't specifically say that. But since Mr. Sinclair rejects it, I am inclined to suggest to the Minister that this be a matter that should be taken under advisement and considered with, let us say, Legislative Counsel or the Attorney-General, himself, or something that deals with the whole concept of what is the proper way to review hearings. Because this means to me, and we said this when we were talking about open hearings of the board, that when it goes to appeal then all confidentiality disappears and it becomes open. Well it really doesn't become open if all the court does is review what went on elsewhere, and I consider it very important. As a matter of fact, that's one of my criticisms of the Law Society Act, which has a similar provision, I believe, except that the appeal goes to the Court of Appeal, and the only acceptance of that, by a member of the Law Society that is speaking at the moment, is that lawyers are trained to know the Rules of Evidence and I think can't get away with much oversight that might occur if they were not so trained.

I can conceive the board meets or the discipline committee meets and has a lawyer, whom they've hired to advise them, now his objectivity is one where he has a duty to his clients; that is the board that hired him. They hold hearings, there is a transcript and the board comes to the conclusion. The Appeal Court does not have that kind of opportunity to listen to witnesses, one of whom may be lying, and to determine which of the two appears to be lying; the court doesn't have that opportunity.

So I really think, Mr. Chairman, that we are now on a very basic issue and I'm prepared to discuss it at the moment or defer it, but not let it go.

MR. SINCLAIR: Mr. Chairman, the court would act in the manner of an Appeal Court, under the legislation that is before you. There would be one hearing. That hearing would be before the discipline committee, and there would be a review by the court of that hearing. If the court concluded that a person had not been properly treated by the discipline committee, had not been allowed evidence which they should have been able to present, then the court has the power, as Mr. Cherniack indicated, under the rules of natural justice, to deal with the matter. But if the hearing was a full, fair, frank hearing where the party had every opportunity to present his or her case, then there shouldn't be the necessity of a second hearing, to go over the same ground again, and that is the manner in which this legislation has been drafted and I assume that since

this is a bill which is drawn on the basis of it being uniform, that the legal officers of the government have considered and decided upon this format.

MR. BALKARAN: Mr. Chairman, I don't think that that last statement by Mr. Sinclair is correct. I think in the final analysis the format was that of the association which I had to accept. I was in no position to argue or quarrel with them. I might add that so far as 42(4) of the RN bill is concerned, I've got some difficulty, too. Because if the evidence is not reduced to writing or transcript cannot be obtained, in my opinion it seems that the court is limited in what it could consider in considering the appeal. When you don't have that type of a transcript, then it would appear to me that the court does not really have the evidence that was adduced by all the parties. And so, in that situation, it seems to me that a trial de novo is warranted.

MR. SINCLAIR: Mr. Chairman, I believe that section goes on to provide for that situation by saying that if such material isn't available, they can order a new hearing. That's what the section says.

MR. CHERNIACK: Mr. Chairman, the courts under 42(4) might say, boy, this is not really enough evidence as presented to us. What does it then do? It doesn't hold a hearing, it sends it back to the same committee that did the inadequate — when I say inadequate, well the inadequate documentation — and says do it again.

Mr. Chairman, the principles of justice in our system are that there is an open hearing somewhere, be it in the Magistrate's Court, be it in the Queen's Bench. There is a hearing, open, public, everybody has a right to attend, except in very exceptional circumstances, and then a Court of Appeal reviews what went on before, knowing that there was a judge sitting there, a judge trained to hear evidence, to sift through evidence, and then that court can reverse the decision, affirm the decision, vary the decision or order a new trial. But what is presented to us here is no opportunity, ever, for there to be an open hearing and that, to me, is completely in contrast with our whole system of justice.

MR. SINCLAIR: Well there are two points, Mr. Chairman, that Mr. Cherniack raises. One, is concerning the openness of the hearing and that I think is a separate issue from that which we're discussing right now. The court obviously is reviewing what took place and there is a review that protects all the parties of the nature of that hearing.

But the real issue that we are talking about now is the nature of the committee that hears the proceeding. Mr. Cherniack is saying, I think, that a judge should hear and make the decision. That is not what is proposed by this legislation, that is not what is intended by this Act or any of the other professional Acts that are presently in force as far as I know. The nature of a discipline hearing by an association is that it is directed to a particular body of knowledge, that the members of the discipline committee who are appointed by an association are taken to have their own specific knowledge of their own profession, and that those persons are the best persons and the only persons to determine whether the person whose conduct is complained has met the standards and that we should not be putting a judge who does not have that specific knowledge, education and background, in a position where he has to make an evaluation as to whether those standards are being met. So, again, we come to a basic difference on the nature of the professional association.

I would submit that this legislation and similar legislation gives to associations the power to discipline their members on the basis that the association is best able to determine when standards are met and when they are not met, and what Mr. Cherniack is proposing would derogate from that principle.

MR. SHERMAN: Mr. Chairman, I'm prepared to resubmit Clauses 42(3), (4) and (5) to the Attorney-General for an opinion.

MR. CHAIRMAN: . . . 42(3), 42(4), 42(5), as proposed by the Honourable Mr. Sherman that they be given to the Attorney-General for reconsideration. Is that agreed? (Agreed)

MR. CHERNIACK: Mr. Chairman, yes, that's agreed, we will get a report as to the whole principle of justice involved. I just can't help but stress that judges generally review matters which are of a specific and technical nature for which they have not gone to university but, nevertheless, it is for them to review the evidence presented and still make a decision. You know, this very room had a judge deciding on how you finance hydro-electric power development and how you make decisions on what hydro-electric power shall be done and that's only on a commission level, but in court, they're dealing with everything under the sun, and to suggest that only the nurses may know how best nurses' activities are to be conducted, rejects the opportunity for an outside open review of whether or not the judgment is correct. However, we'll get the report.

MR. SHERMAN: Mr. Chairman, in defence of Mr. Sinclair's position, I would just like to reiterate for the record that the reason we are proceeding in the way in which we are proceeding on these bills is because I think it is the intention and ambition of a great many Manitobans that these three bills in the nursing field be dealt with at this session.

Now, there was a suggestion that bills of this nature be referred to a intersessional committee, and Mr. Cherniack and I discussed that and a number of professional bills have been referred to an intersessional committee for this kind of examination and cross-examination and input. But because of the importance of these three bills, we asked for and received concurrence in proceeding with them at this particular session, and the exercise that we're going through at this time really is the equivalent of putting them through an intersessional committee. That's why we're doing it this way. Mr. Sinclair is simply putting the position that the association has put to the government and has found itself incorporated into what, in effect, really is a draft bill. I respect his position, I'm prepared to submit those sections to the Attorney-General for an opinion.

MR. CHAIRMAN: To the committee, if we agree to pass that section, we'll turn to Part VIII, Miscellaneous. 43 agree? — Mr. Adam.

MR. ADAM: Just for clarification, this is the section where a person who is brought before a committee for conduct or whatever, wrongfully or otherwise, who deems to have been brought before a hearing or a disciplinary committee, would not have any grounds to appeal of any kind, there would be no recourse for having been . . . for damages. Could I get an explanation of that, no recourse for anyone who has been wrongly brought before proceedings of any kind?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, the intention of that section is that so long as the association and the members of the association act in good faith and act in accordance with the regulations and by-laws, that they should not be open to lawsuits from parties who are affected by their actions. I think that is essential to the members of any association if they are going to be able to carry on the business of the association.

MR. CHAIRMAN: 43, agreed, as explained; 44.

MR. SHERMAN: Is that all right with Mr. Adam?

MR. CHAIRMAN: 44 agreed? — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I want to agree with Mr. Sinclair but I do that on the basis that I believe that the association must not only be seen to be doing acts for the benefit of the public, but it also has to do it. That relates to other arguments that we've had and we've not yet settled about the openess of their proceedings. But I agree with the principle that once they conduct all matters in good faith and in such a way that the public interest is protected, then if they make a mistake, in good faith, I wouldn't want them to have to be liable for damages. But the good faith to me includes all these other things, some of which we have disagreed on, but this section itself, I accept that as being a necessary part of a professional society's self governance powers.

MR. CHAIRMAN: 43 agreed as explained then; 44 agreed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm not sure about "the board has the discretion to publish notices and/or to give reasons" and I'd like clarification as to the justification for this, because the board has absolute discretion to do as it pleases.

MR. SINCLAIR: The power is set out in this section as a method of protecting the public. If the board comes to a situation where it feels that it's necessary to advise the public of a situation, then it has the power to do so. I don't know if I can give any further explanation than that.

MR. CHERNIACK: Mr. Chairman, I understand that. That's for the protection of the public. The fact is that very few members — I wonder if we could get a ballpark guess as to how many of the 8,000 members, who are active members, are independently employed, other than by the, let's say the members of WHO. But the point of whether or not to give reasons is another question. I mean if there is a minor reason and the board decides to publish it without stating a reason, then surely it's better to have a standard practice, stating reason or not stating reason, but just stating a fact, and the fact would be the suspension or the removal from the committee. But giving a reason in one case and not in another seems to me to leave a discretion which might be unfair, and I'd rather they'd didn't give reasons in all cases or gave reasons in all cases. I'd rather they didn't give reasons, just state the fact.

MR. SINCLAIR: Mr. Chairman, I believe that the College of Physicians and Surgeons has recently had a situation where they made a decision and that decision was disputed by the person who was disciplined, who gave his side of the story to the media. If the College of Physicians and Surgeons were restricted to a simple statement that a suspension had taken place, then it places itself in a position where it might not be able to give an explanation for that suspension, to justify the suspension. I think that's the reason why this is provided, so that the association has the opportunity, if necessary, to justify to the members of the public the action which it has taken.

MR. CHERNIACK: There's a difference, Mr. Chairman, between giving a press release and publishing a notice. Now, if Mr. Sinclair is suggesting that the public statement of the College of Physicians in relation to Dr. Schwartz, which is what he is referring to, were published as an advertised document, then I would wonder about it. But I don't fault the college one bit for issuing, even having an interview, for calling and saying, well there has been public statements that have been made by the person complained and we therefore feel it out duty to inform the public. I think that's important. But this is not the same comparison, because here it's a publication, that is an advertised notice, I assume, I want to have it clarified.

If the association is responding to public utterances by other parties, that's one thing in which I don't disagree at all, but if instead of that they're going to publish a notice or suspension, with or without stating reasons, then it's not the same thing, and that I would question. But the president responding on an interview to a statement made to the press is something I would justify.

MR. SHERMAN: Mr. Chairman, this section is discretionary after all. The wording clearly stipulates in two places that it is discretionary. The board "may" cause, not the board "shall" cause, and it concludes with the term, "in its absolute discretion decides". I think that there has to be some concession on the part of the committee to the judgment of the board of a self-governing, professional association. It may well be that they never publish any such notice with reference to suspension or relocation, or reinstatement of anyone. But if there has been a story in the media, as so frequently happens in cases involving personalities in

the health field, that is inaccurate or distorted in any way, for whatever reason, which sometimes happens, the association may well want to make a statement or publish a notice that clarifies their position. I think that kind of discretion can be safely vested. That kind of trust in judgment can be safely vested in the board of a professional association.

I note that the RPN Act contains precisely the same provision and I wonder if it would be in order, Mr. Chairman, to ask Mr. Street what the views of the RPN Association are on this?

MR. CHAIRMAN: Mr. Street. Mrs. Osted.

MRS. ANNETTE OSTED: Thank you, Mr. Chairman. The association, we feel, the professional association has a responsibility to advise the public and certainly employers, and other professional associations which this person may approach, that the individual has been suspended. There are times when it may be necessary to publish the reasons, if it is an offence of such a nature that it has already been made public. We might agree with Mr. Cherniack, that it might be easier to make them all public, and state the reasons for all of them; however, there are times, if it is a habit or illness that an individual psychiatric nurse has, we may wish to keep that private, not publish those reasons for suspension, for the individual's sake, the member's sake.

MR. CHERNIACK: Mr. Chairman, I'd like to back away from the position I took, the hard position I took. I want to back away from that because some of the comments made by Mr. Sherman and by Mrs. Osted were persuasive.

Personally, I'm wondering whether there's any need for Section 44 at all. If it were not there, would they not be allowed to make a publication; if there is a need, then we have a right to look into it. It seems to me if there were an occasion where there is a suspension or a revocation, for a reason which the public ought to know, then the fact that there was a suspension or a revocation or a limited membership, subject to conditions, is all that the public need to know. They have to know that nurse so-and-so was suspended, or nurse so-and-so is now allowed to practise under certain limited conditions. That imposes on the employer, or the prospective employer, an obligation to find out what the limitations are. I therefore feel that they should really not give the reasons, unless it were an interview, not a formal publication by the board, but rather an interview with the chairman of the investigating committee, or the other. That may then refer more to the aspect of confidentiality that we discussed yesterday. I think there has to be confidentiality. I might go a little further and qualify what I said about confidentiality by saying, except in such case where there has been a public statement made contrary to that of the reasons of the association whereby the President then becomes authorized to respond. It seems to me I now see validity to the publication where I didn't before, but I don't see validity to the board having absolute discretion whether or not to publish reasons, because I don't understand that any reason is one which should be published. These people are not going to be submitting their services to employers who will not know that they are incompetent, or whatever reason there was. So I still question whether they ought to be allowed to give reasons, but I certainly withdraw the thought that I had that maybe they shouldn't publish it at all, till the decision.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I don't want to comment further, Mr. Chairman.

MR. CHAIRMAN: Mr. Bostrom.

MR. BOSTROM: Mr. Chairman, listening to the discussion it appears that this section is completely academic in that, if the section was not in there what would prevent the board, in its discretion or otherwise, making whatever information it wanted to make, public, to the point of buying an advertisement in the newspaper and making the information available to the public? Why would this section have to be in the Act, and whether or not it is in the Act, what would prevent them from doing this?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would invite a comment of Mr. Sinclair and Miss Osted but I'd be prepared to see the clause deleted from both bills. If it's in the LPN bill — I haven't looked at it — delete it from it, too.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I think the reason, Mr. Chairman, that the section is contained in the legislation is to make it clear that the association can do that.

There has traditionally been a reluctance on an association to go to a publication without specific statutory authority. Now it may well be that this specific statutory authority is not required, but certainly the association would be much more comfortable if that power was specifically given to them, to make it clear that they do have that power. It would be essential, Mr. Chairman, if Mr. Cherniack's comments last night concerning incorporating into this Act, a prohibition, were adopted.

I think, Mr. Chairman, it comes down to what the Minister said, that this is a discretion which the association requests. You can't predict today — and I think Mr. Cherniack in his remarks indicated that — you can't think of all the circumstances that might arise, and that the only way you can cover it is to have a discretion you have to have the confidence the association will exercise properly.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I suggest that this be packaged with a confidentiality aspect which I think was already referred to, to counsel.

MR. CHAIRMAN: To the members of the committee then, I just make the comment that the committee will agree to take another look at this section. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, we will have a look at packaging it with the confidentiality item. But I would like it to be clearly understood that whatever we do, either by commission or omission or packaging or whatever, that the principle that there shall be some faith reposed in the judgment of the board of a self-governing professional association will be upheld, whichever option we follow.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I don't quarrel with that. I'm not really put in the position of being labelled as having no faith. I still believe in self-regulating professions.

MR. CHAIRMAN: Okay, 44, it's agreed to take another look at then. 45 (Agreed); 46 (1) agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, that's the Informant section. It is a requirement that a member of the association must report to the association if she has reason to believe that the RN is suffering from a physical or mental condition or disorder, so that she may no longer be permitted. It is judgmental for that member to know whether or not she thinks that it's really that bad — or maybe she has reason to believe but doubts it, and the informant aspect, the tattletale aspect is one that is not normally considered as an acceptable requirement. Nevertheless, I think if a person has strong reason to beieve that some fellow practitioner is doing harm, I think that person ought to make the report.

We were dealing yesterday with the incompetence of a lawyer in several ways, and it seems to me somebody who knows how sloppy that kind of operation goes on, should be drawn to the attention of the group. As I recall it in the competence legislation we dealt with with the Law Society already dealt with by this Legislature this year, there is an understanding that a member of the association should be alert to the inadequacies or incompetence of its fellow members.

But the wording is such that packaged with 51 (1), could suggest that it's a crime if it's not so reported. I would rather see something that said, "is expected to disclose the information and failure to do so maybe considered professional misconduct." I would think that that is probably the extent to which one ought to go, rather than to have a hearing of one person saying, well, we've got to get rid of that person because she's done some bad things, and then start bringing in all the other people who are working side by side with her and start enquiring as to whether or not they ought to have reported that person; there are dangers involved. I don't mind if it's done on the basis of professional conduct or ethics, but the danger of it being considered a crime, I think is very serious.

I don't really know very much criminal law, I say that with a feeling of security in that I'm not likely to be hired to act as a lawyer in serious criminal charges, but I'm not aware that there's a requirement on a member of society to be an informant if that member of society believes that another person is suffering from such a condition as makes it possible that he is committing a crime. I'm not even sure you have to report a crime if you see it, I'm not sure of that, although I consider it a greater obligation for a professional to protect the public by making sure that another professional of the same group is doing a proper job. I wouldn't like to make it a crime not to report it. I'm wondering whether we couldn't just indicate that failure to do so knowledgeably, a deliberate failure to do so, shall be considered professional misconduct or may be considered professional misconduct. It wouldn't serve.

MR. SINCLAIR: Mr. Chairman, this Act has on at least three occasions been presented to the membership of the MARN. This provision is a recognition by the MARN of their duty to the public. They are, in effect, volunteering in this to take on this responsibility. If the Legislature doesn't want them to take on that responsibility, I'm sure that's a decision of the Legislature. It's obviously imposing an onus on the members of the association which the membership is proposing to you.

I think, in answer to Mr. Cherniack's question, that the mandatory provision shall disclose, my answer to that particuar aspect of it is that I would think that the membership, since they decided on this, would want that to stay in there. But I don't think there would be any objection to saying that failure to do so shall be professional misconduct rather than something that should be treated under Section 51.

MR. CHERNIACK: Fine, Mr. Chairman, we are really in agreement because I said that I recognize the onus on a member of the profession to protect the public. But we're in agreement; it would be professional misconduct to knowingly fail to report.

MR. CHAIRMAN: Mr. Ransom.

HON. BRIAN RANSOM: Mr. Chairman, perhaps the issue has been cleared up now, but when Mr. Sinclair refers to the membership as being prepared to assume this responsibility, then I think that would be a responsibility that they should assume as professional members of the society, and that they assume that on their conscience and perhaps as part of their general code of ethics established in the by-laws of the association and not be established in the legislation as is recommended here. I would certainly hope that this section would be amended.

MR. CHAIRMAN: Is it agreed to Section 46(1)?

MR. CHERNIACK: Mr. Chairman, Mr. Ransom's point is rather important and I don't know whether there is a code of ethics that embodies this. It doesn't in reading the book that we were given. There is nothing there to indicate it, yet, I think it ought to be there in some way. Would that then be possibly in the regulations? I do really believe that it is professional misconduct to knowingly refrain from reporting what is a sincerely believed situation, but possibly I think Mr. Ransom is agreeing with me more strongly than I was prepared to accept of Mr. Sinclair. I don't know; I see his point and yet I don't see that it is in their code of ethics. I don't think they are required to have a code of ethics.

MR. RANSOM: Mr. Chairman, I was not saying that it was in the code of ethics, necessarily, or even that they had one. I was simply making an observation that it strikes me is that's the sort of thing that should be in there and that it's an obligation, but a professional or a moral obligation on the individual and not a legal one, as would be the case with this section and the bill before us.

MR. CHAIRMAN: Mr. Sherman, then Miss Tod.

MR. SHERMAN: Mr. Chairman, I'll be very interested in hearing from Miss Tod whether, indeed, it is enshrined somewhere as an ethic, because I haven't discussed this with my colleague, Mr. Ransom, and I certainly respect his views on it.

We're not dealing here with just any profession or field of practice, we are dealing here with a profession that deals with life and death and I feel very strongly that this is one area in which silence or neglect can constitute a very serious offence with very serious possible repercussions or ramifications. I don't suggest that anybody should be pilloried for that and it's quite possible that the penalties laid down in 51(2) would not be imposed. In fact, I would hope that in most cases they would not imposed. But I have to say that, in principle, I think that a person as described in 46(1) would be guilty of an offence in the health profession if he or she did not convey that knowledge or suspicion sincerely held on their part — obviously, it can't be mischievous — to a superior or to the association itself. So, I'd be interested in Miss Tod's comments.

MR. CHAIRMAN: Miss Tod.

MISS LOUISE TOD: Mr. Chairman, number one, the MARN does have a code of ethics, and has had for many years. In 1973, they adopted the International Code of Ethics as revised by the International Congress of Nurses. Contained in that code of ethics are principles spelling out relationships of the nurse to people, the nurse in practice, nurses in society, nurses and co-workers, and nurses in the profession.

Specifically, it states that the nurse takes appropriate action to safeguard the individual when his care is endangered by a co-worker or any other person. Further, when members of the MARN were considering redrafting the Act, considering sections of the proposed Act, they were and have been very much aware of increasing criticism by governments, by public, by other co-workers and other professionals regarding the responsibility of professionals and allegations that occasionally professionals will protect their own, they will cover for each other.

The members of MARN feel very strongly that they have a responsibility to assume responsibility and report those members who are not safe to practise. So, there has been no difficulty in having this passed by our members and they are prepared to assume this responsibility and be seen to be doing it.

MR. CHAIRMAN: 46(1) — Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I'm very pleased to have that reassurance from Miss Tod because that then reinforces my position and leaves no doubt in my mind that, in my view, and I submit it for the committee's consideration, the section is properly worded as it appears in the bill.

MR. CHAIRMAN: 46(1) (Agreed); 46(2) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the only feature then, what about the provision that this shall be considered to be professional misconduct? Taking it out of the criminal courts. —(Interjection)— I have grave doubts as to whether a court would convict on that but nevertheless I think it's a terrible imposition for a judgment to be reviewed as being a criminal act. I do see it as misconduct, I really do and I don't quarrel with the intent, I honour the intent and I believe in it, as a professional I believe that it is correct. I think it's an onus of every professional person to see to it that there's no danger caused by another professional but I don't see it as a criminal act because it is still judgmental. I don't think a person should be faced with the possibility of paying a fine or going to jail because in his or her judgment this was not of such a degree as to require reporting. But I would say that it should be clearly this professional misconduct.

Now, Mr. Sinclair did, I think, indicate that he was prepared to accept that but now maybe he isn't, I don't really know. But if he is prepared to, on behalf of MARN, I'd like to have that considered.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I did indicate that I would be prepared to accept that. I think that words could be added at the end of that section in form, such as that: "And failure to make such disclosure shall constitute professional misconduct".

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Mr. Chairman, what would the penalty be then? A reprimand or . . .

MR. CHERNIACK: Or they could be thrown out.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: In answer to the question, Mr. Chairman, the discipline committee would then deal with that and depending on the seriousness of the complaint, the range of penalty could be whatever penalty that this committee decides on.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, might I then suggest to the committee that in looking at 51 (1), if I can get permission to redraft that in such a way that, failure to comply with 46 (1) is not an offence for which a member could be dragged into court.

MR. CHAIRMAN: Committee agreed on that? Redraft 46 (1).

MR. BALKARAN: The point is, Mr. Chairman, Mr. Cherniack doesn't seem to — I don't know if you understand what I'm getting at — but 51 (1) as

worded now would make any person who's failed to comply with any provision of the Act guilty of an offence and because of the suggested amendment, we don't want to get that person hauled back into court because the disciplinary action will now take place for failure to comply with 46 (1). So I'm suggesting an . . .

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, Mr. Balkaran is addressing me and I accept his advice. I worry a little about any other portion of the Act which would then, by not being accepted might suddenly become a crime which would not otherwise be considered one. But that's why I shrugged my shoulder on the assumption that Mr. Balkaran will do what is the right thing to do. I'm usually respectful of his advice and guided by it. So I don't quarrel with his suggestion.

MR. CHAIRMAN: Committee agreed to reconsider 46 (1) as discussed; 46 (2) agreed. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, there's something I don't understand. I don't know enough about nurse-client relationship. I think I know enough about solicitor-client relationship. It seems to me that that might not be the same thing. I wonder if it could be clarified why there is an exception there.

MR. CHAIRMAN: Miss Tod.

MISS TOD: This was included to cover the nurse who is caring for a co-worker, a nurse, and by virtue of her close relationship as a nurse to the patient, has information that she wouldn't ordinarily have.

One of our principles within the Code is that information regarding a patient is confidential and must remain so.

MR. CHERNIACK: Mr. Chairman, what is the obligation then of, let us say, the doctor that is treating that nurse and sees to it that another nurse works with that nurse. Should the doctor then report that to you? It's a problem that I don't quite see clear.

MISS TOD: I don't understand your question. You say that the doctor treats the patient who is a nurse, and what was the second part? That he would direct a nurse to work with her?

MR. CHERNIACK: And sees to it that under certain circumstances there is a nurse with her, and treating her as a patient. For example, the nurse who has a certain physical or mental incompetence is in hospital, a doctor is treating her, another nurse is treating her. Who is going to inform the association of that problem?

MISS TOD: Let me use an example. Miss Smith is working with Nurse Jones. Nurse Jones comes on duty, she's smelling of alcohol; she falls over a chair; she collapses in the medicine room; the nurse either reports her because she is showing signs of the influence of alcohol. If she does this frequently and the nurse still doesn't report her, then we believe that the nurse who is making these observations, 46 (1) would apply.

However, Nurse Jones is admitted to the psychiatric unit for care and Nurse Smith is caring for her. Nurse Smith would not report Nurse Jones to the association believing that she has — I've lost the clause.

MR. CHERNIACK: Mental incompetence.

MISS TOD: Mental illness or a condition, whatever, because that's a nurse-client relationship and that information would remain confidential. Does that help?

MR. CHERNIACK: It helps to define the position of the nurse who is employed by the hospital. I am still concerned about somebody making sure that the association is aware of the fact that this member, this R.N. is receiving treatment for a mental disability and therefore her ability to treat others should be brought into question. So if you say, well, there's a nurse-client relationship, should the doctor inform the association or should the association not know about it because that nurse is in the hospital, is in the psychiatric ward? How would you know about this, or shouldn't you know?

MISS TOD: If she is a patient, she is not practising.

MR. CHERNIACK: She's an out-patient. I mean, I don't know enough about the ramifications of it. But surely there are circumstances under which a nurse has a nurse-client relationship with a client who is nursing, surely that's conceivable.

MISS TOD: I doubt it.

MR. CHERNIACK: All right.

MR. CHAIRMAN: 46 (2) agreed; 46 (3) agreed. Part IX - Advisory Council, 47 (1) agreed? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, this is another big issue and I feel strengthened in my comments by Ray Taylor's letter and if I may at this stage, mention Mr. Taylor's letter — and I hope, Mr. Chairman, that somehow we can get it on record because it would have been a very important presentation had he been able to be present — so I don't want to start reading it into the record or taking up the time of the committee, but I would urge all members to read it.

He is concerned there with certain decisions made by the board relating to the qualifications of applicants for nursing and expresses disagreement with decisions made by the board relating to a particular case, which he discusses, he may be wrong, of course, but he does make that point. Looking at it and considering that he may be right — and I don't mean that as relates to R.N.s alone, it relates to any professional body — it comes to mind when we come to Part IX, and I have written down there in my scribble opposite the word "Advisory Council", the words, "no power". The important feature to me is that there is no power at all, as I read it, in the Advisory Council other than to make recommendations. And just as, if I may say, in the Legislature we discussed, I think it was only this

morning, some energy advisory group as having no power, one may even wonder as to why this has to be in the legislation at all. I mean this Part IX, because the function could be such as is accepted or ignored by the board.

I related to the point Mr. Taylor made by saying that maybe it would be advisable to give the Advisory Council the obligation to hear complaints or reviews on standards established by the association and to report that to the Lieutenant-Governor-in-Council, which is involved in approving of regulations. The point Mr. Taylor makes, and he makes it so well it seems to me when I read it that he is repeating many of the things that I have said but much better than I did, the point that he makes there is one that I made in relating to the burden, the onus placed on the Lieutenant-Governor-in-Council to review regulations as they come before it.

Since I believe it is a very true comment, with all deference to all of the civil servants who advise the Lieutenant-Governor-in-Council, it seems to me that a real function of this Advisory Council might be, that when a complaint is made such as Mr. Taylor is indeed making, not about the treatment of an individual case but in relation to standards set by the association — when I say standards I really mean educational, academic and out-of-province or out-of-country educational institutions — that a positive function that could be performed by an Advisory Council would be the obligation to recommend to the Minister or to the Lieutenant-Governor-in-Council on the decisions of the board. We did mention yesterday that the board is not bound by any of these decisions.

Therefore, since I take Mr. Taylor's comments seriously, since they resembled to some extent what I have said on other occasions, I'm wondering whether the Minister wouldn't consider the great assistance it would be to him to have the Advisory Council report in that way or report openly, although I wouldn't like to see a public disagreement on these standards. But it would be much more helpful, as indeed we found two nights ago when the Advisory Council — whatever they're called — on LPNs, who came here and reported and in that way advised the Legislature — not just the Cabinet — about certain concerns they had about powers being proposed to be granted by legislation.

I'm opening up a much bigger discussion than just the Advisory Council but . . . Mr. Filmon, I think, started it yesterday on a discussion on academic qualifications, especially from out-of-province or out-of-country institutions and I'm wondering at what stage we can discuss that and meaningfully.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Thank you, Mr. Chairman. I think that the point which Mr. Cherniack raises goes to the very essence of whether or not the Legislature is prepared to allow a self-governing association to be a self-governing association and that what he is proposing here is that a super body be imposed on top of the self-governing association to review what they do. And, of course, the association is adamantly and entirely opposed to that sort of structure.

MR. SHERMAN: Mr. Chairman, I want to acknowledge that Mr. Ray Taylor's letter was a very responsible one, and I think very valuable and helpful to the committee. I would agree that I hope that every member of the committee has had a chance to read it because it was unfortunate that he was prevented by personal reasons from delivering it into the record, verbally, on Wednesday night. Nonetheless, I do believe that most of the concerns that Mr. Taylor makes have been addressed, or certainly are in the process of being addressed. I might say that I have had discussions with Mr. Taylor. That was not Mr. Taylor's de facto presentation on this bill, because I'd had discussions with him earlier and was aware of some of his concerns, and certainly recognized the validity of them.

The question about equivalent educational qualifications and training qualifications is one that is of considerable concern to the government, and I'm sure it is to MARN because of the need to ensure the widest possible but responsible opportunities for maintaining and, indeed, expanding our professional nursing force in Manitoba.

I think the regulations which Miss Tod circulated yesterday or the day before go a considerable distance; particularly 3(1)(a) and (b) go a considerable distance in removing the concerns that I had in that area, and although I haven't had a chance to discuss it with Mr. Taylor, I would suspect that they would also reduce his concerns. I'm not suggesting they would eliminate them entirely but I would hope they would reduce his concerns.

Beyond that, to address the basic point in Mr. Cherniack's position, I think that the assurances of Lieutenant-Governor-in-Council participation in these very crucial decisions in the education field, in this profession, will be met through the structure of the advisory council, through the composition of that council, and the fact that there will be a direct appointment by the Minister of Health and a direct appointment his or her colleague, the Minister of Education, and an appointment that will be made jointly and severally by the Deans of the Faculties of Education of the three universities.

I know that Mr. Cherniack can quickly point out that that is three members of a nine-member board and that hardly constitutes a majority, but it will, I suggest, sir, constitute a meaningful minority. I believe that the composition, as proposed, offers that link that will provide the safeguard that Mr. Cherniack, I think legitimately, sees as being necessary.

To go beyond that, takes me to the position that Mr. Sinclair has expressed; at least in this point in my thinking, it takes me to the position that Mr. Sinclair has expressed. We move to the very threshold of changing professional self-governance, professional association autonomy, to something that is mere rhetoric and that has no existence in fact whatever. And as Mr. Cherniack has suggested, this is a very important section of the bill and this is a very important question. I think we now come down to the nub of it. Do we want self-governing, professional associations, and if so, what do we mean by self-governing, professional associations? It might be that some good argument could be made for changing the composition of the advisory council

somewhat, but to go too far beyond what is proposed here would completely obviate the objectives of a bill that is intended to establish and recognize a self-governing association. That would be my position at this point in the committee's considerations, Mr. Chairman.

MR. CHERNIACK: I believe that we must, not that we necessarily want to but we must accept the fact that a self-governing, professional body is the best way we know of regulating the service being offered to the public by people who are specialized in various fields. And that we must work with them, bearing in mind always that their obligation is primarily to serve the public and in the public good. That we must know and they must know, and they must keep telling themselves; every morning they should get up and say, my job is to serve the public good and not myself. And I would imagine that most professionals do do that, in a symbolic way. But there is the obligation of the representatives of the public to ensure that that is a constant primary objective of professional associations, and we were told in no uncertain terms a couple of days ago that the LPN's are not, are definitely not, of that kind of standard where we can rely on them to know their own limitations so as to be able to set their own standards and to regulate their own members as to the delivering of a service.

And we are told by this legislation before us, specifically Bill 65, that when it comes to setting standards, make regulations to regulate admission, registration, etc., and prescribe educational standards, nursing education etc., it must require the review and approval by the Lieutenant-Governor-in-Council. Why do we do that? Because we feel it is necessary for the representatives of the public to carry out their obligation to ensure that the professional associations are indeed acting in the best interests of the public. So let us not pretend that we are giving them full and free scope, as they had in years gone by, to do as they see fit. There is in this very legislation, accepted by this particular profession at this time, the obligation not to have regulations effective without the approval of the Lieutenant-Governor-in-Council.

So I want to read just one paragraph from Mr. Taylor, with which I agree, and it appears on page 2, and it says, "Reason B. Past experience shows that by-laws or regulations formulated by the board of the association and submitted to the Cabinet for approval are not always given the kind of scrutiny that the public should expect. The reason is simple and it is not necessarily a reflection upon members of Cabinet. Draft Orders-in-Council are submitted to senior members of the public service in the Department of the Attorney-General for draftmanship and the Minister of Health for content and, if approved there, are normally given automatic acceptance by the Cabinet of the Day. Members of Cabinet simply do not have time to scrutinize in detail every item for which their approval is sought."

Mr. Chairman, what I have just read is an opinion stated by a person whom I respect, whom I like, but who has never been a Member of Cabinet. And one wonders how he knows what goes on. — (Interjection)— Yes, he's known a couple of Cabinet Ministers, including the present Minister and he's known me, and maybe it's only the basis of what he knows about the two of us that he's arrived at this judgment but, I'm already on record as having been a Cabinet Minister for five years, and I would generally say that his statement has general application, especially when he says, "for approval is not always given the kind of scrutiny that the public should expect".

Mr. Chairman, I think its true and should be recognized, just as Mr. Sinclair has said, well, the nurses are the most capable of knowing the technical requirements of their own profession, and therefore — we were talking then about appeal and whether a court should be involved in making decisions relating to the specialized requirements or knowledge of that profession — the Lieutenant-Governor-in-Council is made up of a group of politicians dedicated to serve the public, and the greater the dedication the more they must rely on people in whom they have confidence to do the job for them, because these are technical things, you know, the educational qualifications for a nurse. And casting about in my mind, how one deals with the obligation to make sure that the Lieutenant-Governor-in-Council, which assumes a responsibility, carries it out, it seemed to me that we could come back to something like the advisory council, rather than to give implicit, complete — and I really mean implicit and complete — decision-making to the professional body.

Mr. Chairman, I am a member, and have been for over 40 years, of a professional body of which I have pride, and which I respect, but nevertheless, I do believe that there is no reason why there shouldn't be somebody that looks at what they're doing and then decides whether or not they're doing the right thing. So I do believe that the availability of a review has validity.

Look at the structure of the advisory council — we're coming to it soon — and note the persons that are on it, the three persons out of nine that the Minister referred to. I would be much more comfortable if, instead of a person nominated by the Minister, it said, the Deputy Minister, or if it said, the Director of Nursing or somebody named — I don't mean by name, but rather designated by a position — who has an obligation direct to the Minister. But I think that it can happen that the Minister would appoint somebody, I don't know, a member of WHO, a member of the health organizations — there might be validity to that — or a member of the medical profession, or of the LPN's or RPN's to sit on this board. I think that the Minister's obligation might end with the nomination of a member of the council. And if I could force the Minister to sit in on the advisory council, I would do that, because then when he comes to Lieutenant-Governor-in-Council and says, yes, these regulations are fine, he puts his stamp of approval directly on it. But I'm concerned about the fact that he's only going to nominate somebody and then that direct line that he thinks he has may not be that direct or that useful. And I think that it is important.

Now I don't even know if it is a philosophical difference, it may be just a mechanical difference, because we've already agreed, as has the the professional body, that their regulations must be approved by another body, by somebody else that must approve their regulations and all I want to

make sure is that the body that has the final say has the fullest exposure to the problems and the decision. I want to be helpful, Mr. Chairman, if we can't do it any other way, alright let it go, I don't think there's great harm done, but Mr. Taylor's letter points out that there may be some hardship done by exclusivity or elitism that may creep into any professional body, any one, and then you can run into a problem.

MR. CHAIRMAN: 47(1) (Agreed); 47(2) (Agreed) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'd like to ask the Minister — I think he was going to ask for the floor.

MR. SHERMAN: Mr. Chairman, I appreciate Mr. Cherniack's contribution. I'm not going to subject the committee to a repetition of what I have said, but I essentially offer the committee my reinforcement of that view, reinforcement of the position that I have stated. Certainly there is legitimate concern and there have been legitimate questions raised both outside and inside the committee with respect to the precise composition to make up a membership of The Advisory Council. We are certainly prepared to consider it further. That's what this exercise at this stage of the committee's studies is for. We're prepared to consider it further among ourselves and among the MARN executive and legal counsel and our own legislative counsel.

MR. CHERNIACK: Mr. Chairman, I appreciate what Mr. Sherman is saying, and I, of course, accept it. While I was in government and all the time that I've been in the Legislature, I am considering my concerns about professional associations and their powers, I have sometimes and often tried to think about one person in the entire civil service of government whose field of work is such that would be considered sort of an expert on professional associations and the way they operate. If it came to mining, I'm sure the Minister of Mines could point out one particular person and say, now, that's a guy who is sort of the expert in Manitoba in this field — or it comes to many other things, of course. When it comes to the delivery of a service of medicine, there is a Deputy Minister who is a doctor and knows a good deal about the delivery of service. I don't know of any one person or body in the entire structure of government that would be considered to be knowledgeable about all the legislation, about all the aspects of self-governing bodies and the extent to which they operate well or not well, and that's one of the reasons why I came to — and I'm not going to deal with my earlier suggestion that it would be good to have one central body involved in the delivery health services and working with all professions. But there is not even a person I know of in government that ought to be on The Advisory Council, and maybe the one person ought to be on all the advisory councils in the health field.

You know, that might be a good idea and, therefore, because I want to be helpful, I want to suggest to the Minister that maybe when he said he's going to think about it, maybe he should think about the idea of getting somebody who would become an expert within government to deal, not only with the RNs or the LPNs, but with the entire group of professional associations that do deliver a service, and work with the effort to see to it that there is sufficient feedback to the Minister about what's going on in the various aspects of the delivery of health services. Maybe that would be a good procedure, if we knew that in the Department of Education and the Department of Health there is a person who would be appointed to this kind of a council who would then be a conduit back to the Minister. I'm not even sure whether it would be — is the word — ethical, or fair play, or whatever you call it, for a person once appointed then to sit on The Advisory Council to keep reporting back to the Minister about what's going on in The Advisory Council. It might be considered by some that it's a person appointed by the Minister to observe and spy on him. I really think it's the proper responsibility for a person nominated to be a person who informs the person who nominated him as to what goes on. But maybe the Minister will consider that possibility.

We have a Public Utility Board; we have a Municipal Board; we have boards that are independent that overview what other bodies do. And I am therefore suggesting to the Minister that possibly in looking at the structure of the council, even though it has no power, that there ought to be a clear-cut obligation on the nominee to report back to the body which has nominated them, an obligation rather than an opportunity, and to advise them so that indeed there would be an opportunity that if the advice of the council is not accepted by the board, that whoever has appointed them — and that of course doesn't mean the six appointed by the board, but the others — would have an opportunity to say, hey, they've rejected the recommendation of this group of presumable experts — Mr. Filmon got into a discussion with Miss Tod last night as to whether they are all of such a high education, being baccalaureates or not, that are the best capable of making decisions as to education — I am sorry he is not here, I think he might support me on this — that at least if we are not going to do very much to the powers of The Advisory Council, the Minister will consider a manner in which we could indicate the appointments should be made and their obligation — their opportunity, if not obligation, to keep the Cabinet advised through this way. Now is that something worthy of consideration?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I am prepared to consider the topic at hand. I am not so concerned about the powers of The Advisory Council as Mr. Cherniack is. I would say that I would fully expect that the person nominated by the Minister, and the person nominated by the Minister of Education, would be persons who were nominated as a consequence of consultation between the Minister and the Minister of Education. Indeed, I am quite sure that it is certainly the experience of the current Executive Council, and I'm sure it's true of any executive council, that they would be persons whose nominations would have to have the sanction of the Executive Council. It would not be done arbitrarily or unilaterally; it would not represent appointments of party hacks. I know that sort of thing certainly

happens in government appointments; we are all guilty of political appointments, but in this case these would certainly be appointees that were determined by the Executive Council in total because of the important link that they would represent to the Cabinet office with the Advisory Council and the whole field of education and edcuation standards in this professional health field.

So I don't have quite the concerns that Mr. Cherniack does. I think that the conduit for communication and information, knowledgeable suggestion and counsel, would be guaranteed by the very nature of those appointments themselves. He has made other suggestions that I am not going to dismiss summarily or out of hand by any means. We'll consider the whole subject matter. It might be that the Advisory Council should consist of ten persons instead of nine, and that there be three persons nominated by members of the Executive Council rather than two. We haven't discussed those specifics with the MARN for some time, but certainly considerations of that kind will be addressed very conscientiously within the next 48 hours.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: One more very brief suggestion, Mr. Chairman. This is something that is entirely within the control of the Minister and Cabinet and maybe can't be settled quickly, probably can't. I would like to think that the Minister will think very seriously about having a member of his department, the same person, sit on all advisory councils. I envision a person of the calibre of Dr. Johnson, and maybe I am raising my sights too high, somebody of the calibre reaching towards his. Well, with his experience — I really pick a person who has tremendous experience.

MR. SHERMAN: You are prepared to settle for that.

MR. CHERNIACK: Mr. Chairman, I can't even joke about it, because I do think that he would have my absolute confidence in this field. The Minister has shown his confidence in Dr. Johnson by the appointment he holds. I don't mean necessarily that person, but somebody with qualifications that could really do the job of being the representative on all these boards and maybe be the best conduit and make the greatest contribution to the councils and to the boards. I don't mean just to the Minister, it's a two-way street. With knowledge of sitting in on various of these councils, I'll bet there are a dozen people whose names we could find who are possibly people who have retired or are about to retire from the senior Civil Service, who have that kind of competence, who would really make a tremendous contribution that way. And I leave that way, because it is something that has to be thought through and decided elsewhere rather than in this committee.

MR. CHAIRMAN: 47(2) — further consideration — (Agreed); 47(3) (Agreed); 47(4) (Agreed); 47(5) agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I can't let this go. Somebody has permitted a very drastic thing to happen. Somebody has put in the word, he, in the first line, and I think that is very serious error and it should be corrected. I think there should be no argument about it, but if there is, I want to fight vigorously to have it changed to she.

MR. CHAIRMAN: 47(5) Agreed to be corrected? (Agreed).

MR.CHAIRMAN: 47(6) (Agreed); 47(7) (Agreed); 47(8) (Agreed); 47(9) (Agreed); 47(10) (Agreed); 48 agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on 48, may I ask the representatives of MARN whether these recommendations would be expected to be available to the public or not?

MR. CHAIRMAN: Miss Tod.

MISS TOD: There are no decisions made by our association that are not available to the public.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, that's helpful but I am not talking about the associations decisions, I am talking about recommendations by the Advisory Council.

MISS TOD: Yes, the standards are available and would be available.

MR. CHERNIACK: I am sorry, it's the recommendations, I'm talking about. The council shall advise and make such recommendations as will enable the board to do those things, so the only thing 48 deals with is not the decisions of the board, it deals with the recommendations. I want to know if they would be available to the public or if you have any objections to making them available to the public. My point being that if they would made available to the public then it would become apparent to such persons who really wants to study at the extent to which the board has not accepted the recommendations and I think that's healthy. What does the MARN think?

MISS TOD: I would refer you to 50, where the association becomes a public report — the association receives a report every 12 months.

MR. CHERNIACK: That's a partial answer because then it means that the council — Miss Tod uses the word association, I think she means council — the council will decide what information is put in and the council is controlled by the board and therefore I would still like to provide, not in an adversary nature but rather in an accountability nature to the members of the general membership, that the recommendations made by the council should be published so that they would know them.

Now, 50 does not require that the recommendation be published. I would very much like to see it. I would like every member of MARN to know the recommendations and then be able to decide whether the board made a decision that the membership agrees with, relating to the dealing with the recommendations.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: Mr. Chairman, I have some difficulty with Mr. Cherniack's position on that matter. I have always had concerns about advisory groups that do not have a responsibility or accountability and the tendency, I think, would be that an advisory group, whose advice is not accepted, makes that advice public and that then becomes the standard by which the actions of the association or the board are judged.

I think that the board should certainly be responsible to the membership for justifying any action that they have taken, but in my view the advisory council should be just that, advisory to the board. We have seen situations where advisory councils to the Minister — I think in the previous administration we saw some examples with the environmental council, advisory to the Minister — where the Minister didn't accept their recommendations and the advisory group goes public with those recommendations. I don't think that that is a proper role for an advisory group to take and so I would have some concerns about making it mandatory that the advice of this council would be made public.

MR. CHERNIACK: Mr. Chairman, Mr. Ransom has reminded me and persuaded me.

MR. CHAIRMAN: 48 (Agreed); 49(1) (Agreed); 49(2) Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want an understanding, in light of Mr. Balkaran had said earlier about his intention about 51(1) and 46(1), why is it necessary to say a person who contravenes is guilty of an offence? Isn't that covered by the blanket in 51(1)?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: No, Mr. Chairman, I don't read it that way because if you remove 49(1), then there is no offence if a person establishes that type educational program without the consent of the board.

MR. CHERNIACK: No?

MR. BALKARAN: No. Because no way is the prohibition set out.

MR: CHERNIACK: Mr. Chairman, as I read it, 49(1) says, No person shall establish or operate a nursing education program without authority and consent of the board, period. Then, surely, if it ends there, then any person who does that would, under 51, be guilty of an offence.

So I am wondering why it is there. Maybe Mr. Sinclair knows why it is there or why it should be there because, to me, it weakens the other features or is redundant. I don't know enough about, as I said earlier, criminal law, to know whether it's a vital feature.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I would agree, Mr. Chairman, to the deletion of the words, "and any person who contravenes the provisions of this section is guilty of an offence."

MR. CHERNIACK: You don't see any point to it either? Mr. Chairman, just in case some criminal lawyer would have some way of getting out of it, then could we just leave it with Mr. Balkaran; delete it unless Mr. Balkaran considers later than it should be in.

MR. BALKARAN: The only reason, Mr. Chairman, if we were to take a look at The Highway Traffic Act, we have numerous sections interspersed throughout the Act where prohibitions are set out and those words are tacked on in every instance, to make it quite clear. I agree that if you remove those words, the general penalty and offence section would take care of it, but for a greater emphasis, it is a drafting practice we have been following.

MR. CHERNIACK: I would like to see it removed, Mr. Chairman, but it's no big issue.

MR. CHAIRMAN: 49(1) (As agreed); 49(2) (Agreed); 49(3) Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, we talked about various appeal provisions. I don't read an appeal by, let us say, the University of Manitoba or Red River College to say: We'd like this reviewed or reconsidered. Now, is that still part of the basis philosophy that an educational institution should not have the right of reconsideration? Of course, it has the right to go back to the board and say, please reconsider, but is the Minister prepared to accept this, because it does come back to that basic thing, shall they make the decisions as to the educational institutions of this province?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, 49(1) and (2), with respect to the principle raised and just expressed, are both under consideration by the government at the moment and we want to consult further with the MARN on both those sections, with respect to the principle just raised, not with respect to any other suggestions made, such as the deletion of that clause in 49(1), etc.

MR. CHAIRMAN: 49(3) (Agreed); 50 (Agreed).
Part X, General, 51(1) Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I would like to ask Mr. Balkaran whether it would be advisable to insert the word "knowingly," any person who knowingly disobeys or contravenes? I don't pretend to know but it seemed to me that I would like the assurance that they have to know what they are doing, and yet I believe that in law they are expected to know it and therefore it's an offence. Ignorance of the law is not an excuse, but I am a little worried. I just thought I would be more comfortable with the word "knowingly." I don't know what a criminal lawyer would think about it.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I don't pretend to be a criminal lawyer, but I think that the inclusion of that word would change entirely the standard which would apply to evidence and I wouldn't want that done.

MR. CHERNIACK: That becomes more important than I thought it did, Mr. Chairman. Does that then mean that if the board proves a contravention, that merely proving a contravention shifts the onus onto the defence to prove that it was inadvertent or without knowledge. Is he really talking about the onus shifting onto the defendant, and if the word 'knowingly'' were inserted that the onus would be on the board; is that what he is saying?

MR. SINCLAIR: That's what I am saying, Mr. Chairman, yes.

MR. CHAIRMAN: 51(1) Agreed — Mr. Cherniack.

MR. CHERNIACK: No, I am just saying no.

MR. CHAIRMAN: All right, agreed to disagree. 51(2) (Agreed); 51(3) Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, just as a matter of order, we did agree that Mr. Balkaran would do something in 51(1) relating to 46(1); that was agreed?

MR. SHERMAN: That was agreed, Mr. Chairman.

MR. CHAIRMAN: 51(4) (Agreed); 51(5) Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, 51(4), the RPN says six months. Is there any reason why one should have six months, one should have one year, and what is desirable? I don't know.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, it would be my suggestion when we get to The RPN Act, that it should be one year, also.

MR. CHERNIACK: Mr. Chairman, I would really think it should be two months, or something that brief, after the fact of the offence has become known. It seems to me there should be immediate action. I don't think they should be allowed to let it go for a long time. I am just wondering whether that isn't more important, that it should be dealt with quickly.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: My reaction to the comment, Mr. Chairman, is that one year is as short as you would want the period to be; certainly it is not too long.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I was just going to say, it is after all a limitation, and we did discuss the inviability or the viability of the Statutes of Limitations with respect to another bill in this committee yesterday. But it is, after all, a limitation. It does not say that they cannot proceed with the prosecution two days after the . . . but it puts a limit on how long the option to prosecute remains valid and I think one year is reasonable.

MR. CHERNIACK: I think six months is reasonable, but I'm not going to fight it.

MR. CHAIRMAN: 51(4) (Agreed); 51(5) (Agreed); 52 Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, could we have some information as to why it is necessary and, if so, why is it advisable that a single act shall be considered to be an offence? Why do we have to say that? Is not a single act an offence?

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I believe that the necessity of the section arises out of the problem with proving that a person has ''practised'' and the implication in the word ''practised,'' is that — or there can be the implication that you can only practise something by doing it several times, and so the intention of the section is to make it clear that doing a thing once is, for the purposes of creating an offence, ''practise'' under the Act.

MR. CHERNIACK: Mr. Chairman, we are now talking about an offence in Criminal Court, aren't we? Because it seems to me that when it comes to a discriplinary measure, that a single act could be dealt with by the board, but apparently what Mr. Sinclair is arguing is that is you are going to, let us say the case of . . . Well, I don't know where ''practise'' comes in. Does it say a person who practises beyond the scope of a conditional licence would, if not for this section, have to do it twice, whatever that was, like, I don't know, giving an injection that is beyond her ability of competence to do, but after two injections rather than one?

MR. SINCLAIR: Or more, Mr. Chairman. It would be a problem to define just how many times a person would have to do it before it was an offence. That is why the section is there, to make it specific that doing the act once is an offence.

MR. CHERNIACK: I suppose a court would have some discretion as to the nature of the penalty. A court might say, well, they did it once, it's all right. I suppose that's okay.

MR. CHAIRMAN: 52 Agreed — Mr. Filmon.

MR. FILMON: I was just going to say, Mr. Chairman, that it seems to me that if one act resulted in one death that that might be more serious than several that had little consequence.

MR. CHAIRMAN: 52 (Agreed); 53 (Agreed); 54 Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on 54, my note tells me, and so does my memory, that Miss Tod agreed that there could be a limitation, some set provision to 54. My suggestion was that we add to the end of 54 the words, ''or until December 31, 1981, whichever shall sooner occur''.

MR. CHAIRMAN: Is that agreed by the Committee? (Agreed) 54 Agreed as suggested; 55 Agreed; 56 Agreed; 57 Agreed; 58 Agreed. Mr. Cherniack.

MR. CHERNIACK: One question, Mr. Chairman, a very minor question on 58. Is the MARN sure that it's all set to go tomorrow or two weeks from now, whenever Royal Assent is given because I have looked at Regulation 1, I am not entirely enthused about it, but I gather that the regulation has to be shot into the Lieutenant-Governor-in-Council in order to be effective once the Royal Assent is given, and I kind of wonder whether it wouldn't be a good precaution to put it in by proclaimation so that nobody is caught short. It doesn't matter to me, but I think in the interests of the MARN they ought to be sure they are ready, otherwise they are in trouble.

The other thing is, they pass a regulation, they shoot it into the Minister and he may not like it, and he may then say, well let's review it, let's reconsider it. The by-laws I know cover but the regulation may not, and I would like to suggest in their interests that they make it on proclaimation so they have that safeguard.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, we appreciate Mr. Cherniack's comments in that regard and it was a problem that we wanted to come to some solution for and that would be a solution which certainly would be acceptable if Regulation 1, could by virtue of this Act, come into force at the same time as promulgation of the Act, that would be of great assistance. In so far as the submission of the regulation to the Minister's department is concerned, the regulation in draft form has been provided to the department for review by the department's lawyers and their look at the initial draft indicated that they were happy with it, but in its final form it will be submitted again. I would ask that if Mr. Balkaran could use the appropriate language to accomplish what Mr. Cherniack suggested, that would be very much appreciated.

MR. CHAIRMAN: 58 Agreed as suggested? (Agreed) Now I am at the guidance of the committee as to what our next procedure is to be.

Mr. Sherman.

MR. SHERMAN: Mr. Chairman, my suggestion would be that we now address Bill No. 66, The RPN Act, in precisely the same way and I would think we should be able to do it in much less time.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Page by page.

BILL NO. 66 — THE REGISTERED PSYCHIATRIC NURSES ACT

MR. CHAIRMAN: Page by page. Mr. Blake says page by page. All right, page 1 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, are we now assuming that whatever changes have been brought into the Bill 65, or being considered in Bill 65, will automatically be done in 66 and therefore all we are looking for in 66 are differences that we notice are, or want to see, carried out between the two. Is that the way we are going to go at it?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, in the main I think the answer to that question would be yes, but not necessarily. There may be some changes that have been suggested to Bill 65, for which, or in respect of which, the representatives from the RPN association may have some opposing views that I think we should hear.

Just before doing that I would like, to on behalf of all members of the committee, through you, Mr. Chairman, express our thanks to the representatives of the MARN for their assistance in taking us through Bill 65. (Agreed)

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I want to add my agreement to Mr. Sherman's comments about the contribution of the MARN representatives, and I want to agree with his procedural suggestion on 66. I would just plead with you, Mr. Chairman, don't go to quickly from page to page so we can just look at it.

MR. CHAIRMAN: Before I proceed, I was the under the impression that the members from MARN were going to sit in on the rest of the proceedings as the representatives of Bill 66 and Bill 87 have sat in on Bill 65, so I leave it open to them.

MR. SINCLAIR: Thank you, Mr. Chairman, we will do that but we thought we'd leave some room here at the table for the people who would address it more specifically.

MR. SHERMAN: One other point, Mr. Chairman, I know that representatives of the RPN association have been waiting for some time and presumably the committee will rise at 5:30 which is only an hour from now, but I leave it to the committee as to whether at this point they want to take a five minute break if we are starting on Bill 66.

MR. CHAIRMAN: I am at the wish of the committee. The wish is that we proceed.

MR. CHERNIACK: Mr. Chairman, I move we adjourn for five minutes.

MR. SHERMAN: I second that, Mr. Chairman.

MR. CHAIRMAN: I bring this committee to order. We are now going to deal with Bill 66, and I am advised . . .

Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on a point of order. I was just told that at the Municipal Committee there was an announcement made about the House not meeting tomorrow morning, or not doing anything. Do you have an announcement to make?

MR. CHAIRMAN: For the members of the committee's information, I have been handed a note a while ago and I was going to read it before 5:30 but I will read at this time. It's a note from the House Leader, Mr. Jorgenson. He advises that an agreement has been reached with respect to tomorrow's sitting. The House will meet at 10:00 a.m. and is adjourned to that hour, but immediately following prayers the House will adjourn and we will continue in the two committees, those which are now sitting. In other words if we are through these committees tonight the House would just meet and adjourn.

MR. CHERNIACK: Or it then means that there may not even be a quorum for the House to meet. I think it means then that if there is no quorum at 10:00 o'clock the House won't meet, only the Speaker will have to wait for, I suppose, half an hour to count bodies. But, in any event, if our committee is meeting, Mr. Chairman, because the other committee I understand has already completed its business, so if our committee does not complete its work tonight then the House meets at 10:00 and adjourns immediately after the prayer, that's the understanding. Then we would come back here and if we aren't here tomorrow morning then whatever will happen, there will not be any business of the House. That's your understanding sir.

MR. CHAIRMAN: That's my understanding.

MR. CHERNIACK: Let's hope that we can complete our work.

MR. CHAIRMAN: Mr. Balkaran asked the question whether we are back tonight and it is my understanding we are back in this committee tonight.

Mr. Sherman.

MR. SHERMAN: Mr. Chairman, originally because of the obligations on people who have been assisting the committee, who have work schedules and commitments to observe, we had made the arrangement that the committee would sit tomorrow to consider Bill 87, The Licensed Practical Nurses Act, and when we finished with Bills 65 and 66 today, we would be finished for the day. However there seems to be some disposition on the part of committee members for a preference for sitting tonight, if necessary, rather than tomorrow if that's possible so we are now attempting to reach the president of the LPNs and we may well deal with the LPNs Act tonight and then not have to sit tomorrow.

If that's the case the committee would then meet at 8:00 o'clock tonight, Mr. Chairman. We'll know that in a few minutes.

MR. CHAIRMAN: We will start dealing with Bill 66. I think we have agreement from the committee that we will deal page by page and wherever there is some consideration we will stop and deal with it.

Mr. Adam.

MR. ADAM: Mr. Chairman, there may be some comments that the visitors will want to make.

MR. CHAIRMAN: They have my permission to stop me wherever they desire.

MR. CHAIRMAN: Page 1 pass — Mr. Filmon.

MR. FILMON: Mr. Chairman, this was the point at which we were supposed to make this parallel to the provisions in the others under definition (1)(e) "a Minister means a member of the Executive Council responsible for the administration of health matters in the province", as agreed upon.

MR. CHAIRMAN: Mr. Filmon, I think, Mr. Balkaran already has that noted. Page 1 pass; Page 2 pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, it's a dangerous word. Try not to use the word pass.

MR. CHAIRMAN: Pardon me, I'll start using the word agreed.

MR. CHERNIACK: Yes, Mr. Chairman, and if you say pass it's understood that you don't mean it in the technical sense.

On page 2, referring to the objects, that has been laid over for the RNs and I just want to confirm with the representatives of the RPNs that they like the objectives as set out in Section 2; and I don't know whether they heard or reacted to my proposed addition of a subsection which I could read to them if they would like to hear it.

MR. CHAIRMAN: Mr. Street.

MR. STREET: Could you please reread it, I was not here yesterday.

MR. CHERNIACK: The wording of course is subject to review: "To carry out its activities in such a manner that the best interests and the protection of the public are insured".

MR. CHAIRMAN: Mr. Street.

MR. STREET: That would be added as an (f)? No objection.

MR. CHAIRMAN: Page 2 as agreed — Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just so that the members of the committee are aware, our caucus has received very strong legal representation in the last 24 hours against including Objects of the Association into The Registered Nurses Act, Bill 65, and I might say that it has not come from counsel for the MARN or the MARN itself, but it has come from other lawyers. As a consequence of that, when we come back to Bill 65, Mr. Cherniack and I may find ourselves at some debate as to whether the objects of the association should be in the bill or not. I think it is only fair to apprise the committee of that at this time so that they RPN representatives can make their decision. Presumably they are happy with the objects of the association stipulated in their bill.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, since the objects of the association are really a philosophical statement about the association, I would imagine that if the Minister and legislative counsel or Cabinet finds that there is some legal objection to having the objects in the Act, that would apply to us as well. Is my understanding correct?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I am not presuming to tell the RPN Association what they should do. They may well be happy with the objects of the association in their bill. They may also at this point want to indicate to us that they would like us to consider Section 2 of their bill as being in the category of, held for consideration, pending the decision that we produce with respect to the same kind of clause in Bill 65.

MRS. OSTED: I believe that what I understand you are saying, Mr. Minister is correct, that we don't mind at all having the objects of our association, our members supported us leaving them in there from the previous Act. However, if it would come to the attention of Cabinet or the Minister and legislative counsel that it would create some serious legal problems then we would appreciate being informed of that and certainly would undertake to change that.

MR. SHERMAN: I think that being the case, Mr. Chairman, we should circle Clause 2 of Bill 66, as being one that is subject to further consideration.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want to make sure to point out on the record my recollection that the Minister made no reference to the legislative counsel, Mrs. Osted did on two occasions, saying if it's the opinion of the legislative counsel. He has not stated an opinion in my hearing and I think she should be careful not to attribute to him an opinion which he has not stated publicly, nor which was quoted by Mr. Sherman, where some of us are a little bit sensitive about the use of the Legislative Counsel.

More importantly, Mr. Chairman, I just want to express my public regret that members of the legal profession did not consider it advisable to come to the NDP caucus, as they did to the PC caucus, to give them their points of view in regard to this section. They certainly have no obligation to do it but it then means that there are certain members of this committee who have been given opinions which were not shared with other members of this committee and it's a form — at this stage, I'm quite serious about this stage — at this stage, I think it's sort of a form of discrimination by whatever lawyers thought that it was worth doing, to leave us out of their expertise and I regret it. It is certainly not the fault of the Conservatives present, or of anybody other than the lawyers who chose not to, or did not, make those members of this committee, who are not members of the Conservative caucus, familiar with their points of view.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: I think, in fairness, it should be pointed out that Mr. Sinclair did give us his point of view, which was opposed to it, though.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: In all fairness, Mr. Filmon should know that we can hear, and Mr. Sinclair did state the point of view of the Registered Nurses Association, MARN. We did not have any opinions expressed to us by any other lawyers who appeared as advisors on their own behalf. As I say to Mr. Filmon, I don't expect him to justify or make any comment on behalf of those lawyers. I am just saying it as if, like one hand clapping, I'm talking to the wall because I don't even know who they are.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, just so that there is no misunderstanding, Mr. Cherniack is correct in his first comments with respect to the Legislative Counsel. Certainly, I did not indicate that the Legislative Counsel had given me any advice on this subject, but I don't want the impression left on the record that this has been a presentation to the government caucus. As far as I know, the caucus is not aware of it. This is a legal opinion that has been conveyed to my Deputy Minister and me within the last, I think I said 24 hours and that is an exaggeration, Mr. Chairman, and that perhaps led to the misunderstanding, it is actually within the last six or eight hours, that has conveyed to us very strong reservations about including the objects of a professional association in a piece of legislation, therefore making them subject to review by the courts.

That being the case, I wanted to apprise, since we had already gone past that section in 65, this really is the first reasonable opportunity that I had to raise it and I wanted to make the RPN Association aware of it. They may want to take into consideration the fact that we are very seriously considering not putting it into the RN's bill; it is not there now. We were asked to consider putting it in, and we were considering putting it in. I must say that my Deputy Minister and I are now seriously considering suggesting to the caucus that we don't put it in, and I want the RPN to know that.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Essentially, I have had similar discussions with those of Mr. Sherman, although not with him, with legal counsel, and the essence of the opinion is that the objects, as was pointed out, are a philosophical statement, whereas what we are attempting to do in the legislation is put in specific provisions. It may well be that it could be judged by somebody looking at the Act that the philosophies contradict the specifics that are within the Act and they could throw into question anything that we are putting into the Act.

It seems to me that we are taking the trouble, clause-by-clause, to be very sure of what we want to have in the Act, and we wouldn't want to have that contradicted in court by a philosophical statement

hat is a little bit wide-ranging and open to nterpretation.

MR. CHAIRMAN: Mr. Adam.

MR. ADAM: Yes, Mr. Chairman, I find it quite peculiar behavior on the part of whoever made the submissions in the last eight hours to the Minister, or to whoever, when a committee had already been convened and sitting, debating, and going section-by-section on a bill. It seems to me that the tradition and normal practice has been to communicate to the chairman with a brief, a letter, or whatever form. We received a letter from Mr. Taylor yesterday. It seems to me that that excludes some members of the committee from having access to those views that have been submitted.

I find that very peculiar. I want to put that on the record.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I agree with Mr. Adam. I have to say, of course, it is the privilege of any member of this committee to talk to anybody and get any private points of view.

I just want to clarify. When I expressed the regret I did, I meant it, but now I understand, the Minister may not realize, but he used the words, "spoke to our caucus" and that's why I reacted, but apparently they didn't talk to the caucus, they only talked to the Minister and his Deputy, and it's the wrong word that he used that prompted my reaction, which doesn't detract in any way from my agreement with Mr. Adam that it's a pity that we didn't have that.

I am not now going to discuss Mr. Filmon's argument, because we will leave that until the Minister comes in with a formal recommendation when we deal with the RNs, then we can debate that feature.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: Mr. Chairman, I think if there is information that the committee should be aware of about some feature in the bill, I don't think it makes any difference whether it was made available through the proper, appropriate appearance before the committee or not. If somebody has become aware of a concern and they bring it to the committee, I think it should stand on its merits, not on how it was brought here.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Further to Mr. Adam's point, Mr. Chairman, there is no way that any lawyer could have known that Mr. Cherniack was going to propose putting objects in, and therefore we precluded people from making representations — (Interjection)— But that's this bill; they weren't in the RN's bill. So if these people were concerned about them being put in the RN's or any other bill, such as the LPN's, they would not have known that Mr. Cherniack proposed to put objects in all these bills. They don't have a crystal ball to know that they should appear in case Mr. Cherniack suggests objects. He may suggest that they put foreign cars in the bill, but they don't know that, so they can only go on what is in the bill. That's why nobody appeared; it wasn't in the bill.

MR. CHAIRMAN: Page 2 agreed to disagree; Page 3 agreed — Mr. Filmon.

MR. FILMON: On Page 3, I think we agreed before that (k) was going to be changed to promote the professional and social welfare. Do we have that?

MR. CHAIRMAN: Mr. Balkaran has that.

MR. FILMON: I'll keep bringing them up just in case Mr. Balkaran doesn't have it.

MR. CHERNIACK: Mr. Chairman, I don't know that we had a reaction from the RPNs to that. I think our committee agreed we would not put it into the RN bill. I'm not sure that we heard from the RPNs as to whether or not they would . . .

MR. CHAIRMAN: Mr. Cherniack, I have given the RPNs full acknowledgement to bring anything to my attention that they feel they want to, and all they have to say is, "Mr. Chairman," and I will stop.

MR. CHERNIACK: They may not have the courage that some of us have.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Thank you, Mr. Chairman. To allay Mr. Cherniack's concern, this phraseology had appeared in one of the drafts and everyone concerned had agreed that it should be removed, and it wasn't; it was a mistake, so we want it removed.

MR. CHAIRMAN: Page 3 agreed; Page 4 agreed — Mr. Balkaran.

MR. BALKARAN: 5(2), Mr. Chairman, I think in 65, Mr. Cherniack has suggested, "after due notice." I think the committee had agreed.

MR. FILMON: The submission of the by-law to the members: "After due notice, the board shall submit . . ."

MR. CHAIRMAN: Mr. Street.

MR. STREET: We have no objection to that.

MR. CHERNIACK: Mr. Chairman, okay, I kind of assumed, from what we had said, that if it's going into the RN it's going in here, but you're right, it is well to bring it up so that the members will be aware of it.

MR. CHAIRMAN: Page 4 agreed; Page 5 agreed — Mrs. Osted.

MRS. OSTED: There is a slight change under 6(2). It should read, "prior submission of regulation by a board," rather than "to" a board.

MR. CHERNIACK: I thought it meant to members.

MRS. OSTED: To members, or by the board, one or the other.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, 6(1)(f), I think, will have a very substantial operation performed to remove the mandatory aspect. I think that was agreed to.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, the same applies in this bill as applies in Bill 65. I think the case was made at that point for a substantial review of the wording of that section, so as to eliminate any possible suggestion that we were sanctioning mandatory continuing education at this point.

MR. CHERNIACK: Mr. Chairman, dealing with the regulations, 6(1), and the approval of the Lieutenant-Governor-in-Council, it may be that this Act will be so well drawn that it will last a long time and through the lifespan of various Lieutenant-Governors-in-Council, who will not have had the privilege of being members of this committee.

I would like to suggest that when the regulations are submitted to the Lieutenant-Governor-in-Council for approval, that the recommendations of the Advisory Council, relevant to the regulations, shall be submitted to the Lieutenant-Governor-in-Council before approval is given. That takes us back to what we were discussing with the RN bill, and I was talking about the Lieutenant-Governor-in-Council and about the Advisory Council when I agreed with Mr. Ransom that it is going a little too far to give any advisory body any power to enter into public debate. But in the case of the Lieutenant-Governor-in-Council wanting to ensure full knowledge by the Lieutenant-Governor-in-Council of what is the background, I would like to suggest that when we deal with the final form of this regulations section, that there be a requirement that the board notify the Lieutenant-Governor-in-Council of the recommendations of the advisory council.

I am really saying that for the protection of the Lieutenant-Governor.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, in respect of that particular suggestion, I would point out that not all of the regulations are the subject of concern of the advisory committee and that there wouldn't be recommendations in respect of each of the type of regulations that are submitted to the Lieutenant-Governor-in-Council.

MR. CHERNIACK: Mr. Chairman, I agree, and that's why I used a word which I even remember sort of stumbling on. I said, "relevant to," the recommendations of the Advisory Council "relevant to" the regulations. The others, of course, would not be applicable.

MR. CHAIRMAN: Page 5 agreed — Mr. Ransom.

MR. RANSOM: Mr. Chairman, I would just take us back for a moment. I realized I had a page here with a couple of amendments that were apparently going to be proposed later on. The first one strikes me as rather a minor one, at the bottom of the first page, that it was going to delete "the" maximum potential of the individual and insert "her" maximum potential.

MR. CHAIRMAN: Mr. Ransom, I have been advised by Legislative Counsel that that is noted for the main bill.

MR. RANSOM: I just bring it to the attention of the committee.

MR. CHERNIACK: May I express appreciation to Mr. Ransom making us aware of certain amendments of which we have not been made aware of.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: The reason I have the amendments, Mr. Chairman, is that the Member of the Legislature who is responsible for this bill was not a member of the committee here, and left them with me. I apologize for not pointing that out when we dealt with the first page. It is to delete the words, "the maximum potential of the individual," and insert, and here I have made a change from "his" to "her" on my own, "her maximum potential."

MR. FILMON: What section?

MR. CHAIRMAN: The last line on the first page.

We will return now to Page 6. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I was just wondering, just let us not slip by, you say to "her" maximum potential. They are really talking about the maximum potential of the patient, not of the nurse.

I am wondering whether it wouldn't be better to leave it as it was so that it is clear we are talking about the patient. It's a technical point, as he said. It just occurred to me that the amendment may have been brought in on the assumption that they are talking about the nurse, the nurse potential.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I don't understand the amendment. I think (g)(iii) is perfectly clear the way it is worded.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: The amendment is a grammatical change and if you will read the whole of 1(g)(iii), and it helps when we read it out loud, however. If you read it to yourself you will see the individual is already noted. As to using the word "patient" and opposed to "individual," it is our association's philosophy to use the word individual, rather than patient, client, resident, inmate, what have you.

MR. CHAIRMAN: Mr. Ransom.

MR. RANSOM: My understanding is, Mr. Chairman, that we were not dealing with the specifics of amendments in going through. I simply drew it to the attention of the committee that that was one section

that there was to be an amendment. If the members don't like the amendment when it comes in, I assume that they can defeat it or if there is reason not to bring it in, it won't be brought in.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Surely the psychiatric nurse is not concerned with involving the planning and implementation of therapies and programs for herself. We are talking about planning and implementting therapies and programs to assist an individual with emotional, developmental, or associated physical or mental difficulties, to develop to the maximum potential of that individual.

I don't want to make a big issue out of it either, but I don't understand the amendment.

MR. CHERNIACK: To assist that individual to attain and develop her maximum potential, the maximum potential of the individual, is the way I read it.

I think it's okay; I think I understand the amendment. But, really, as Mr. Ransom said, it's up to the draftsman.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, it is better language, but the problem is that because of this problem we have with her meaning him and him meaning her that her throughout the Act almost invariably refers to a registered psychiatric nurse and that's what throws the confusion in.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, we do not mind if the committee prefers to refer to people with whom we work as males.

MR. CHAIRMAN: Can you repeat that again, Mrs. Osted?

MRS. OSTED: The association has no concerns if the committee wishes to refer to the people that psychiatric nurses work with as males.

MR. FILMON: That's not my point, Mr. Chairman; that won't solve it, because then you would have the same problem if you changed all the "hises" to the "hims." The reference, just using the pronoun is difficult.

Do you have any problems if we left it as it was? It still means the same thing.

MRS. OSTED: We don't have any serious problems, just don't let an English teacher see it, that's all.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Well, that's right, you know. You can't say to develop to the maximum potential — you don't say that, to the potential, to the maximum potential. —(Interjection)— I'm sorry, too, Mr. Chairman. I think the amendment was correct, I really do, but I don't want to discuss it anymore.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, just a final comment, if I may. It may help if you read it: "which assist the individual to develop to his maximum potential."

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: What would happen, to differentiate between the use of "her" or registered psychiatric . . .

MRS. OSTED: His or her.

MR. FILMON: Just a second, though. It would be to say, in this case, as Mr. Sherman originally suggested, "to develop his maximum potential," but then the only difficulty that you have is, then, in that clause in the Act that says wherever the reference is to the female, it should be assumed to be the male, you have to say, or vice versa, right?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I believe that the sub-clause as printed is correct. If you try to use a pronoun to qualify individual by using the word "her," then you leave out the other sex. In other words, you are simply referring to that individual as her, notwithstanding the subsequent section that says "her" includes "him."

I think we are talking about developing the maximum potential of the individual referred to in line 2 of that section.

MR. SHERMAN: That's right, that's what we are talking about.

Could the amendment not read, Mr. Chairman, simply, "to develop maximum potential," in other words, "which assists the individual to develop maximum potential."

MR. CHAIRMAN: Could we agree to leave this matter with Legislative Counsel?

Mr. Blake.

MR. BLAKE: Mr. Chairman, surely we can solve this problem very very quickly without spending an hour on it. We are all grownups, surely somebody can come up with an answer.

MR. CHAIRMAN: Order please. Can I make the suggestion that we leave this to Legislative Counsel to figure this one out?

MR. CHERNIACK: I would like to get some information. Is there some law somewhere that says that wherever you use the male gender, the female is included, and not vice versa? Is that the law?

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: The Interpretation Act says that it merely includes the females, but not the other way around.

MR. CHERNIACK: Why don't we change The Interpretation Act?

MR. BALKARAN: It's not quite that simple, Mr. Cherniack; there are a lot of problems.

MR. CHAIRMAN: We'll return now to Page 6. Are there any problems with Page 6? Page 6 Agreed; Page 7 Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the RNs agreed to include, where 8(3) appears, that sentence that I suggested on human rights.

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I believe what was said, Mr. Chairman, is that while we don't think it is necessary, we have no objection to it.

MR. CHAIRMAN: Just for Mr. Balkaran's clarification, Mr. Cherniack, what section was it dealing with?

MR. CHERNIACK: 8(3). Well, in the RN it's probably another number. But it had to do with the provision of the protection of human rights. Under 7(3), in the RN, in Bill 65. Okay, Mr. Balkaran?

MR. BALKARAN: You mean the discrimination section?

MR. CHERNIACK: Yes.

MR. CHAIRMAN: Page 7 — Mr. Street.

MR. STREET: Just a note that we concur with MARN on 8(3), on the human rights thing. We don't feel it is necessary but it creates no problems for us.

MR. CHAIRMAN: That's on Page 6. Now we will turn to Page 7. Any problems there? Agreed — Mr. Cherniack.

MR. CHERNIACK: I have a note under 12 that the RN 11 is more extensive. I would have to read to see why, but it's longer and my note indicates that I thought that the RN 11 was better than 12 here, but I don't remember why. Then my note says, or does 16 cover it?

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, perhaps the reasons that we do not have included under our Section 12, the fact that the conditions and limitations shall be entered in the roster against the name of the person who is subject to them, which is included in Section 16 for us.

MR. CHERNIACK: That's the same discussion we had, that I started, about 11 and 15, and I gave up, so I'll give up now.

MR. CHAIRMAN: Page 7 Agreed; Page 8 Agreed — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, my note tells me, under 17(d), that they may mean by-laws, rather than regulations. 17(2)(b). "such additional sums as may be prescribed by . . ." My hunch is they mean by-laws, not regulations, because regulations have to go before the Lieutenant-Governor-in-Council.

MR. CHAIRMAN: Mr. Street.

MR. STREET: Mr. Chairman, we'll have to check on that but we believe Mr. Cherniack is right there.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: It is specified as by-laws in 65; in Bill 65 it is Section 16(2)(b). So I would think it should be by-laws here.

MR. CHAIRMAN: Agreed. Page 9 Agreed — Mr. Cherniack.

MR. CHERNIACK: 17(3) says, "as required by the regulations," to such terms and conditions as are required by the regulations. My note is it doesn't say that in the RN section and I don't know whether, again, the RPNs intend to include this in regulation, because if it isn't in the regulation, then you may not be able to do it, and the RN didn't have it.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, some of this in included in regulations and that is why we state, "as required by the regulations or as the board may prescribe."

MR. CHERNIACK: Oh, thank you. I had overlooked the word "or."

MR. CHAIRMAN: Page 8 is agreeable; Page 9 Agreed — Mr. Sherman.

MR. SHERMAN: Mr. Chairman, 18 obviously would have to conform with 17 in 65.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, we have no objections at all with the committee's recommendations for 18.

MR. CHAIRMAN: Page 9 is agreed then. Page 10 Agreed — Mr. Cherniack.

MR. CHERNIACK: 19(1). I don't recall whether — yes, I think in the RN we removed the offence provision, I think.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, we didn't remove it. We said that that would be discussed with Legislative Counsel.

MR. CHERNIACK: I see, as to whether it should be disciplinary rather than criminal?

MR. SHERMAN: Correct.

MR. CHERNIACK: That's fine.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, for 19(1), we concur with the suggestion of removing the "guilty of an offence" phraseology and would suggest that the last line of that section read, "as recorded in the roster, may be charged with professional misconduct."

MR. CHAIRMAN: Is that agreeable to members of the committee? (Agreed) Page 9 — Mr. Cherniack.

MR. CHERNIACK: I'm sorry, I'm just slow, my memory isn't that good. No. 20 here is not in the RN, and I have no notice to what we discussed in the RN and I don't think I object to 20, but isn't this the bill where we have to watch for the appeal provision being broad enough to include the decision under 20? I am getting a nod from Mrs. Osted.

MR. CHAIRMAN: Page 9 as suggested agreed; Page 10 — Mr. Cherniack.

MR. CHERNIACK: 24(1), Mr. Chairman, I think we agreed that "verbal" would be removed and it would be "written complaints".

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Yes, Mr. Chairman, we have no problems with that at all.

MR. CHAIRMAN: Page 10 as suggested Agreed — Mr. Sherman.

MR. SHERMAN: I trust that Legislative Counsel has been given the opportunity to keep abreast of these rapid changes.

MR. CHERNIACK: Mr. Chairman, I think this is a very good exercise we are going through but it would be spoiled by going so quickly that Mr. Balkaran isn't able to keep up.

MR. CHAIRMAN: I trust that Mr. Balkaran will stop me when he runs into problems.

MR. CHERNIACK: Well make sure he does.

MR. CHAIRMAN: Are members of the committee then agreeable on Page 10?

MR. ADAM: Mr. Balkaran will be changing the words that should be changed when we say that we are removing the word "verbal" out of section 24(1) and he will correlate the proper words.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: In 27 there was that same change saying "where a member (a) after (b) . . .

MR. BALKARAN: No, that wasn't agreed.

MR. FILMON: That wasn't agreed?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: What's under consideration, Mr. Chairman, is the term "is advised". Legislative Counsel is looking at the word and in (b) the term "or otherwise".

MR. CHAIRMAN: Page 10 Agreed; Page 11 as agreed.

MR. CHERNIACK: I think, Mr. Chairman, we agreed that confidentiality provision will be included there.

MR. CHAIRMAN: Mrs. Osted.

MRS. OSTED: Mr. Chairman, having discussed the confidentiality issue our legal counsel suggested that we note the fact that confidentiality can only be kept until the end of findings of a private hearing or until the beginning of a public hearing and that that be taken into consideration as well.

MR. CHAIRMAN: Is it agreed by members of the committee? (Agreed)

Page 12 Agreed — Mr. Sherman.

MR. SHERMAN: No, I guess it's all right, Mr. Chairman. I know that Mr. Cherniack had some difficulty with preliminary investigation provision on 65, but he does not, I assume, have any difficulty with it on 66.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: No, because I think that the change was made in 65 to accord more with this one, so there is no problem here.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: In addition to that we were looking into the provision under, in this case it would be Section 35, that none of the members of the discipline committee shall have been involved in the investigation of the complaint hearing.

MR. CHAIRMAN: Page 13 Agreed — Mrs. Osted.

MRS. OSTED: Mr. Chairman, just on 37(1) you did add, "to fix a date not more than 30 days after date of fixing" or some similar to ours as well I believe. This was added to The MARN Act. It's on 37(1).

MR. CHAIRMAN: I think that was agreed.

MR. CHERNIACK: Mr. Chairman, I think we are being taken more quickly than I was following. Your 37(1) says, "shall within 30 days fix a date".

MRS. OSTED: Yes.

MR. CHERNIACK: I think that the MARN one was changed to accord with that.

MRS. OSTED: Yes, was it not added so that it would read, "within 30 days fix a date not more than 30 days after date of fixing", or something like that; time and place for holding the inquiry.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, if I may I have scribbled an amendment down here that would require the discipline committee to fix within 30 days from the date of a direction or decision for the holding of the inquiry which shall be held not later than 60 days from that decision of inquiry, so that you have a time frame with which . . .

MR. CHAIRMAN: Is that agreed? Mr. Sinclair.

MR. SINCLAIR: Mr. Chairman, I think that amendment would have to be drawn in such a way

that the commencement of the hearing would not be more than 60 days. It may not be possible to complete the hearing. There might be adjournments requested.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: It says it shall be held no later than 60 days, but there is nothing to preclude you from adjourning that.

MR. SINCLAIR: I would interpret be held, as be completed or at least I would say that it could possibly be interpreted that way.

MR. BALKARAN: I don't agree.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Page 13, is that what we are dealing with?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, if I may, Mr. Cherniack, before we get to Page 13, would Mr. Balkaran read that proposed amendment again on 37(1).

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: 37(1) — it would read after the third line, the word "shall" you add the words, "within 30 days from the date of the direction or decision fix a date, time and place, for the holding of the inquiry which shall be held no later than 60 days from the date of the direction or decision".

MR. CHAIRMAN: Mr. Sinclair.

MR. SINCLAIR: I wonder, Mr. Chairman, if there is some way that I can make representation concerning that section before it comes back to committee, because I think there is some interpretation under The Bankruptcy Act where similar legislation, where the courts have held that such wording requires the completion of the hearing within the 60 day time frame.

MR. CHAIRMAN: The time being 5:30, or a little past, we will come back to this subject at 8:00 o'clock. Since we are on a little bit of a problem with 37(1) in 66, that will give us all a chance to review it.

MR. CHERNIACK: Mr. Chairman, you may right. I think Mr. Sinclair will have the opportunity to talk to Mr. Balkaran. I don't know if the committee cares much as long as they can settle that, but may we know whether we have word now about the LPN's?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I was just going to ask the representative of the LPN's whether the president will be available this evening?

MR. CHAIRMAN: Mrs. Latimer.

MRS. LATIMER: Miss Fawcett was phoned in Brandon. She is on her way here, pending any unforeseen circumstances she will be here at 8:30. I have been charged to act in her place until she gets here as first vice-president of the association.

MR. SHERMAN: Mr. Chairman, I would like to thank Mrs. Latimer for making those arrangements. That means that we can then, I would expect, deal with the LPN Act tonight because we shouldn't take that much more time on the RPN bill, in which case it may not be necessary for the committee to meet tomorrow. We will make that determination on the basis of the progress we make on the LPN bill tonight. I presume we will be sitting at 8:00 o'clock, Mr. Chairman.

MR. CHAIRMAN: That's my understanding. Members of the committee are we willing to meet again then at 8:00 o'clock? Committee rise.