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of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

MUNICIPAL AFFAIRS

31-32 Elizabeth II

Chairman
Mr. A. Anstett
Constituency of Springfield

MG-8048

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON MUNICIPAL AFFAIRS
Tuesday, 16 August, 1983

TIME — 8:00 p.m.

LOCATION — Winnipeg

CHAIRMAN — Mr. Andy Anstett (Springfield)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Adam, Penner and Plohman

Messrs. Anstett, Eyler, Filmon, Gourlay, Manness; Mrs. Oleson

WITNESSES: Representations were made to the Committee as follows:

Bill No. 47 - The Municipal Council Conflict of Interest Act; Loi sur les conflits d'intérêts au sein des conseils municipaux

Messrs. Frank Steele and Gordon Carnegie, City of Winnipeg

MATTERS UNDER DISCUSSION:

Bill No. 18 - The Legislative Assembly and Executive Council Conflict of Interest Act. Passed with certain amendments.

Bill No. 47 - The Municipal Council Conflict of Interest Act; Loi sur les conflits d'intérêts au sein des conseils municipaux.

Passed with certain amendments.

Bill No. 114 - An Act to amend The Legislative Assembly Act(3).

Passed without amendment.

WRITTEN SUBMISSIONS:

A written submission was presented with respect to Bill 18 - The Legislative Assembly and Executive Council Conflict of Interest Act from the Manitoba Association for Rights and Liberties.

* * * *

MR. CHAIRMAN: Committee come to order. The bills before the committee this evening are Bill 18, Bill 47, Bill 114.

We have briefs on Bill 18, two in number, and three on Bill 47. I believe all are local people so there's no need to hear rural representations first.

Is it your will and pleasure to take them in the order in which they appear on the list?

I understand that Victoria Lehman, on behalf of MARL, has a written presentation and will not be here this evening. The Clerk can distribute that brief and then I'll call on Mr. Ben Hanuschak.

Mr. Hanuschak. I call on Harry Peters or Grant Mitchell, on behalf of the Manitoba Association for Rights and Liberties.

Proceeding to Bill No. 47, Mr. Frank Steele, City of Winnipeg.

Mr. Steele, please.

MR. FRANK STEELE: Thank you, Mr. Chairman. On The Municipal Council Conflict of Interest Act, we are thankful that we've had the opportunity to discuss with your draftsman the review which our department prepared in connection with this bill, and we had an opportunity, as well, this afternoon, to have a quick look at the amendments, and a great many of the concerns which we had, mainly technical in nature, have been addresssed and we won't, therefore, bore you with getting into those details tonight.

The review which my department made of the bill was a collaborative effort, principally between Mr. Carnegie on my staff and myself, and since I'm just back from vacation and Mr. Carnegie has been in closer touch with the latest developments, I'll let him make a few points that we have to make this evening.

MR. CHAIRMAN: Mr. Carnegie.

MR. G. CARNEGIE: Thank you very much. As Mr. Steele has made apparent, we appear here by virtue of the fact that council approved a review of the act prepared by the Law Department. That review was made available to your draftsman and I note that, of the 31 motions for amendments, 18 of those arise, at least in part, out of our own review of the legislation. Many of them were housekeeping, many of them substantive.

I think it's important particularly to note that, from the city's point of view, the motion regarding the use of influence by a councillor for the procurement of any gain is a particularly important one from the city's point of view in the sense that a great deal of city business occurs outside meetings, something which gave us considerable difficulty in reviewing the act.

Because of the size of the administration there is an extensive set of delegations right down to the administration, and we felt that it was necessary to make sure that influence was not used at the administrative level to ensure that the administration awarded contracts and did the other things it's required to do without the interference from councillors who are now free to deal with the city, particularly with regard to contracts.

In the review that we prepared, we accepted the scheme of the act as drafted and our primary concern here is to address its workability. We are not in the unhappy position of those who are outside wishing to scuttle the legislation entirely, a very unhappy situation I think.

I should make clear that our concern, as far as the city was concerned, arises from the fundamental difference between the way business is conducted in a rural municipality and the way in which it's conducted in the City of Winnipeg.

In a rural context almost everything goes before council and the meeting itself serves a very real purpose

because virtually everything is decided at that meeting. That is not the case in the city. If it is the intent of this committee that every time there is a dealing between a councillor and the city that there should be a disclosure, the legislation simply does not provide for that in the city context.

It is anticipated that if councillors are dealing with the city from time to time that the vast majority of those dealings will pass through the adminstration without a disclosure because they will either go through the administration directly, or the councillor in question may not be a member of the committee before which the matter appears, I make no comment apart from saying that if is intended, if it is the intent of the legislation, it simply does not work in an urban context that there should be a disclosure every time there is a dealing.

I would also, just for the record, say that so far as one of the key definition sections of the act is concerned, that is to say Section 4 on indirect pecuniary interests, I as a lawyer had very great difficulty with this definition and indeed it was the subject of several hours of discussion before we were able I think to define the meaning of that term. I realize now that the bill is at this stage that the complexity of this definition I anticipate will cause considerable difficulty.

It's intent I think is clear upon very very careful and detailed study. The only problem arises is that your expecting councillors to interpret this particular section on the spur of the moment and it certainly is something less than lucid. As far as our own concerns with the original bill and the amendments are concerned, I would like to address five basic points.

With regard to Section 4(5), that's the third motion on page 2. The city's concern here arises from the way in which conflict of interest legislation is applied by the courts. This section is a section which says that although there are certain kinds of financial relations between a councillor and the city that these are deemed not to be conflicts of interest in the cases of (a) and (b) because these are things which ordinary citizens must do with the municipality.

The city has recommended that a further category be added here and that is those pecuniary interests which are clearly caught by the act but which are so insignificant and so remote that they cannot reasonably be expected to have affected the decision. For us, this is very important because the degrees of remoteness of pecuniary interests are almost infinite.

I would like to take your time for a moment to recite the facts of a case that has recently arisen in Ontario on exactly this point. A councillor in a rural municipality voted to extend a sewer outside the town as they are allowed to do under their legislation to particular farm houses. He had a piece of land a mile and a half further along the same road; a piece of land without a house on it. It was alleged that in voting on the motion to extend the sewer that, in fact, he had a pecuniary interest in the extension of the sewer by reason of the fact that he had a piece of land another mile and a half down the road.

There was of course some possible - however remote - financial benefit to him by being able perhaps at some future date to build a house and to run the sewer even further to that property. Clearly, however, that property had no house on it; it was a considerable distance away. The councillor was exonerated eventually by the courts on the basis that the interest was too insignificant and remote to possibly have affected his decision.

We would like to see this provision built into Section 45 because it seems to us that in these degrees of remoteness of interest, nothing is served by penalizing someone in this kind of situation. In this way, therefore, a court before whom a case comes of this kind, where there is some remote pecuniary benefit would be in a position to relieve the councillor at the outset. That is, to say that there is no breach of the act because it is so remote and insignificant.

I would suggest in accordance with the review provided to your draftsmen earlier on that wording something to this effect be added: that a councillor shall not be deemed to have a pecuniary interest by reason only of an interest which is so remote or insignificant in its nature that it cannot reasonably regard it as likely to influence the councillor. In that way I think the interest of the legislation as well as that of the councillors would be served.

The city is also concerned by way of a second point with what we perceive to be an ommission in the act. The act speaks at several points and I note particularly Section 14 as in the original Bill 47 and in Section 18(2) which is in the motions with a proper definition of compensation for services and compensation generally. It is expected, now that councillors will be free to deal with municipalities, that some of this compensation will occur in kind rather than in cash. We would like it to be quite apparent that compensation in kind is comprehended in the definition of compensation.

The act would have to be examined on a section-by-section basis in order to properly define how this would happen. In other words, I don't have a draft here right in front of me for that but it seems to me, in principle, it would be in the interest of the act that kind of amendment would be added.

With regard to the motions with which we were provided, the motion of Page 7 at the bottom - this was new to us. It appears to us it has a purpose to secure the right of councillors to appear and be heard before meetings where they actually have a pecuniary interest of a particular kind, in order that they might protect their own usual rights in relation to a municipality. In principle, I think, this is an agreeable kind of an amendment. The drafting however leaves something to be desired and I would suggest to this committee that paragraph (a) is, from a municipal lawyer's point of view, very confusing. It talks about an application for a variance in a zoning by-law. Variance is a term of art, under The City of Winnipeg Act and it refers to only one kind of change in a zoning by-law. We would prefer, since it is the evident purpose of this section, to allow a councillor to appear, where zoning matters arise, variances, conditional uses, changes to zoning by-laws, that wording something of this kind be incorporated. That is to say, an application for a change in the application of a zoning by-law or something to that effect, so that the full spectrum of zoning considerations can be the subject of appearances by a councillor without his offending the act.

With regard to Section (b) as it now reads, it says that a councillor may appear to represent his personal interest in a complaint in respect of a realty or local improvement assessment." Since it is the intent of this section apparently to allow a councillor to contest tax

assessments, there's one obvious omission and that's business tax. Realty taxes and business taxes under The City of Winnipeg Act are quite different. Realty taxes are for the owner and business taxes are for tenants. Conceivably a councillor could be a tenant and would want to contest a business tax matter on the same basis and with the same right that an owner would be entitled to contest realty taxes. That seems to me to be a clear omission from the scheme.

With regard to the original bill, Section 22, The Ontario Act upon which this act - well I shouldn't say modelled, it's really quite different in some fundamental ways - provides two limitation periods for the making of an application. In a municipal law context I think, it's generally favoured that people who have a right of action should be required to bring it within a reasonable time, who actually know about a situation.

The suggestion we make with regard to Section 22 is that any applicant should be obliged to bring an application within six weeks of the time that the breach of the act comes to his knowledge in order that he might be entitled to continue instead of sleeping on his rights for a full six-year period. That provision is incorporated in Ontario and it seems to make good sense to us that people should be required to act upon their rights within a reasonable time of knowledge.

Finally, with regard to Section 15(1) of the act - the disqualification of a councillor from office. Terms for councillors in the city are three years. Litigation proceedings are slow to say the very least. It is quite conceivable that an action to disqualify a member might take several years. As the act now stands a councillor could, in one term, breach the act; an election could intervene; he could be re-elected while the case is in the process of being heard; and thereby not be disentitled to sit in the session because the remedy here is disqualification, but he is disqualified for the balance of the term which has already expired. So there's no penalty attached to this kind of breach.

It was our suggestion in the review that the judiciary be given some discretion to determine the length of time of disqualification. In accordance with the facts and circumstances of every case to a given maximum - I believe the Ontario Legislation provides for a maximum disqualification of seven years when such a number of course must be arbitrary - but it seems to us that as the penalty provision here stands, it could and in fact in most cases would be completely ineffectual because of the slow manner in which cases are dealt with through the courts and on appeal.

Thank you.

MR. CHAIRMAN: Any questions for Mr. Carnegie from members of the committee?

Mr. Adam.

HON. A. ADAM: Mr. Carnegie, in your opening remarks you indicated, if I follow correctly, that the amendment in your opinion and the act itself was not restrictive enough insofar as conflict of interest during the year. Is that a correct assumption about what you're saying?

MR. G. CARNEGIE: I'm sorry, I don't understand, Mr. Adam. Can you repeat your question?

HON. A. ADAM: That there be no disclosure of a contract during the year if the contract is awarded . . .

MR. G. CARNEGIE: There are two kinds of disclosures under the act; one at a meeting and one general filing procedure. The filing procedure itself would catch such a document, would catch such a transaction. However, there would not be any disclosure at the time of award if the award were not made before a meeting; and the vast majority of city contracts are not awarded before meetings. Indeed, I think contracts only over $500,000 are awarded before committee and/or council, depending upon the particular circumstances of that transaction. The dollar value of contracts awarded by the administration is far in excess of anything awarded at a meeting.

HON. A. ADAM: What you're saying there is that the present wording isn't sufficient and you would like to see that tightened up. Is that correct?

MR. G. CARNEGIE: I don't think it can be tightened up by wording unless you require all contracts to be awarded at meetings.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I'm wondering what the mischief is. There is the general disclosure that councillor X has an interest in Phillip's Paint and, administratively, without any part in the decision-making process being taken by councillor X, the administration charged with that responsibility awards a contract for paint for road markings to Phillip's Paint. Where's the conflict of interest? I mean there's nothing here. It's not our intention that you simply, because one councillor has an interest in the company, can't award it to that company.

MR. G. CARNEGIE: That's correct. I'm making a note really, Mr. Penner, based upon the contrast between the rural situation where there would always be a disclosure because all such contracts are awarded at a meeting, and the city context, where the vast majority of such contracts are awarded by the administration. It is for that reason that we suggested the influence provision which has happily been included among the motions here because we felt that there was an opportunity for abuse there that ought to be closed.

HON. R. PENNER: It looks like we're going to need conflict of interest for administrators and their legal help.

MR. G. CARNEGIE: Really quite unnecessary.

MR. CHAIRMAN: Further questions for the delegation?

Mr. Adam.

HON. A. ADAM: Your comments, Mr. Carnegie, on Section 14(2) - that does make sense to us and we'll take that under consideration and also your comments on adding business tax as well as assessment where a councillor has the same right as an ordinary citizen to appeal his own assessment on his property and that makes good sense to add in the business tax as well.

MR. G. CARNEGIE: Thank you, yes.

MR. CHAIRMAN: Mrs. Oleson.

MRS. C. OLESON: Thank you, Mr. Chairman. You didn't mention, Mr. Carnegie, in your presentation, clause 6(5) of this legislation which states that the clerk of every municipality shall make the second record referred to in this section available for inspection by any person without charge during normal business hours. Do you concur with that clause of the bill?

MR. G. CARNEGIE: In the light of the motions, the restrictive disclosure provisions, it would appear that there is a conflict in the bill as it stands.

MRS. C. OLESON: Could you explain that please?

MR. G. CARNEGIE: Just a moment.

MRS. C. OLESON: Are you telling me that there is an amendment to this, proposed, because we just received this copy.

MR. G. CARNEGIE: Sorry, I'm having some difficulty finding the so-called snooper provision.

MR. CHAIRMAN: Mr. Penner, on a point of order.

HON. R. PENNER: The information disclosed that's referred to in 6(4), 6(5) is simply the record of disclosures that are made at a meeting where a councillor gets up and says, I have a conflict of interest in this matter and I'm leaving.

MR. G. CARNEGIE: That's correct. There is no conflict; you're right.

MRS. C. OLESON: Then it's Section 12 that I would also refer to then, the clerk of the municipality shall make the statements filed under Section 9 available for inspection by any person without charge during normal business hours. That's the one that I'm concerned with; I'm sorry.

MR. CHAIRMAN: On a point of order, Mrs. Oleson, you may wish to consult the amendments that have been distributed at the bottom of Page 6. That may be of some assistance.

MR. G. CARNEGIE: Yes, that obviously deletes that section and provides for a restricted kind of access to the general disclosure provisions.

MR. CHAIRMAN: Mr. Manness.

MR. C. MANNESS: Mr. Carnegie, I arrived a little late and I don't know if you gave specific comment on Section 10. Do you have any concerns at all with the areas in which an individual has to disclose assets and interests, under that section?

MR. G. CARNEGIE: We were faced with a very delicate task in the composition of our review, lawyers are not accustomed to trenching into the areas of policy except insofar as it's strictly necessary. We accepted the scheme here, for the purposes of our review, as generally what would be acceptable. We addressed ourselves entirely to making that system, given the decisions behind it, making it work as well as possible, and the motions which we were provided with, clean up I think some of the inconsistencies in the procedures so that the Clerk of the municipality or the Clerk of the city can be reasonably expected to know what is expected of the councillors and so on.

Apart from that, we have not addressed a substantive issue of whether or not there is something that ought to be added or ought to be deleted. The councillors of the city did not see fit to address that issue so we accepted the enumeration of classes of items here and addressed ourselves to their workability.

MR. C. MANNESS: Well, what you're saying is, the councillors in the City of Winnipeg accept in principle, the requirement for disclosure of the assets and interests as indicated under Section 10.

MR. G. CARNEGIE: I believe we have had disclosure of interests, Mr. Chairman, for quite some time in the city on a voluntary basis.

MR. C. MANNESS: Well, specifically though as laid down under this act, under Section 10, have you had it in that manner?

MR. G. CARNEGIE: Insofar as the council has approved the review we provided. There is a nervousness in the city with regard to this legislation, I cannot deny.

The justification for this kind of legislation in urban context is something beyond my capacity, but certainly there is not the same compelling necessity for disclosure legislation in dealing with the municipality in an urban context as there is in the rural context. As one who practised in the country, I can tell you it was a very serious problem. People would not run for office because they knew they would be disqualified very shortly thereafter or they would be out of business. So that in a rural context, it certainly was very well justified, from my own personal experience. In an urban context, I don't know that it matters which of the two systems is in operation.

That's a personal opinion by the way and not one endorsed by the city.

MR. C. MANNESS: Well, I would like to draw one answer, if I can, from you on your personal experience. Do you feel that this legislation could, in effect, impose some restrictions on rural people who would wish to run for public office? Again, based on your experience.

MR. G. CARNEGIE: Quite the opposite. I mean I cannot say, Mr. Chairman, that I have studied this legislation from a specific rural point of view - it was hard enough to get the city's act together - but I would say that I know personally of several people who declined to run for council because they knew that their land developments and so on could not go ahead because they just have to put their business activities on hold under the existing Municipal Act because they would be in a conflict, there was no doubt about it. They felt that it was better to be outside the municipality off council, dealing with council, rather than on council and run the risk that you might run into a conflict.

It is hoped - and my personal hope - that this legislation would remove that difficulty. Whether it does it or not as I say I haven't really read the legislation from that point of view.

MR. CHAIRMAN: Further questions for Mr. Carnegie. Hearing none, Sir, thank you very much and thank you to Mr. Steele for being here this evening.

Mr. Bob Atkins, Municipal Law Subsection of the Canadian Bar Association.

Mr. Atkins.

MR. B. ATKINS: Members of the committee, my name is Bob Atkins. I am the Chairman of the Municipal Law Subsection of the Canadian Bar Association. The Subsection has met and considered the proposed legislation and we did have and prepared some points that we thought we would like to present to this committee in connection with that proposed legislation.

I cannot say to you that we had consensus on any particular points. We had concerns expressed both pro and con in connection with some of these points, therefore, I'm not going to say that this is a brief that presents the position of the Subsection.

The concerns, or the legislation, itself, deals with something that has been of a great deal of concern to municipal lawyers. Indeed, I would think all municipal councillors who have any sort of feelings at all with the municipalities. I know my friend, Mr. Carnegie, has addressed this matter from the point of view of the City of Winnipeg, and I don't intend to deal, then, to deal in any depth with the City of Winnipeg's position. I will try and keep my comments in relation to municipalities that are outside of the City of Winnipeg.

The other thing that has happened is that I was informed today, in speaking to Mr. Carnegie, late today, that in fact there were proposed motions, or motions of proposed amendments to the proposed legislation to the bill. I have not had a chance to discuss at all with any other members the Subsection of the proposed motions. I have had an opportunity to review them myself, personally, and have some comments in connection with them that are personal comments. Having said that, I would like to then proceed.

There is a substantial change in the legislation that is now proposed from that that was previously in existence, and the change really is that now people can deal, councillors can deal with municipal councils, provided they declare their interest. That seems to be the intent of the legislation.

Previously there was a general prohibition for councillors to deal with municipalities because of the conceived conflict of interest, except in very specific circumstances. Those circumstances were spelled out in the legislation and they required a tender, they required advanced notice resolutions to be posted, and they required that the person who, in fact, was the councillor tendered had the lowest bid, and they required that at the time the matter came on before council the councillor absent himself from any discussion of the proposed contract.

That method, although it would seem on the face of it to cover the problem and to be an answer, did create a lot of difficulties in smaller municipalities where a great deal of municipal services were goods purchased, or services acquired by municipalities from residents in the municipality were very small nominal things in nature, they would require a tire on vehicle change and they would take it to the garage and no one wanted to tender on that basis. It simply wouldn't work and so, therefore, for the person who owned the garage who did this type of work would say, I don't want to run for council and it was a problem.

There were methods to deal with that problem, in terms of a tender based on a long-term tender, for a year's basis, saying that you would provide services of so much per hour and parts at cost-plus-X-number of dollars or whatever that was. But, again, that was complicated; in many instances, it was something that councillors didn't want to become involved with as business people; and secondly, it was in many instances not thought of by councillors or their legal advisors and wasn't considered as a possibility.

The difficulties that the Subsection foresees with the legislation, as proposed, in that regard, relates to I suppose the problem, I don't know, that if, in fact, there are more than one person involved in a community who can provide the service, and there is no tendering, as such, and the services are then provided by the councillor, there is a perceived conflict of interest, and a perceived adverse result arising from that conflict of interest.

That concern is, I suppose, something from the point of view of the legislation would be answered in part by saying that this is something that, because of disclosure provisions, the community as a whole on their next election, the voters, the electors, could deal with this matter; and if the councillor was in a conflict of interest position and did receive gain or benefit then he will be appropriately removed from office at the next election.

I think that, to some extent, that is an answer. There still remains, however, a concern that a councillor can receive benefit, can receive a gain arising out of dealings with the municipality in circumstances where he may not necessarily be the low bidder. I think that problem is something that possibly cannot be totally answered. Concern is the concern with legislations as it now stands.

The concern is valid and to be in all fairness about it and, of course, it's also covered by criminal provisions. If there was obviously an intent, a criminal intent, if there were benefits that were obtained through influenced peddling, the criminal law does have provisions. The standard of proof in those circumstances is very difficult. There are other reasons why there may not be an appropriate remedy in all circumstances, but it is something that is of concern, that there is not further requirement; disclosure is nice, but there is no further requirement in the event there is competition, that there is more than one party who can provide it, and that it be done on a competitive basis.

One of the things which we had considered and suggest as a possible matter for consideration of this committee, is a simple phrase, or a simple statement, to the effect that basically a conflict of interest, as we perceive it, is any circumstance which arises with the person acting for ultra vires reasons, that is, interest beyond the interest of the council, acts in a way that is not in the best interest of the council.

The Corporations Act, which deals with directors, that in some instances can be considered similar to councillors, as a simple phrase to the effect that the directors will act always bona fides and in the best interests of the corporation. A statement of that nature, in this type of legislation, I think could be of some benefit in determining what the position of the councillor is; that, in fact, just because the person who is appearing before you does not happen to be a dependent is defined by this, but happens to be your brother, you should be acting in the best interest of the municipality, and not in a favouritist position in favouring your brother.

Even though you are under the legislation you would be able to sit and hear that matter and make a determination, that feeling of family which you have towards your brother, is not a factor which should be influencing your position and that, I think, goes I suppose without saying, but when you go and pass legislation as this legislation, where you're saying this is a conflict and that is a conflict and then you do not say, any time you act in any way which is not in the best interest, bona fide, of the municipality, that you're then acting in a conflict of interest, I think you may be by expressing the one and excluding the other. I don't think legally you're doing that but possibly in the minds of the councillors or people who are reading legislation, they might feel that is a result.

The difficulty with a statement of that nature in legislation of this type where there are penalties, is what in fact is the result of acting in a matter which is not bona fide in the best interest of the municipality. Clearly, the forfeiture of the seat is one of the results that could occur. It also raises a question which, as a lawyer, doesn't concern me, but possibly from a policymaker's point of view, would this create a great increase in the amount of legislation? You can imagine circumstances where a councillor votes against something and a ratepayer says, I don't think that was proper, I think he wasn't voting in the best interests of the municipality. He would bring this on.

Now I think, in due course, the courts would say, well yes, that's fine, you may not agree with that and the courts aren't going to interfere, unless you can establish that there was some ultra vires motive, some bad faith. At the present time, of course, if you can establish that in courts today, any resolution or anything done in those circumstances can be, if the council itself is acting in bad faith, can be struck down, quashed by the courts. So I don't know and I don't think that such an inclusion in the legislation would create a tremendous amount of additional legislation. I think it is something that is worthwhile considering including and possibly considering some sort of sanction for any person who does not act in the best interests of the municipality and does not act bona fides. I think the both of those requirements would have to be there.

One of the things that does arise as a result of this legislation is a comparison of Section 49(7), under the existing legislation, The Municipal Act, in Section 8, the proposed Section 8, and I raise this because in my practice I do a fair amount of municipal work as other people in the Subsection do, and I've had on many occasions been required to advise councils in connection with conflict of interest and also, in many instances, to advise councillors. There was a substantial difference between the approach you could take in advising a council and advising a councillor because 49(7), as it now stands, states basically that in the event of a conflict of interest situation arising, where the contract is one that should not have been entered into by the councillor with the municipality, that the contract transaction purchaser sale, unless there's one permitted by this act, is void, in any action thereon against the municipality and it's interesting, because if you compare that to Section 8 and proposed Section 8 in the bill, — (Interjection) —

MR. CHAIRMAN: Are you familiar, Mr. Atkins, if it's amended?

MR. B. ATKINS: Yes, not as familiar as I would like to have been today. The point, and there are amendments to that particular section, but the point that I'm getting at I think has remained the same. Under the proposed legislation, Section 8, the contract is not void as against the councillor nor is it void in total, but rather it is voidable at the instance of the municipality. The difficulty that this creates or the difference is, when you used to advise the council, you would say, yes, that may or may not be; we're not sure; we don't know the councillor's specific position or his involvement with various companies or things of this nature, or they are such that we're not certain; we can't express a firm legal opinion on it. However, as far as the municipality is concerned what you're doing, even if the councillor does take part, is not going to be void; you're proceeding bona fide and will still be valid and there are no real adverse consequences to the municipality.

In advising a councillor, for example, if a councillor bid to build a certain facility for a municipality and had some interest in the construction company, directly or indirectly, whereby he may or may not be receiving some pecuniary interest, you would say to the councillor, you have a great deal of concern, my friend, because if in fact your company or the company which we think you may have an indirect benefit in, receives this contract and there's a substantial profit in that contract, you may still be required to build that particular facility, but when you come to collect your profit you may not be able to resort to the courts to enforce your contract against the municipality.

He would say, well, does that mean I'm totally without any right to receive any monies? Probably not; probably the courts might entitle him to make a claim in quantum meruit; whatever he has in fact expended, he would be able to receive back from the muncipality. But if he had some substantial benefit, if he had a profit figure built in there, he might very well be stopped from obtaining that profit and he runs the risk of not receiving any benefit at all from the municipality.

Under the legislation that is now proposed, the municipality's in a difficult situation. They may void or not void the contract and they're going to have to weigh very seriously the situation they're in. They may be half way through the project. If they void that contract at that point in time, what is the effect on them if they in fact make the application to make it void? Should it be void, as against the municipality or should the municipality have the right to insist that the work be done or that the contract be fulfilled by the other party? And then possibly, it could be explained that the

councillor, although he may not profit from such a thing, is certainly not to be put out of pocket or expense or something of that nature, he can receive a quantum meruit claim or something, or maybe that could be left to the courts to determine under all the circumstances. Was the councillor really justified or was he in fact trying to make a profit that might almost be a criminal type of situation? These are things that arise from that question of void or voidable.

One of the concerns, and clearly the whole intent of this legislation is the idea of disclosure and that disclosure and the subsequent election should be the compelling force behind the legislation. But one of the concerns expressed and seriously expressed and I don't want to belabour the point because I'm certain it's been expressed before this committee before, is this question of the general disclosure. The specific disclosure is certainly something which is absolutely a necessity if a person is sitting on council and a matter comes up on which he has an interest, the requirement should be for him to disclose, because if he does not disclose his interests, then he has to sit there and vote. He would have to get up, disclose his interest and then remove himself, absent himself from the consideration of the matter and any vote on the matter.

But outside of the City of Winnipeg, and certainly with the administrative position of the City of Winnipeg, the full disclosure there makes a great deal of sense because there the councillor may not be sitting on a committee, he may not be sitting in council and yet still have an application or a tender for a contract awarded by the city's administration and there, if there is the full disclosure and the city's administration has access to that, they may very well be able to determine a conflict when the councillor is not put in the obligation of having to stand up and declare his conflict.

The general position in connection with this concern - and I'm not saying it was wholeheartedly endorsed - but the general position in connection with this concern was, what is the benefit? If there is a disclosure in the event of a specific conflict at a specific time and the councillor is required to do that, what is the benefit of having them disclose at a previous occasion because if he, in fact, is not going to disclose at the time the specific conflict occurs or arises, is there going to be any more reason to disclose at the time he first becomes a councillor?

The argument against that of course is that if he may not realize at the time - and he may make a full disclosure not realizing at some later time that there will be this conflict arising - although he's given that choice, he's already made the disclosure and of course would have to follow through. But the position or the concern was that by the requirement for disclosure, are you not also limiting the types or limiting this to people who do not want to disclose their assets but at the same time do wish to run and take part in public life? Is it necessarily incidental to running for public life that you disclose all of your private assets?

It is primarily, I suppose, a philosophical question, one that really is not so much a legal question but it is a concern that was raised and it was raised on the basis that I've outlined to you.

In connection with an amendment or proposed motion, one of the things that did concern the subsection was that in previous years in our experience there have been numerous situations where a council is not really sitting at a meeting, but rather is sitting as a quasi-judicial body at a hearing of matters. In those circumstances it has always been a concern when land which the councillor owns - one of the councillors owns - comes up for consideration, either as a result of a general rezoning by the municipality or as a result of the councillor's application to rezone the land, those things I think have to be considered separately.

This concern in dealing with this is that first of all with any quasi-judical proceeding, notwithstanding the legislation, there are rules of natural justice which apply and the courts may very well come in and quash a decision of a board, or a tribunal, or a council municipality sitting as a tribunal, in making a quasi-judicial decision.

Basically, the subsection was wanting and was approaching this that it would be nice to have some clarification of the position of a councillor and in saying that we also had some ideas as to what might be a possible way of clarifying it and making it a workable situation. However, there is a proposed motion, which has now been referred to by my friend Mr. Carnegie, which is found at the bottom of page 7, 14.2(1) which allows the councillor to appear with an application for a variance in a zoning by-law, or with respect to a complaint of a realty or local improvement assessment. The question of business assessment was raised and I think has been fully dealt with.

Under The City of Winnipeg Act, Mr. Carnegie indicated that this was a term of art. Under The Planning Act which governs zoning matters outside of the City of Winnipeg and the additional zone, a zoning variation is not particularly a term of art, it is rather a very specifically defined term and it is a very limited term. It deals only with changes in side-yard requirments, front-yard requirements, things of this nature, and nominal types of variations. It does not allow any sort of change in use. It does not allow any substantial change in bulk requirements. It does not allow any significant change in the existing zoning.

Therefore, if this is to be considered, I think there should be some consideration of the significance of the word "variance" as being very minor under The Planning Act in consideration of the question of zoning in total. I would also think that there should be some consideration of the question of amending zoning agreements or development agreements because they are also something which are passed at quasi-judicial meetings.

The other thing which is of some concern is depending on the circumstances, I would question - I've not had a chance to review this with the subsection - the effect of this in terms of the quasi-judical proceedings of a variation of a zoning by-law. If by the term variation you are meaning specifically the applicant, the person involved coming forward, that is one thing. If you are saying a variation in terms of a general rezoning, that is another. But if, in fact, the councillor himself has decided he wants to have his land rezoned, or the councillor himself is desirous to have a variation to vary the effect of the zoning as it relates to his land, I feel there is a great deal of concern with his appearing and making representations at all in connection with the proceeding from the point of view of it being a quasi-judicial proceeding.

It is simply too easy for the councillor to stand up and say, excuse me fellow councillors, I have to absent myself now because I am going to be making a presentation to you, then stand down and make his presentation on that matter which could be of a very great financial significance to him. He cannot under other provisions take part in any discussion and yet here he is allowed to make a presentation, make representations to the councillors following which they can have their vote - or they may in fact delay the vote for a later period of time - he then gets back up, assumes his chair, and says, let's continue on with other business.

It seems to me that this does not appear, this does not give the appearance of justice, the justice will be done in those circumstances and I wouldn't suggest for a minute that in most circumstances probably the council would make the same decision whether it was a councillor or not but there is a bad appearance in those circumstances.

It is something I think that the courts might very well look at askance. In any circumstances where another party affected by such rezoning applies to the courts and says, we believe they acted in bad faith; we believe that they did not act in accordance with the rules of natural justice; and that the person who sits on a tribunal should not have the right to get up and address the tribunal on a matter and then retake his seat on that tribunal and deal with other matters.

Nonetheless, we don't feel, as a subsection, that it is right to deprive a councillor of his ability to make applications for rezonings, or indeed, variations; nor do we think - and this is a different circumstance - if the municipality as a whole, has decided it wants to rezone land, the councillor then is not appearing in any different position than anybody else whose land is being rezoned. He does not have a special interest over and above that of the average ratepayer, or the ordinary ratepayer, or the ordinary resident, which is now the word that's being used; but he is simply appearing and making his position known to council as any other ratepayer affected by that zoning by-law would be, as opposed to applying to the council to have a zoning by-law changed or varied. But, in circumstances where such was the case, where the councillor did want to have his land rezoned, it might be considered, or we would suggest considering, the possibility of having those matters referred directly to the district board, if there is a district board of a planning district, or indeed, the municipal board if there is not.

Again, I think, in saying this, some consideration would have to be given to the numbers of times this would occur because obviously you can't saddle the municipal board with thousands of additional hearings.

The feeling of the subsection, and the people involved in that subsection, was that that is not likely to be that many circumstances where a councillor will be specifically applying for a rezoning of land, and is it not better then to remove it from that jurisdiction? At the same time, having said that, the municipalities will of course, jealously, and I think correctly, jealously guard their rights to zone, but they do retain the right under The Planning Act to finally decide if the zoning by-law will be passed, or not passed, once the municipal board has gotten through hearing it, making its position known and saying, yes, you can proceed with the zoning by-law under these circumstances; and, at that point in time, of course, if the municipality, even if the municipal board said, yes, we think this can be rezoned or should be rezoned, the council could come back and say, no.

The other factor which, in all fairness, has to be stated of course is that there are appeal procedures and anyone who does feel adversely affected, when a councillor makes application for rezoning, can, of course, repeal that matter. Such is not necessarily the case with a variation, but certainly with a rezoning it is the case. I don't think, however, that's a total answer; I think that the better answer might very well be to remove these from the jurisdiction of the council in those circumstances, or not allow the councillor; let the councillor, if in fact he's in that position, resign his seat and become an ordinary citizen and then not go back and vote on other matters in which he may somehow be able to influence, directly or indirectly, the position of council.

In addition, in dealing with any public hearings, there are also subdivision provisions which should be considered because the regulations under The Planning Act have been amended to provide. In certain circumstances, a subdivision will require a public hearing, and subdivisions, again relating to land, I think there is sufficient case law now to indicate that they can be considered to be quasi judicial in nature, certainly they can be extremely important to the individuals concerned, and I don't think the courts would be too reticent about applying certiorari or, indeed, the statutory provisions to quash decisions of municipal councils when they're dealing with subdivisions. So that, again, in dealing with this question of hearings, because there we're talking again about hearings and I have some difficulty in saying whether they're meeting or not, but when they're dealing as a hearing, as a tribunal, I think some consideration should be given to the question of subdivision control and the position of the councillors.

Other than that, I would like to say that clearly there have been, and I think will continue to be difficulties in dealing with this question of conflict of interest. It's not an easy question at all; it is extremely complicated. There is a marked difference between conflict of interest - and I don't mean that in a sense - conflict of interest is conflict of interest, whether it's in the city or in municipalities, but the effects and the way it manifests itself within the City of Winnipeg, and the way it exists and what happens and occurs in smaller rural municipalities, or even urban municipalities outside of the City of Winnipeg, is substantially different because there are substantially different practical problems relating to the question of conflict of interest.

I don't know whether the - and obviously, this bill I think is at the point where it is probably going to proceed generally on the basis that it now exists - but at some point in time there may be some consideration of reviewing separate provisions relating to the City of Winnipeg because it is a far different situation. I think we've had some indications of that today. Not to say that there's a different test or something of that nature, but rather that maybe there should be some review of the specific requirements from a practical point of view.

I'd like to thank you very much for hearing our submission and I appreciate your time this evening. If there are any questions, I'd be pleased to answer.

MR. CHAIRMAN: Thank you, Mr. Atkins. I think there will be some questions.

Mr. Adam.

HON. A. ADAM: Mr. Atkins, first of all, I want to thank you for your comprehensive presentation and we have made notes of your comments and we will be reviewing those recommendations that you have made very carefully, and see if we can't put some of those recommendations to our proposed amendments to the act.

MR. CHAIRMAN: Further questions or comments?

Mr. Manness.

MR. C. MANNESS: Mr. Chairman, I would pose the same question to Mr. Atkins that I posed earlier to Mr. Carnegie.

In your opinion, will the requirements for listing and disclosing of assets, under Section 10, will that cause fewer people to run for, particularly, rural municipal politics?

MR. B. ATKINS: It has two effects and, to answer your question, to be completely fair about it, and I've touched upon it already, I think, yes, there are people - I could probably include myself amongst them - who would be hesitant, even though I don't have much in the way of assets to reveal anything, because it's my nature.

There are people who would not want to reveal any of their holdings, not for any malafides reason, but simply as a matter that they are private people, they have a private life, private holdings, they don't want them generally revealed. They would be prepared, I think, as I know I would if I was in public life and I got in a conflict of interest position, to disclose that conflict of interest, to disclose the holding at that time and to step aside, but not to make a general disclosure. At the same time, taking in view the whole legislation, I think, at the present time, there are a lot of people who are not taking part in municipal politics because they feel constrained as a result of their business activities and the specific provisions, particularly Section 49 of the now Municipal Act, that they would have to meet if they wanted to carry on any business relationships with the municipality, and that they would be far more likely to take part in the municipal process, as a politican, if they were simply required to disclose their interests, because most people in the town already know what their interests would be; simply say, I have this interest and I won't take part in any voting when my interests may be affected. So that, from the point of view of the legislation, in total, I think there would be an increase in the number of people; however, I don't know what benefit is gained by the general disclosure, and I do think that the general disclosure will have the opposite effect and people that may even now be councillors might say, no, I don't want to continue to be a councillor because I just don't want my neighbours or other councillors or anyone else, particularly, to know my holdings.

There's been a substantial or a proposed substantial amendment to that which says it is not generally available to the public, and I think I would clearly endorse that sort of amendment. I think that does make sense. There still remains though the question, does the general disclosure have any beneficial effect when there's a requirement for a specific disclosure in the event of a conflict of interest? What is the purpose of the general disclosure when there is a requirement for a specific disclosure? Are you, in fact, going to get people who are not prepared to make a specific disclosure being frank and forthright in making a general disclosure?

There is also, from a practical point of view I think, quite a bureaucratic nightmare that can be created both to the individual councillors and for the council in dealing with these disclosures. How are they to be updated? How often are they updated? Whose to keep them and what happens when they are not kept and all of the various circumstances?

There is a lot of legislation in the Province of Manitoba which exists that really is not followed, at least not to the letter. The spirit may be met but the letter is certainly not met. This legislation I think is going to create a great deal of difficulty administratively from the individual councillor. So the question is then, is the purpose of general disclosure such and its importance such to the general legislation that you cannot dispense with it? Can you simply rely on the specific disclosure in the circumstances? If that could be done I think then the legislation in total would have nothing but a beneficial effect in having councillors run because they would have no problem with their specific business.

But having said that, there are certainly are concerns in removing the general disclosure. It's a difficult position, a difficult question.

MR. CHAIRMAN: Further questions for Mr. Atkins? Hearing none, Mr. Atkins, thank you very much for your presentation tonight.

MR. B. ATKINS: Thank you.

BILL 18 - THE CONFLICT OF INTEREST ACT

MR. CHAIRMAN: That concludes the list. I'll go through it one more time for those who were absent earlier this evening. Mr. Ben Hanuschak, Mr. Harry Peters, Mr. Grant Mitchell. That concludes then, to members of the committee, our presentations for this evening.

Are you ready to proceed clause-by-clause? Well, we also have Bill 18, Bill 40 and Bill 114. I assume we would proceed numerically as we usually do, and start with Bill 18, unless it's being suggested by members of the committee that we start with Bill 47.

Bill 18. I believe there are some amendments. They'll be distributed. — (Interjection) — Yes, there were some proposed amendments distributed and I believe they may have been further refined, as well.

Mr. Manness, Legislative Counsel advises that the further refinements on the original amendments distributed were provided to Mr. Mercier earlier today, so what was distributed now incorporates both the original distribution and the refinements, all in one document. Counsel advises they weren't ready until today, that's why the final refinements were just distributed today. How do you wish to proceed, page-by-page?

HON. R. PENNER: Page-by-page.

MR. CHAIRMAN: Page 1 - the Honourable Attorney-General.

HON. R. PENNER: Let's see if we're on the right page.

I move:

THAT Section 1 of Bill 18 be amended by adding thereto immediately after the definition of "dependant" therein - although that's on Page 2 - the following definition:

"direct pecuniary interest" includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter . . .

MR. CHAIRMAN: I'll hold that motion until we pass Page 1. Page 1—pass; Page 2 - the amendment as moved by Mr. Penner. Is there any discussion? You've all heard the amendment, is it agreed? (Agreed) Page 2—pass as amended. — (Interjection) — Are there two amendments?

HON. R. PENNER: Three, that's on the next page.

MR. CHAIRMAN: 3(1) is on the next page, on Page 3. Page 3, there's an amendment. Mr. Penner.

HON. R. PENNER: I move:

THAT subsection 3(1) of Bill 18 be amended by adding thereto immediately after the word "Act" in the 1st line thereof the words "but subject to this section".

MR. CHAIRMAN: You've heard the amendment, is there any discussion? The amendment as moved to Section 3(1)—pass. Page 3 as amended—pass?

HON. R. PENNER: No. I move:

THAT subsection 3(3) of Bill 18 be struck out and the following subsection substituted therefor:

Exception for common interests.

3(3) For purposes of this Act, where

(a) a person, corporation, partnership, or organization who or which benefits from a program, service or contract represents less than 1 percent of all persons, corporations, partnerships, or organizations in Manitoba who or which benefit from a similar program, service or contract; and

(b) the value of the program, service or contract to the person, corporation, partnership, or organization represents less than 1 percent of the total value of similar programs, services or contracts provided to other persons, corporations, partnerships or organizations in Manitoba;

the person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in any matter involving the program, service or contract.

MR. CHAIRMAN: You've heard the amendment, is there any discussion? Mr. Penner.

HON. R. PENNER: Well, I thought it was self-explanatory. I'd just ask Legislative Counsel to go over that, rather than me giving - and I'm still drawing my breath.

MR. CHAIRMAN: Mr. Szach.

MR. E. SZACH: Thank you. The new provision adds to the 1 percent exclusion, partnerships, corporations and organizations. The disclosure provisions that appear later in the act, require members to disclose direct or indirect pecuniary liabilities to any person, corporation, partnership or organization with a direct pecuniary interest. So by including corporations, for example, in this 1 percent exemption, we're saying that if a member has a liability to a corporation with a minimal interest in a matter, then there's no requirement for disclosure. That's the effect of the change.

MR. C. MANNESS: With a change in title too, or heading?

A MEMBER: Exception for common interests?

MR. E. SZACH: I'm sorry. In terms of the words "interest of an ordinary citizen," really they're redundant in that the 1 percent limitation states the rule and therefore that terminology really doesn't add anything to the wording of the section.

MR. CHAIRMAN: Any further on the discussion on the amendment as moved?

The new Section 3(3) amendment—pass; Page 3, as amended—pass; Page 4, there's an amendment - Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move:

THAT subsection 3(4), Bill 18, be amended by adding thereto immediately after the word, "Act" in the first line thereof, the words, "but subject to the section".

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Is it agreed? (Agreed)

A further amendment on this page - Mr. Penner.

HON. R. PENNER: I move:

THAT Section 3 of Bill 18 be further amended by adding thereto immediately after subsection (4) thereof the following subsections, and here again we have somewhat the same thing

3(4.1) For purposes of this Act, where

(a) a person with a direct or indrect pecuniary liability to another person or to a corporation, partnership, or organization represents less than 1 percent of all persons in Manitoba who have a similar direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization; and

(b) the value of the person's direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization represents less than 1 percent of the total value of similar direct or indirect pecuniary liabilities owing by other persons in Manitoba

to the other person or to the corporation, partnership, or organization;
the person shall be presumed not to have a direct or indirect pecuniary liability to the other person or to the corporation, partnership, or organization.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion?

HON. R. PENNER: And 3(4.2) is part of the same motion.

General exception.
3(4.2) For purposes of this Act,this Act and notwithstanding any other provision of this Act, no person shall be presumed to have a direct or indirect pecuniary interest in any matter, or a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization, unless the value of the pecuniary interest or liability is $500.00 or more.

MR. CHAIRMAN: You've heard the second half of the amendment. Is there any discussion?
Mr. Filmon.

MR. G. FILMON: Mr. Chairman, does that cover - we're now talking about liabilities or interests - does that $500 cover the gift provision that's later on in the listing of interests?

HON. R. PENNER: No, this is a separate provision.

MR. G. FILMON: My recollection is that there is no minimum on that gift provision.

HON. R. PENNER: I think you'll find there's an amendment that deals with gift that will in fact introduce a $250 figure.

MR. G. FILMON: Okay, thank you.

MR. CHAIRMAN: Further discussion? You've heard the amendment. Is it agreed? (Agreed)
An amendment to Section 3(5) - Mr. Penner.

HON. R. PENNER: I move:
THAT subsection 3(5) of Bill 18 be amended by adding thereto immediately after the word "minister" in the 4th line thereof the words "shall be presumed not to have a direct pecuniary interest in the appointment and".

MR. CHAIRMAN: You've heard the amendment. Is there any discussion?
Mr. Filmon

MR. G. FILMON: Just because I'm having difficulty reading that, would the Minister care to explain that?

HON. R. PENNER: Okay, so it would read this way: "For the purposes of this Act, where under the authority of any other Act of the Legislature a member or Minister is appointed to a Crown agency, the member or Minister" - then we go on - "shall be presumed not to have a direct pecuniary interest in the appointment and shall not be presumed solely by virtue of that appointment to have" - and then you read (a) and (b).

MR. CHAIRMAN: Mr. Manness. Mr. Penner again.

HON. R. PENNER: Just by further explanation, it attempts to cover the situation where a Minister is appointed to the Board, let's say, of Hydro; or there are some boards to which Ministers are appointed, or members indeed, and it covers those situations. Then in those circumstances it's not something that has to be disclosed as a conflict situation.

MR. C. MANNESS: Just on a general note, Mr. Chairman, I notice many of the amendments, particularly in Bill 47 - and I haven't had a chance to go through Bill 18 - make the change of the placement of the word "not". Was that just a drafting error in the original production of the bill or is there some significant meaning to that?

MR. E. SZACH: I wouldn't describe it as an error. It's a consistency of terminology. Later in the statement provisions we say, that where a councillor or member is presumed not to have a pecuniary interest, then that person doesn't have to list the asset or interest in the annual statement. So for consistency of language, we use exactly the same terminology in this exclusion provision to say, "shall be presumed not". It's basically technical.

MR. CHAIRMAN: Further discussion on the amendment? Is it agreed?
Page 4, as amended—pass. Page 5 - are there any amendments on Page 5?

A MEMBER: Yes.

MR. CHAIRMAN: Yes. We passed Section 3(6), as printed—pass; Section 4 - Mr. Penner.

HON. R. PENNER: I move:
THAT Sections 4 through 10 inclusive of Bill 18 be struck out.

MR. G. FILMON: Mr. Chairman, there's a whole flock of clauses, exceptions respecting Ministers, medical examiners, justices, Speaker and all sorts of things that are crossed out there. What is the reason for that?

HON. R. PENNER: These are provisions which come from The Legislative Assembly Act and in looking at the relationship between this act and The Legislative Assembly Act, it was initially our intention to move the sections from The Legislative Assembly Act into this act; but then in trying to have as much consistency between 18 and 47 as possible, we realized we couldn't do the same thing with 47. We just technically decided to move these things back to The Legislative Assembly Act, so there's no change at all.

MR. CHAIRMAN: You've heard the amendment with respect to Sections 4 to 10. Agreed? (Agreed)
Page 5—pass, as amended. Page 6 - wipe out, omit—pass. Page 7, Section 11(1) - Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move:
THAT Section 11(1) of Bill 18 be amended
(a) by striking out the words "beyond the interest of an ordinary citizen" in the 3rd and 4th lines of clause (a) thereof; and
(b) by striking out the word "thereafter" in the 1st line of clause (e) thereof and substituting therefor the words "at all times".

MR. CHAIRMAN: You've heard the amendments. Is there any discussion?
The amendment to 11(1)—pass. Mr. Filmon.

MR. G. FILMON: Was that because the definition earlier on with the 1 percent eliminates the need for putting in "beyond the interests of an ordinary citizen"?

HON. R. PENNER: That's right; that's it.

MR. CHAIRMAN: Any further discussion?
The amendment as read—pass. Section 11(2) - Mr. Penner.

HON. R. PENNER: I move:
THAT subsection 11(2) of Bill 18 be amended by adding thereto, at the end of clause (b) thereof the word "and".

MR. CHAIRMAN: You've heard the amendment. Is there any explanation or discussion?

HON. R. PENNER: The explanation is grammatical.

MR. CHAIRMAN: Agreed? (Agreed) Section 12—pass?

HON. R. PENNER: No, I have an amendment.

MR. CHAIRMAN: The amendment's on the next page, I believe.

HON. R. PENNER: Well actually it follows immediately and can be . . .

MR. CHAIRMAN: Section 12—pass, and Mr. Penner with an amendment.

HON. R. PENNER: THAT Bill 18 be further amended by adding thereto immediately after Section 12 thereof the following section:

Public record of disclosures.
12.1 The Clerk of the Legislative Assembly shall record all information filed with him under Section 12 in a central record kept for that purpose, and shall make the central record available for inspection by any person without charge during normal business hours.

MR. CHAIRMAN: You've heard the amendment, is there any explanation or discussion? Mr. Filmon.

MR. G. FILMON: Mr. Chairman, I know that Clerk is now keeping a record of all disclosures, that is, any time a member makes an oral disclosure and absents himself from the board, but the wording seems - it says "shall record all information filed with him under Section 12." Okay, it's the record of compliance. I'm clear on that.

MR. CHAIRMAN: Any further discussion? The amendment to Section 12.1 as read, agreed? (Agreed) Page 7 as amended—pass; Page 8 - Mr. Penner.

HON. R. PENNER: I move:
THAT Section 13 of Bill 18 be amended
(a) by striking out the words "beyond the interest of an ordinary citizen" in the 3rd and 4th lines of clause (a) thereof; and
(b) by striking out the word "thereafter" in the 1st line of clause (e) thereof and substituting therefor the words "at all times".

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Amendment—pass. Section 14 - Mr. Penner.

HON. R. PENNER: I move
THAT Section 14 of Bill 18 be amended
(a) by stiking out the words "beyond the interest of an ordinary citizen" in the 3rd and 4th lines of clause (a) thereof; and
(b) by stiking out the word "thereafter" in the 1st line of clause (d) thereof and substituting therefor the words "at all times".

MR. CHAIRMAN: You've heard the amendment to Section 14. Any discussion? The amendment as read—pass. Mr. Penner.

HON. R. PENNER: I move:
THAT Bill 18 be further amended by adding thereto immediately after Section 14 thereof the following sections:

Absence from meeting.
14.1 Where a member or Minister fails to comply with subsection 11(1), Section 13 or Section 14, as the case may be, by reason of the absence of the member or Minister from a meeting referred to therein, the member or Minister shall
(a) disclose the general nature of his direct or indirect pecuniary interest or liability at the next meeting of the same body before which the matter arose; and
(b) refrain at all times from attempting to influence the matter.

Voidability of transaction or procedure.
14.2 The failure of any member or Minister to comply with subsection 11(1), Section 13 or Section 14, as the case may be, does not of itself invalidate
(a) any contract or other pecuniary transaction; or
(b) any procedure undertaken by the Government of Manitoba or a Crown agency with respect to a contract or other pecuniary transaction;
to which the failure to comply with subsections 11(1), Section 13 or Section 14 relates, but the transaction or procedure is

voidable at the instance of the Government of Manitoba or the Crown agency before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person, corporation, partnership, or organization who or which acted in good faith and without actual notice of the failure to comply with subsection 11(1), Section 13 or Section 14.

MR. CHAIRMAN: You've heard the amendment, is there any explanation or discussion? Mr. Penner.

HON. R. PENNER: Just by way of explanation, the point here and it was discussed earlier with some of the delegations, is that to have any provision which suggests that the contract is void could inadvertently damage the interest of an innocent third party. It might be, for example, that if I own a sufficient number of shares to qualify as a conflict in a large company that has shares publicly listed and that company has been awarded a contract, it shouldn't be the case that my failure to disclose causes loss to the company where the company has acted without knowledge of my failure.

MR. C. MANNESS: Just a question, Mr. Chairman. It's to do with the (a) part of 14.1. I guess I'm trying to set up an example in my own mind. If I were to be this member or Minister and I missed the meeting, and not knowing and not having read the minutes of that particular meeting, I had come to the next one, is it the intent that I should be knowledgeable of what had been discussed at that meeting, given that the subject may not arise at the meeting at which I'm in attendance? I am wondering how far the responsibility falls on myself to know what has transpired at the previous meeting in which a decision has been rendered which could include a conflict.

HON. R. PENNER: I'm glad the Member for Morris is raising that point, because it is dealt with. We thought about the problem of inadvertence, of just not knowing - and what's the section again? - Section 25 is a general curative provision unknowing or inadvertent breach notwithstanding anything in this act where a judge finds that a member violated a provision of this act unknowingly or through inadvertence, the member is not disqualifed from office, etc.

MR. CHAIRMAN: Further discussion, Mr. Manness.

MR. C. MANNESS: Well that's fine, but does it have to go to a judge before I can be cleared?

HON. R. PENNER: Well no, if it doesn't go to a judge you've got no problem. It's only when it goes to a judge that you've got a problem.

MR. C. MANNESS: You're right. That's my point.

HON. R. PENNER: The fact is, if it's lack of knowledge on your part, inadvertence, then there's nothing for you to do because you just didn't know and don't know. It's only when somebody says, hey there, that then at that point you may either seek to make the appropriate disclosure or if somebody gets mad enough at you to want to put up the $200 security for costs and take you to court, that you can plead your defence and collect his $200.00.

MR. C. MANNESS: Well, my only point is, as long as I can make the disclosure before somebody puts up the $200 and drags me through that process of appearing before the judge, that's my concern.

MR. CHAIRMAN: Any further discussion on the amendments as proposed? Is it agreed? (Agreed) I failed to put the question on Section 14 as amended—pass. The two amendments we've passed, Page 8 as amended—pass; Page 9, Section 15 - Mr. Penner.

HON. R. PENNER: I move:

THAT Section 15 of Bill 18 be amended by adding thereto immediately after subsection (1) thereof the following subsection:

Notification of failure to comply.

15(1.1) Where a member or Minister fails to comply with subsection (1), the Clerk of the Legislative Assembly shall forthwith notify the member or Minister in writing of the failure to comply, and the member or Minister shall, within 30 days of receiving the notification, file the statement referred to in subsection (1).

MR. CHAIRMAN: You've heard the amendment, is there any discussion? Hearing none—pass; Section 15 as amended—pass; Section 15(2)—pass; Section 16 - Mr. Penner.

HON. R. PENNER: I move:

THAT Section 16 of Bill 18 be amended by striking out the 1st 2 lines thereof and substituting therefor the words "Subject to Section 17, the member or minister shall disclose in the statement filed under subsection 15(1)."

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? The amendment to Section 16—pass.

HON. R. PENNER: I move:

THAT Clause 16(a) of Bill 18 be amended by striking out the words "and any personal recreational property" in the 6th and 7th line thereof.

MR. CHAIRMAN: You're heard the amendment. Is there any discussion? The amendment to Clause 16(a), as moved.

Mr. Manness.

MR. C. MANNESS: I assume that indicates now that's not excluded. You have to now include that?

HON. R. PENNER: No, I'm sorry, were you referring to the 16(a) amendment?

MR. C. MANNESS: Right.

HON. R. PENNER: Yes, you now have to include that.

MR. C. MANNESS: You now have to include it.

HON. R. PENNER: What are you doing here to me? The words "any personal recreational property" are struck out, so that in the statement filed under subsection (1), each member and Minister shall disclose, and we're striking out any "personal recreational property."

MR. CHAIRMAN: But read the line above, it was excluded. It's now being included.

HON. R. PENNER: Excluding - right. I think I'll go home now.

MR. CHAIRMAN: The amendment, as moved, any discussion?
Mr. Manness.

MR. C. MANNESS: You're talking specifically recreational property in a sense of land, I take it?

HON. R. PENNER: Land, cottage, boat, motor, sailboat, fishing gear.

A MEMBER: You mean I've got to list my canoe?

HON. R. PENNER: No, you don't have to list your canoe, it's not considered to be property, it's considered to be something with holes in it.

MR. CHAIRMAN: Is there any further discussion? The amendment, as moved—pass. Section 16(a), as amended—pass.
Mr. Filmon.

MR. G. FILMON: It appears to me that people have sets of golf clubs that are worth over $500, maybe even the Attorney-General does. That is now part of the personal recreational property that has to be disclosed?

HON. R. PENNER: No.

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

MR. R. PENNER: Well my answer is, no.

MR. G. FILMON: What's personal recreational property then? Is it the $500 limitation?

HON. R. PENNER: Look, all land in the province, or in respect to which the member or Minister or any of his dependants has any estate or interest in, the land is the controlling thing. So we're talking about — (Interjection) — Yes, we're talking about real property, but not chattels.

MR. G. FILMON: I apologize, because I thought earlier that the Minister said, when the Member for Morris said a boat and other things, that he agreed.

MR. CHAIRMAN: Mr. Filmon, I believe the Minister was being facetious. The hour and the number of amendments he's being forced to wrap around his tongue are beginning to get to him and I guess we'll have to bear with him.

HON. R. PENNER: Thank you, Mr. Chairman, that's the last time . . .

MR. G. FILMON: Normally I sit opposite the Minister and I can tell when he's being facetious, but at this point I guess it's a little difficult.

MR. CHAIRMAN: I'm sure the Member for River Heights would yield his seat, so the Member for Tuxedo could benefit from the direct contact.

HON. R. PENNER: Mr. Chairman, I move:
THAT clause 16(d) of Bill 18 be amended by striking out the word "financially" in the 3rd line thereof.

MR. CHAIRMAN: I'll hold the amendment to 16(d) until we pass the two intervening subsections. 16(b)—pass, as printed; 16(c)—pass, as printed. The amendment to 16(d) as already moved by the Attorney-General. Is there any discussion? The amendment—pass; 16(d)—pass; Page 9—pass, as amended. Section 16(e), the top of Page 10—pass.

HON. R. PENNER: Section-by-section now?

MR. CHAIRMAN: Well I have to because the section has been broken. Section 16(f)—pass; Section 16(g)—pass; Section 16(h).
Mr. Penner.

HON. R. PENNER: Mr. Chairman, I move:
THAT clause 16(h) of Bill 18 be amended by striking out the word "gifts" in the 1st line thereof and substituting therefor the words "the nature and the identity of the donor of every gift."

MR. CHAIRMAN: You're heard the amendment, is there any discussion? No discussion? Is it agreed? 16(h), as amended—pass.
Mr. Penner.

HON. R. PENNER: I move:
THAT Section 16 of Bill 18 be further amended by adding thereto at the end of clause (h) thereof the word "and" and by adding thereto immediately after clause (h) thereof the following clause:

(i) the general nature of any contract or other pecuniary transaction entered into at any time after the coming into force of this Act between the Government of Manitoba or any Crown agency and

(i) the member or Minister or any of his dependants, or

(ii) any corporation referred to in clause (c), or

(iii) any partnership in which the member or Minister or any of his dependants is a partner,

but excluding

(iv) any such contract or other pecuniary transaction entered into before the member was first elected to the Legislative Assembly or the Minister was first appointed to the Executive Council, and

(v) any such contract or other pecuniary transaction disclosed in any previous statement filed under Section 15, and

(vi) any transaction in which the member or Minister or any of his dependants is presumed under Section 3 not to have a direct or indirect pecuniary interest.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? The amendment, as moved—pass. Section 16, as amended—pass; Section 17.

Mr. Penner.

HON. R. PENNER: I move:

THAT Section 17 of Bill 18 be amended by striking out clauses (a) and (b) thereof and substituting therefor the following clauses:

(a) to disclose any gift worth less than $250.00, unless the total value of all the gifts from the donor to the member or Minister and his dependants during the past year exceeded $250.00; or

(b) to disclose any other asset or interest worth less than $500.00; or

(c) to estimate the value of any asset or interest disclosed; or

(d) to disclose any asset or interest acquired by a dependant of the member or Minister

(i) in the case of a dependant of a member or Minister holding office during the 32nd Legislature, prior to December 15, 1980, and

(ii) in the case of a dependant of any other person elected to The Legislative Assembly or appointed to the Executive Council during any subsequent Legislature more than two years before the member was elected to the Legislative Assembly, or the Minister was appointed to the Executive Council for the first time after the coming into force of this Act.

MR. CHAIRMAN: You've heard the amendment as moved, to Section 17. Is there any discussion? Hearing none—pass.

Mr. Filmon.

MR. G. FILMON: What is the general explanation of that? Am I correct in saying that the dependants are not required to disclose anything they have to the present time, but only after more than two years - sorry, I'll let the Attorney-General explain it to me.

MR. CHAIRMAN: An explanation, Mr. Penner?

HON. R. PENNER: Yes, we're trying to, of course, encompass two circumstances, one of which will clearly disappear. One is the present circumstance relating to this Legislature, so there's some certainty as to the two-year period; and then the ongoing operative clause is the next one which sets a limit of two years.

MR. G. FILMON: Two years for what?

HON. R. PENNER: Prior to the time that the member was first elected.

MR. C. MANNESS: Mr. Chairman, I ask the Minister, I notice a retroactive clause in here now; is that something new?

HON. R. PENNER: No, we're saying you're not required. The operative words are "you're not required". For purposes of Sections 15 and 16, no member or Minister is required, and then, to disclose all of these things, we're restricting the disclosure.

MR. CHAIRMAN: Further discussion? You've heard the amendment—pass; Section 17 as amended—pass - Mr. Penner, before 18.

HON. R. PENNER: I move:

THAT Bill 18 be further amended by adding thereto immediately after Section 17 thereof the following sections:

Continuing dislosure.

17.1 Where a member or Minister or any of his dependants receives as a gift any of the assets or interests referred to in clauses 16(a) to (g), the member or Minister shall, notwithstanding that the gift has already been disclosed in a statement filed under Section 15, continue to disclose the asset or interest in every statement filed under subsection 15(1) until the member or Minister or his dependant disposes of the asset or interest.

Statements not available to public.

17.2(1) Subject to subsections (2) and (3), the Clerk of the Legislative Assembly shall not

(a) make any statement filed under Section 15 available for inspection by any person; and

(b) reveal the contents of any statement filed under Section 15 to any person.

Exception for members and ministers.

17.2(2) Subsection (1) does not apply to a member or Minister who wishes to inspect, or to be informed of the contents of, any statement which he has filed under Section 15.

Limited disclosure.

17.2(3) Where any person

(a) provides details of a possible violation of this Act by a member or Minister; and

(b) identifies a specific asset or interest in respect of which the possible violation may have occurred;

the Clerk of the Legislative Assembly shall examine the statements filed by the member or Minister under Section 15 and shall in writing inform the person whether or not the statements disclose the specific asset or interest.

MR. CHAIRMAN: You've heard the amendment. Mr. Filmon.

MR. G. FILMON: Yes, Mr. Chairman. I certainly think that this is a vast improvement and is in line with the sort of thing that I know that I, for one, and others probably have recommended to the Attorney-General in speaking to the matter on second reading.

What I would like to know is, how does the action under Section 17.2(3) lead then to an identification of

conflict of interest or a charge of conflict of interest, shall we say?

HON. R. PENNER: Sorry, the question is how do they find out.

MR. G. FILMON: No, I understand that the - and the Attorney-General can correct me if I'm wrong - that the process now is that if I believe that Minister X acted in a matter in which he had an interest, that I go to the Clerk and say, I believe that Minister X owns shares in company Y, and the Clerk merely reviews the statement of interest and reports back in writing, that, yes, he does own shares in company Y or no, he does not. Let's assume that the answer is yes, he does own shares in company Y; how does that then trigger a charge of conflict of interest?

HON. R. PENNER: You'll note, Mr. Filmon, that before we even get to that point the person asking whether or not the Minister has an interest, has to identify the transaction. Now the person has identified a transaction that has involved company Y and asked whether the Minister has an interest in company Y and is told, yes. Then it's up to the person to initiate the action in accordance with the other provisions of the act.

MR. DEPUTY CHAIRMAN, P. Eyler: Mr. Manness.

MR. C. MANNESS: Mr. Chairman, just one question for clarification and I ask the question because I'm not terribly certain of many of these provisions.

Under Section 17.1 which makes reference to 16(a) to (g); if I am in partnership with a non-family member and one of those partners decides to give me a golf clubs worth $600, is that required to be listed?

HON. R. PENNER: No.

MR. C. MANNESS: Well, under (h) it has to.

HON. R. PENNER: It only has to be revealed as a gift but not as a continuing disclosure every year.

MR. C. MANNESS: No, but the one-time giving of that gift.

HON. R. PENNER: Yes.

MR. C. MANNESS: Thank you.

MR. DEPUTY CHAIRMAN: 17, amendment as discussed—pass. 17.1 and 17.2 . . .

HON. R. PENNER: We're down to 18.

MR. DEPUTY CHAIRMAN: Section 17 as amended—pass; Section 18—pass; Page 10 as amended—pass. Section 19.

HON. J. PLOHMAN: I move:

THAT Section 19 of Bill 18 be struck out and the following section substituted therefor:

Compensation for services.

19 No member or Minister shall receive or agree to receive any compensation, directly or indirectly, for services rendered or to be rendered by the member or Minister

(a) to any person, corporation, partnership or organization in relation to any bill, resolution, proceeding, contract, claim, controversy charge, accusation, arrest, or other matter before the Legislative Assembly or a committee thereof, before the Executive Council or a committee thereof, or before any Crown agency; or

(b) in order to influence or attempt to influence any other member or Minister.

MR. DEPUTY CHAIRMAN: You've heard the motion, any discussion?

MR. C. MANNESS: Could you explain that, please?

HON. R. PENNER: Well, actually what we have here really is a number of technical changes. It's not materially - the most important change that you will no doubt have noticed is the deletion of "or any other person".

MR. DEPUTY CHAIRMAN: Mr. Manness.

MR. C. MANNESS: I thought the most important change included Crown agency.

HON. R. PENNER: That's a change.

MR. DEPUTY CHAIRMAN: Motion as read. Is that agreed? (Agreed) Pass. Section 19 as amended—pass.

HON. J. PLOHMAN: I move:

THAT Bill 18 be further amended by adding thereto immediately after Section 19 thereof the following Section:

Use of influence.

19.1 No member or Minister shall, himself or through any other person, communicate with another member or Minister or with an officer or employee of the Government of Manitoba or a Crown agency for the purpose of influencing the Government of Manitoba or the Crown agency to enter into any contract or other transaction, or to confer any benefit, in which the member or Minister or any of his dependants has a direct or indirect pecuniary interest.

MR. DEPUTY CHAIRMAN: Any discussion of the motion? Pass. Section 19 as amended—pass. Section 20.

HON. J. PLOHMAN: I move:

THAT Section 20 of Bill 18 be struck out.

MR. DEPUTY CHAIRMAN: Is that agreed. (Agreed) Section 21.

HON. J. PLOHMAN: I move:

THAT Section 21 of Bill 18 be struck out and the following section substituted therefor:

Disqualification for violation.

21(1) Every member who is found to have violated any provision of this Act shall be disqualified from office, and his seat in the Legislative Assembly shall be declared vacant.

Failure to file statement.

21(2) For purposes of this Act, a member or Minister violates subsection 15(1) only where, after receiving the notification referred to in subsection 15(1.1), the member or Minister fails to file the required statement within the time period referred to in subsection 15(1.1).

Effect on other government business.

21(3) Subject to Section 14.2, no decision or transaction, and no procedure undertaken by the Government of Manitoba or a Crown agency with respect to a decision or transaction, is void or voidable by reason of a violation of this Act.

MR. DEPUTY CHAIRMAN: Any discussion of the motion?

Mr. Manness.

MR. C. MANNESS: Mr. Chairman, I'd just like to go back to 15(1.1). I don't know if it specifies a time period, but my concern is what happens if I, as an individual, who supposedly has this conflict and it's on my conscience for a year and then I decide that I want to disclose it? Do I fall within the time period if I've done it on my own decision? Am I then disqualified from office?

HON. R. PENNER: This only deals with the relatively simple matter of filing the statement of interests and you'll recall there's an earlier section where the Clerk says, hey, you haven't done that, you've got 30 days.

MR. C. MANNESS: The general list?

HON. R. PENNER: Yes.

MR. C. MANNESS: Can I ask the question, specifically, to a major item that I omitted from that list, or is that covered later?

HON. R. PENNER: Again, the inadvertance of clauses there to deal with what may happen to all of us . . .

A MEMBER: Through sudden recollection.

MR. DEPUTY CHAIRMAN: Any further discussion of the motion? Is that agreed? (Agreed)

Section 21, as amended—pass; Section 22.

Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 22 of Bill 18 be amended by striking out the words "an order declaring" in the 6th line thereof and substituting therefor the words "a declaration".

MR. DEPUTY CHAIRMAN: Any discussion? Pass.

Section 22, as amended—pass; Section 23.

Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 23 of Bill 18 be struck out and the following section be substituted therefor:

Application by voter to Q.B.

23(1) Where it is alleged that a member or Minister has violated a provision of this Act, and if there is no previous application outstanding or determined on the same facts, a voter may apply ex parte to a judge of the Court of Queen's Bench for authorization to apply for a declaration that the member or Minister has violated a provision of this Act.

Affidavit and security for application.

23(2) A voter who files an ex parte application under subsection (1) shall

(a) file an affidavit showing details of the alleged violation; and

(b) pay into court the sum of $300 as security for the application.

Summary dismissal or authorizing of application.

23(3) Upon hearing the ex parte application, the judge may

(a) dismiss the application and order forfeiture of all or part of the security referred to in clause (2)(b); or

(b) authorize the applicant to apply to another judge of the Court of Queen's Bench for a declaration that the member or Minister has violated a provision of this Act.

MR. DEPUTY CHAIRMAN: Any discussion of the motion?

Mr. Penner.

HON. R. PENNER: Explanation - aside from a couple of technical changes, the substantive change here is that a person who has taken that step before a particular judge, if the matter does come on for a hearing, it doesn't come on before the same judge who, in a sense, may have been party to information which may not be admissable on the actual hearing of the case.

MR. DEPUTY CHAIRMAN: Any discussion? Pass? Section 23(1), as amended, (1), (2) and (3) — pass; Page 11, as amended—pass.

Section 24 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 24 of Bill 18 be struck out and the following section

substituted therefor:

Disposition after hearing.

24(1) Upon hearing any application for a declaration that a member or Minister has violated a provision of this Act and such evidence as may be adduced, the judge may

(a) declare that the member or Minister has violated a provision of this act; or

(b) refuse to make the declaration;

and in either case, with or without costs.

Penalty for violation.

24(2) Where the judge declares that the member or Minister has violated a provision of this Act, the judge

(a) shall, where the violation has been committed by a member, declare the seat of the member vacant; and
(b) may, where the member or Minister has realized pecuniary gain in any transaction to which the violation relates, order the member or Minister to make restitution to any person, including the government of Manitoba or a Crown agency, affected by the pecuniary gain.

HON. R. PENNER: These are technical changes to make this section conform to changes made earlier on.

MR. DEPUTY CHAIRMAN: Any discussion of the motion—pass. Section 25—pass; Page 12, as amended—pass. Section 26.
Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Section 26 of Bill 18 be amended by striking out the 1st two lines thereof and substituting therefor the words "An application for a declaration that a member or Minister has violated a provision of this Act may be brought notwithstanding that".

MR. DEPUTY CHAIRMAN: Any discussion of the motion—pass.
Section 26, as amended - Mr. Filmon.

MR. G. FILMON: Is this different then than the situation that pertains in Bill 47, where Mr. Carnegie indicated that this whole thing lapses if it occurs during one particular term of office and then the person can be re-elected under Bill 47 and the whole thing then is washed out?

HON. R. PENNER: I'll ask Legislative Counsel perhaps to give the explanation directly, rather than . . .

MR. E. SZACH: The drafting of the bills is fairly similar, the idea being that a subsequent electoral development, be it re-election, defeat or a decision not to run, should not preclude an application under the act.
I think the point that was made by the City of Winnipeg solicitor was that there could be a considerable time lag between the conflict of interest and the court action and, in the intervening period, there could be an election in which the councillor is not re-elected and, under those circumstances, the point was that the judge should be entitled or authorized to declare that the person shall not be eligible to serve as a councillor for a certain period of time. A slightly different point but, in terms of drafting, the bills are similar, that an electoral intervention, be it re-election or defeat or whatever, shall not preclude an application under the act for a declaration of conflict.

MR. DEPUTY CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Will that same provision apply then in Bill 47 - an electoral intervention shall not preclude an application?

MR. CHAIRMAN, A. Anstett : Mr. Szach.

MR. E. SZACH: As currently drafted, it's there, and if it's passed by the committee in the House, then it certainly will be the same.

MR. C. MANNESS: On that point, Mr. Chairman, I guess I've never really looked in detail at this particular section, but would that mean that an individual, who had erred for some reason and there may have been two or three elections in between, on that basis that individual could be asked to step down, or is there a limitation?

HON. R. PENNER: There's a six-year limitation period.

MR. C. MANNESS: Oh, I see; is that generally or is that spelled out in this act?

HON. R. PENNER: The limitation period is contained in the act. If you look at proposed amendment at the bottom of Page 9, at the proposed amendment . . .

MR. C. MANNESS: Oh, it's coming.

HON. R. PENNER: Yes.

MR. C. MANNESS: Thank you.

MR. CHAIRMAN: The amendment to Section 26, as moved—pass? Section 26, as amended—pass. Section 27
Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Section 27 of Bill 18 be struck out and the following section substituted therefor:

Application for restitution.
27 Notwithstanding anything in this Act, where any person, whether the person is or was a member or Minister or not, has realized pecuniary gain in any transaction to which a violation of this Act relates, any person affected by the pecuniary gain, including the Government of Manitoba or a Crown agency, may apply to a court of competent jurisdiction for an order of restitution against the person who has realized the pecuniary gain.

MR. CHAIRMAN: You're heard the amendment. Any discussion? Mr. Penner.

HON. R. PENNER: Again, Mr. Chairperson, technical, to make the language conform to changes already made.

MR. CHAIRMAN: The amendment as moved—pass; Section 27 as amended—pass; Section 27.1 - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Bill 18 be further amended by adding thereto immediately after Section 27 thereof the following sections:

Limitation period for declaration.
27.1(1) No application for a declaration that a member or Minister has violated a

provision of this Act shall be brought more than six years after the date of the alleged violation.

Limitation period for order of restitution.

27.1(2) No application for an order of restitution under Section 27 shall be brought more than six years after the date of the transaction which results in the alleged pecuniary gain.

No quo warranto or statutory proceedings.

27.2 Proceedings to declare the seat of a member vacant, or for an order of restitution, in consequence of a violation of this Act shall be had and taken only under the provisions of this Act, and not by way of application for a writ of quo warranto or by a proceeding under any other Act of the Legislature or otherwise.

MR. CHAIRMAN: You've heard the amendment. Is there any explanation or discussion? The amendment, as moved—pass; Section 28 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 28 of Bill 18 be struck out and the following section substituted therefor:

Summary Convictions Act not to apply.

28 No violation of any provision of this Act is an offence for purposes of The Summary Convictions Act.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Amendment—pass; Section 28, as amended—pass; Section 29—pass; Section 30—pass - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Legislative Counsel be authorized to renumber the provisions of Bill 18 in order to

(a) eliminate decimal points; and

(b) take into account provisions which have been struck out.

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

BILL 47 - THE MUNICIPAL COUNCIL CONFLICT OF INTEREST ACT

MR. CHAIRMAN: Bill No. 47, Section 1.

HON. J. PLOHMAN: I move:

THAT Section 1 of Bill 47 be amended by adding thereto, immediately after the definition of "dependant" therein, the following definition:

"direct pecuniary interest" includes a fee, commission or other compensation paid or payable to any person for representing the interests of another person or a corporation, partnership, or organization in a matter.

MR. CHAIRMAN: You've heard the amendment, as moved. Is there any discussion? Hearing none, the amendment—pass; Page 1—pass; Page 2 - a further amendment to Section 1 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 1 of Bill 47 be amended by adding thereto immediately after the definition of "municipality" therein the following definition:

"ordinary resident" means

(i) in the case of a matter which relates to an entire municipality, an ordinary resident of the municipality, and

(ii) in the case of a matter which relates to a part of a municipality, an ordinary resident of that part of the municipality.

MR. C. MANNESS: Just a question, an explanation, Mr. Chairman. That term "ordinary resident" or ordinary something was removed from the other Act and here we find a definition. Could somebody explain the reasoning for that?

MR. E. SZACH: It has to do with the difference in the scope and level of government. On the provincial scene, the ordinary resident rule is best stated in terms of the 1 percent level or threshold. Programs which apply province-wide and which benefit a particular member, we'd want to exclude from the application of the conflict of interest. In the municipal setting, however, the 1 percent rule doesn't apply because sometimes a matter will be of interest only to part of a municipality, sometimes only to a group of persons within the municipality. So to make it a more specific direction to the councillors, we've restated the rule and put it in a different way, saying that if your interest differs, not from that of an ordinary resident of the municipality or the part of the municipality affected, then there should be deemed to be no conflict of interest.

MR. CHAIRMAN: Is there any further discussion? The amendment, as moved—pass; Section 2 on Page 2—pass; Section 3 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 3 of Bill 47 be amended

(a) by re-numbering the current Section 3 as subsection 3(1); and

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

Area includes additional zone.

3(2) For purposes of this Act

(a) any reference to "land in the municipality" or "property in the municipality" includes, in the case of the City of Winnipeg, the additional zone; and

(b) where the City of Winnipeg has jurisdiction over a matter in the additional zone, any pecuniary interest in the matter shall be presumed to be a pecuniary interest in the City of Winnipeg.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Mr. Manness.

MR. C. MANNESS: Well, just one, Mr. Chairman. I would ask whose potential conflict is of greater concern

in the additional zone seeing, it's sort of governed by two levels of governments. I'm thinking particularly in the Municipality of McDonald where the additional zone applies - in any decision involved in the additional zone, do the local councillors from that area within the municipality plus the councillors from the City of Winnipeg?

HON. A. ADAM: It would depend who has the jurisdiction over the matter before that council, whether this is a request, a recommendation from the City of Winnipeg and I think that was mentioned in the presentation from one of the people who made a presentation tonight. The City of Winnipeg has planning and zoning jurisdiction over additional zones so potential conflict of interest involving the additional zone must be brought within the scope of the Act.

MR. CHAIRMAN: Further discussion on the proposed amendment? The amendment as read—pass; Section 3—pass; Section 4(1) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 4(1) of Bill 47 be amended by adding thereto immediately after the word "Act" in the 1st line thereof the words "but subject to this section".

MR. CHAIRMAN: You're heard the amendment. Is it agreed? Section 4(1), as amended—pass; Page 2—pass; the balance of Section 4(1) on Page 3—pass; Section 4(2)—pass; Section 4(3) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 4(3) of Bill 47 amended

(a) by striking out the words "shall not be presumed" in the 2nd and 3rd lines thereof and substituting therefor the words "shall be presumed not;" and

(b) by adding thereto immediately after clause (b) thereof the following clause:

(b.1) holding bonds or debentures of the municipality.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Section 4(3), the amendment—pass; Section 4(3) as amended—pass; that portion of Section 4(3) on Page 3—pass; Page 3 as amended—pass; the balance of Section 4(3) on Page 4—pass; Section 4(4), an amendment - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 4(4) of Bill 47 be amended by adding thereto immediately after the word "Act" in the 1st line thereof the words "but subject to this section".

MR. CHAIRMAN: You've heard the amendment. Is there any further discussion? The amendment—pass; Section 4(4) on Page 4—pass; Page 4 as amended—pass; Section 4(5) on Page 5 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 4(5) of Bill 47 be struck out and the following subsection substituted therefor:

Interest or liability must be significant.

4(5) For purposes of this Act, and notwithstanding any other provision of this Act,

(a) where the direct or indirect pecuniary interest of any person, corporation, partnership, or organization in a matter does not exceed the pecuniary interest of an ordinary resident in the matter, the person, corporation, partnership, or organization shall be presumed not to have a direct or indirect pecuniary interest in the matter;

(b) where the direct or indirect pecuniary liability of any person to another person or to a corporation, parnership, or organization does not exceed the pecuniary liability of an ordinary resident to the same person or to the same corporation, partnership, or organization, the person shall be presumed not to have a direct or indirect pecuniary liability to the other person or to the corporation, parnership, or organization; and

(c) no person shall be presumed to have a direct or indirect pecuniary interest in any matter, or a direct or indirect pecuniary liability to another person or to a corporation, partnership, or organization, unless the value of the pecuniary interest or liability is $500 or more.

MR. CHAIRMAN: You've heard the amendment as moved. Is there any discussion? Hearing none, the amendment as moved—pass; Section 4(5) as amended—pass.

Further section immediately after subsection 5 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 4 of Bill 47 be further amended by adding thereto immediately after subsection (5) thereof the following subsection:

Appointments to commissions, boards and agencies.

4(5.1) For purposes of this Act, where a councillor is appointed to serve in his official capacity as a councillor on any commission, board or agency, the councillor shall be presumed not to have a direct pecuniary interest in the appointment and the councillor shall not be presumed, solely by virtue of that appointment, to have

(a) an indirect pecuniary interest in a matter in which the commission, board or agency has a direct pecuniary interest; or

(b) an indirect pecuniary liability to another person or to a corporation, partnership, or organization to whom or which the commission, board or agency has a direct pecuniary liability.

MR. CHAIRMAN: You've heard the amendment. Is it agreed? Mr. Manness.

MR. C. MANNESS: Yes, Mr. Chairman, I agree with it, but I see the word "appointed" and I realize this is an elected individual, elected councillor appointed in some capacity, to a commission or board. But I would ask the Minister at this time because, I for one, believe that there will be more and more positions filled on council

by appointment now because I don't believe there will be people preparing to run.

Will those people that are appointed, will they fall fully under this act? I mean as individuals who are . . .

HON. A. ADAM: The explanation to that is, again that's a recommendation brought forward by the City of Winnipeg. Councillors appointed to commissions, boards or agencies should not be presumed to have a pecuniary interest in or by virtue of the appointment itself.

MR. C. MANNESS: Maybe you'd rather me ask a question afterwards? I'm of the opinion that there'll be many wards where there will be nobody running. They're usually filled by appointments. I am asking, are those appointed people - will they be subject to the very same act?

HON. A. ADAM: Yes, they would.

MR. CHAIRMAN: You've heard the amendment to Section 4(5.1), is it agreed? The amendment—pass; Section 4(6)—pass; Page 5 as amended—pass; new Section 4(7) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 4 of Bill 47 be further amended by adding thereto immediately after subsection (6) thereof the following subsection:

Contribution to municipal budget.

4(7) For purposes of this Act, a corporation or organization shall not be presumed to have a direct pecuniary interest in a matter solely by virtue of the fact that the corporation or organization is liable to pay a portion of a municipal budget under an agreement entered into with the municipality.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? The amendment—pass; Section 5(1) on Page 6, Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 5(1) of Bill 47 be amended by striking out the word "thereafter" in the 1st line of clause (e) thereof and substituting therefor the words "at all times".

MR. CHAIRMAN: You've heard the amendment, is there any discussion? The amendment as moved—pass; Section 5(1) as amended—pass; Section 5(2) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 5(2) of Bill 47 be amended by striking out clauses (b), (c) and (d) thereof and substituting therefor the following clauses:

(b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee, on which the councillor sits;

(c) in the case of City of Winnipeg, a meeting of a community committee on which the councillor sits;

(d) a meeting of any commission, board or agency on which the councillor serves in his official capacity as a councillor; and

(e) a meeting of any Court of Revision or Board of Revision on which the councillor sits.

MR. CHAIRMAN: You've heard the amendment, is there any discussion? The amendment as read—pass; Section 5(2)—pass—Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 5 of Bill 47 be further amended by adding thereto immediately after subsection (2) thereof the following subsection:

Absence from meeting.

5(3) Where a councillor fails to comply with subsection (1) by reason of the absence of the councillor from a meeting referred to therein, the councillor shall

(a) disclose the general nature of his direct or indirect pecuniary interest or liability at the next meeting of the same body before which the matter arose; and

(b) refrain at all times from attempting to influence the matter.

MR. CHAIRMAN: You've heard the amendment as proposed, is there any discussion? The amendment—pass; Section 6(1)—pass; Page 6 as amended—pass; Section 6(2) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 6(2) of Bill 47 be amended by striking out the last line thereof and substituting therefor the words and figures "in accordance with subsections (3) and (4)".

MR. CHAIRMAN: You've heard the amendment, is there any discussion? The amendment—pass; Section 6(3)—pass; Section 6(4)—pass; Section 6(5)—pass. Mr. Plohman, Section 7(1).

HON. J. PLOHMAN: I move:

THAT Section 7 of Bill 47 be amended

(a) by adding thereto immediately after the word "Legislature" in the 5th line of subsection (1) thereof the words "or any procedure or by-law of the council";

(b) by striking out the word "may" in the 3rd line of subsection (2) thereof and substituting therefor the word "shall"; and

(c) by adding thereto immediately after subsection (3) thereof the following subsection:

Referral to city council.

7(4) — Notwithstanding subsections (2) and (3), where in the circumstances referred to in subsection (1) there would be fewer than two councillors remaining at a meeting of a committee, subcommittee or community committee in the City of Winnipeg, the committee, subcommittee or community committee shall refer the matter to the City of Winnipeg council, and the council shall discuss and vote on the matter in place of the committee, subcommittee or community committee.

MR. CHAIRMAN: You've heard the amendment, Mr. Manness.

MR. C. MANNESS: Explanation.

HON. A. ADAM: Yes, that again is a request from the City of Winnipeg to deal with procedural changes to accommodate the operation of the City of Winnipeg council. Rather than send an issue before the Municipal Board, why not do it to the whole council instead?

MR. C. MANNESS: I beg a second, so that our former councillor can have a chance to digest this.

MR. CHAIRMAN: Mr. Filmon, would you like to hear the explanation again?
Mr. Penner.

HON. R. PENNER: It's just that with respect to the City Council of Winnipeg, there's no need, as there would be, for a rural council and where there are no subsidiary bodies, or usually are no subsidiary bodies, so where do you go? You go to the municipal board, but for the City of Winnipeg that's not necessary. Where the problem arose, the quorum problem arose at a committee, sub-committee or community committee, then you do have a place to go and that is the City of Winnipeg Council; and it gets there and can be decided there without any further difficulty.

MR. CHAIRMAN: You've heard the amendment. Is it agreed? (Agreed)
Section 7(1) as amended on Page 7—pass; Page 7 as amended—pass; 7(2) as amended—pass; 7(3) as amended—pass; Section 8 - Mr. Plohman.

HON. J. PLOHMAN: Did you do 7(4)?

MR. CHAIRMAN: Yes, it was passed in the last motion.

HON. J. PLOHMAN: I move:
THAT Section 8 of Bill 47 be struck out and the following section
substituted therefor:

Voidability of transaction or procedure.
8 The failure of any councillor to comply with subsection 5(1) does not of itself invalidate
(a) any contract or other pecuniary transaction; or
(b) any procedure undertaken by the municipality with respect to a contract or other pecuniary transaction;
to which the failure to comply with subsection 5(1) relates, but the transaction or procedure is voidable at the instance of the municipality before the expiration of two years from the date of the decision authorizing the transaction, except as against any person, corporation, partnership, or organization who or which acted in good faith and without actual notice of the failure to comply with subsection 5(1).

MR. CHAIRMAN: You've heard the amendment. Is there any discussion?
The amendment as moved—pass.
Section 8 as amended—pass; Section 9(1)—pass; Page 8 as amended—pass; Page 9, Section 9(2) - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT subsection 9(2) of Bill 47 be amended by adding thereto immediately after the word "shall" in the 2nd line thereof the word "forthwith".

MR. CHAIRMAN: You've heard the amendment. Section 9(2) - any discussion?
The amendment, as moved—pass.
Section 9(2) as amended—pass; Section 9(3)—pass. Section 10 - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Section 10 of Bill 47 be amended by striking out the first two lines thereof and substituting therefor the words and figures "Subject to Section 11, the councillor shall disclose in the statement filed under subsection 9(1)".

MR. CHAIRMAN: You've heard the amendment. Is there any discussion?
The amendment, as moved—pass.
Section 10(a) through (g)—pass; Page 9 as amended—pass;

HON. R. PENNER: Wait a minute. Didn't we have a beginning motion with respect to the first two lines of Section 10?

HON. A. ADAM: Yes, we did.

MR. CHAIRMAN: We moved the amendment in the first two lines of Page 10. I'm now passing Sections 8 through (g) so that we can have an amendment on subsection (h); (a) through (g) have been passed.
Mr. Plohman, on subsection (8).

HON. J. PLOHMAN: I move:
THAT clause 10(h) of Bill 47 be amended by striking out the words "gifts" in the 1st line thereof and substituting therefor the words "the nature, and the identity of the donor, of every gift".

MR. CHAIRMAN: You've heard the amendment. Is there any discussion?
The amendment, as moved—pass. Subsection (h)—pass; subsection (i) - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT clause 10(i) of Bill 47 be struck out and the following clause substituted therefor:
(i) the general nature of any contract or other pecuniary transaction entered into at any time after the coming into force of this Act between the municipality and
(i) the councillor or any of his dependants, or
(ii) any corporation referred to in clause (c), or
(iii) any partnership in which the councillor or any of his dependants is a partner,
but excluding
(iv) any such contract or other pecuniary transaction entered into before the councillor was first elected to the council, and
(v) any such contract or other pecuniary transaction disclosed in any previous statement filed under Section 9, and

(vi) any transaction in which the councillor or any of his dependants is presumed under Section 4 not to have a direct or indirect pecuniary interest.

MR. CHAIRMAN: You've heard the motion as moved, the amendment to Section (i) of subsection (i) of Section 10. Is there any discussion?

Seeing none, the amendment, pass?

Page 10 as amended—pass. Page 11, Section 11 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 11 of Bill 47 be amended by striking out clauses (a) and (b) thereof and substituting therefor the following clauses:

(a) to disclose any gift worth less than $250, unless the total value of all the gifts from the donor to the councillor and his dependants during the past year exceeded $250; or

(b) to disclose any other asset or interest worth less than $500; or

(c) to estimate the value of any asset or interest disclosed; or

(d) to disclose any asset or interest acquired by a dependant of the councillor

(i) in the case of a dependant of a councillor elected on October 26, 1983, prior to December 15, 1980; and

(ii) in the case of a dependant of any other person subsequently elected to the council, more than two years before the person was elected to the council for the first time after coming into force of this Act.

MR. CHAIRMAN: You've heard the amendment as moved. Is there any discussion?

The amendment as moved—pass. Section 11, as amended—pass. Section 11.1.

Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Bill 47 be further amended by adding thereto, immediately after Section 11 thereof, the following section:

11.1 Where a councillor or any of his dependants receives as a gift any of the assets or interests referred to in clauses 10(a) to 10(g), the councillor shall, notwithstanding that the gift has already been disclosed in a statement filed under Section 9, continue to disclose the asset or interest in every statement filed under subection 9(1) until the councillor or his dependant disposes of the asset or interest.

MR. CHAIRMAN: You've heard the amendment as moved.

Mr. Manness.

MR. C. MANNESS: I'd like to bring another example and see where it fits in here, Mr. Chairman.

If my son receives a fishing trip gift, again from a neighbour down the road to some remote lodge in Northern Ontario, does that have to be disclosed, given the value of that's over $500.00?

HON. R. PENNER: The answer is yes.

MR. CHAIRMAN: Any further discussion?

The amendment as moved, to Section 11.1—pass. Section 12.

Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 12 of Bill 47 be struck out and the following substituted therefor:

12(1) Subject to subsections (2) and (3), the clerk of the municipality shall not

(a) make any statement filed under Section 9 available for inspection by any person; and

(b) reveal the contents of any statement filed under section 9 to any person.

12(2) Subsection (1) does not apply to a councillor who wishes to inspect or to be informed of the contents of any statement which he has filed under Section 9.

(12(3) Where any person

(a) provides details of a possible violation of this Act by a councillor; and

(b) identifies a specific asset or interest in respect of which the possible violation may have occurred;

the clerk of the municipality shall examine the statements filed by the councillor under Section 9 and shall in writing inform the person whether or not the statements disclose the specific asset or interest.

MR. CHAIRMAN: You've heard the amendment, as moved, to Section 12. Is there any discussion? Mr. Adam, by way of explanation.

HON. A. ADAM: This is one of the areas where we have received some concerns and I want to say and put on the record that we have received very very few - contrary to what the general belief is - we have received no more than 16 correspondence on this particular section of this bill, the Conflict of Interest Bill. Just speaking from the top of my head, perhaps three or four were opposed to the bill and changes in the present act. The majority of them wanted to see some amendments. There were two or three, I believe, that were supportive of the bill and considering the fact that we have 202 municipalities, it's a very small percentage of concern that was expressed to us. One of the major concerns was the disclosure and that any person could come off the street and enquire into the assets or the nature of the disclosure by the councillor. We have addressed that problem and I'm sure that that will certainly be accepted and supported by the Union of Manitoba Municipalities.

MR. CHAIRMAN: Mr. Gourlay.

MR. D. GOURLAY: Mr. Chairman, I take note of the Minister's comments and would say that this is definitely a big improvement in the original drafting of the bill. While the Minister indicates that he has not received a great number of complaints about this section, I think

that this may be true, but I still feel that they are a lot of councillors that have concerns the way the original bill was printed. This will clear up many of those problems, but I still think that we're going to be hearing lots of problems even with this come election time, but that's just for the record.

MR. CHAIRMAN: Any further discussion on the amendment as moved to Section 12? Hearing none, the amendment as moved—pass; Section 12, as amended—pass; Section 13—pass; Section 14 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 14 of Bill 47 be amended

(a) by striking out the words "or any other person" in the 3rd and 4th lines thereof; and

(b) by striking out the 5th line of clause (a) thereof and substituting therefor the words "subcommittee or community committee thereof, before any subcommittee of a committee, or".

MR. CHAIRMAN: You've heard the amendment. The amendment, as moved—pass; Section 14, as amended—pass? . . .

A MEMBER: No, no.

MR. CHAIRMAN: Page 11, as amended—pass; Section 14.1 - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Bill 47 be further amended by adding thereto immediately after Section 14 thereof the following sections:

Use of influence.

14.1 No councillor shall, himself or through any other person, communicate with another councillor or with an officer or employee of the municipality for the purpose of influencing the municipality to enter into any contract or other transaction, or to confer any benefit, in which the councillor or any of this dependants has a direct or indirect pecuniary interest.

Right to appear.

14.2(1) Notwithstanding anything in this Act, but subject to subsection (3), a councillor has the same right as any other resident of the municipality to appear before a meeting for the purpose of representing his personal interests in

(a) an application for a variance in a zoning by-law; or

(b) an application for conditional use under a zoning by-law; or

(c) a complaint in respect of a business realty or local improvement assessment.

"Meeting" defined.

14.2(2) For purposes of subsection (1), "meeting" includes

(a) a council meeting;

(b) a meeting of any committee or subcommittee of a council, or any subcommittee of a committee;

(c) in the case of the City of Winnipeg, a meeting of a community committee;

(d) a meeting of any commission, board or agency which has jurisdiction in the matter; and

(e) a meeting of any Court of Revision or Board of Revision.

No right to vote.

14.2(3) Where the councillor sits on any body which considers a matter referred to in subsection (1), the councillor shall not vote on the matter.

MR. CHAIRMAN: You've heard the amendment, as moved. I believe that the member moving the amendment moved it with some slight variation in response to the delegation. Perhaps the Minister can explain that variation? Mr. Penner.

HON. R. PENNER: You will recall the submission that was made by Mr. Carnegie. We had in the proposed amendment, in its original form, that there were certain specific uses of the language in relationship to zoning in the City of Winnipeg and also he raised the question of business tax, so that rather than do something at report stage, the proposed amendment has been changed here to conform with the representations.

A MEMBER: It's called instant legislation.

HON. R. PENNER: It's called instant surrender.

HON. A. ADAM: It's called listening to the people.

MR. CHAIRMAN: The amendment as moved to the additional Section 14.1 and Section 14.2, etc., as moved—pass; Section 15(1) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT subsection 15(1) of Bill 47 be struck out and the following subsection substituted therefor:

Disqualification for violation.

15(1) Every councillor who is found to have violated any provision of this Act shall be disqualified from office, and his seat on council shall be declared vacant.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Hearing none, the amendment as read—pass; Section 15(1) as amended—pass; Section 15(2)—pass; Section 15(3) - Mr. Plohman.

HON. J. PLOHMAN: I move:

THAT Section 15 of Bill 47 be further amended by adding thereto immediately after subsection (2) thereof the following subsection:

Effect on other business.

15(3) Subject to Section 8, no decision or transaction, and no procedure undertaken by a municipality with respect to a decision or transaction, is void or voidable by reason of a violation of this Act.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? Hearing none, the amendment as moved—pass; Section 16—pass; Section 17(1)—pass;

Section 17(2)—pass; Page 12, as amended—pass; Page 13, Section 17(3)—pass; 18(1)—pass; 18(2) - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT subsection 18(2) of Bill 47 be amended by striking out clause (b) thereof and substituting therefor the following clause:

(b) may, where the councillor has realized pecuniary gain in any transaction to which the violation relates, order the councillor to make restitution to any person, including the municipality, affected by the pecuniary gain.

MR. CHAIRMAN: You've heard the amendment, as moved. Is there any discussion? The amendment—pass; Section 18(2), as amended—pass; Section 19—pass; Section 20—pass; Page 13, as amended—pass; Page 14, Section 21 - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Section 21 of Bill 47 be struck out and the following section substituted therefor:

Application for restitution.
21 Notwithstanding anything in this Act, where any person, whether the person is or was a councillor or not, has realized pecuniary gain in any transaction to which a violation of this Act relates, any person affected by the pecuniary gain, including any municipality, may apply to a court of competent jurisdiction for an order of restitution against the person who has realized the pecuniary gain.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? The amendment to Section 21, as moved—pass; Section 21, as amended—pass; Section 22(1)—pass; Section 22(2)—pass; a new section 22.1 - Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Bill 47 be further amended by adding thereto immediately after Section 22 thereof the following section:

No quo warranto or statutory proceedings.
22.1 Proceedings to declare the seat of a councillor vacant, or for an order of restitution, in consequence of a violation of this Act shall be had and taken only under the provisions of this Act, and not by way of application for a writ of quo warranto or by a proceeding under any other Act of the Legislature or otherwise.

MR. CHAIRMAN: You've heard the amendment. Is there any discussion? New Section 22.1—pass; Section 23—pass.

HON. J. PLOHMAN: No, 23 I have an amendment here.

MR. CHAIRMAN: You do?

HON. J. PLOHMAN: 23.1, yes.

MR. CHAIRMAN: Oh, that's one we don't have?

HON. J. PLOHMAN: It's a new amendment that you don't have.

MR. CHAIRMAN: Could you read it carefully and slowly please?

HON. J. PLOHMAN: I've been writing here. All the rest of them are going through so nicely, I thought I could write one.
I move:
THAT Bill 47 be further amended by adding thereto immediately after Section 23 thereof the following section:

23.1 Clause 47(m) and Sections 49 to 123 of The Municipal Act, being Chapter M225 of the Continuing Consolidation of the Statutes of Manitoba are repealed.

MR. CHAIRMAN: Explain, Mr. Plohman. Is there any discussions? Is there any explanation?

HON. J. PLOHMAN: I thought they'd be redundant.

MR. CHAIRMAN: Is there any discussion? Is there any explanation?
Mr. Szach.

MR. E. SZACH: Yes, I have a partial explanation. As a result of the change in principles, from disqualification to disclosure, there are certain provisions of The Municipal Act which, in consequence, should be repealed. Basically, the provisions dealing with contracting and prohibitions against contracting with the municipality; my understanding was that those provisions would be repealed at the committee stage of Bill 21, An Act to amend The Municipal Act but, as a result of a failure of communications in the Legislative Counsel's office, my current information is that that change was not made, so we're proposing it at this stage, as a consequential amendment to The Municipal Act, based on the already past provisions of this bill.

MR. CHAIRMAN: Is there any discussion on that explanation? The amendment, as moved by Mr. Plohman—pass; Section 24—pass; Section 25.
Mr. Plohman.

HON. J. PLOHMAN: I move:
THAT Section 25 of Bill 47 be amended by striking out the word and figure "October 1" in the 1st line thereof and substituting therefor the word and figures "October 26."

HON. R. PENNER: Why did you pick October 26th?

MR. CHAIRMAN: Mr. Plohman, is there any explanation?

HON. R. PENNER: It's the date of the municipal elections.

MR. CHAIRMAN: Is there any discussion on the amendment?
Mr. Manness.

MR. C. MANNESS: You're saying that individuals who decide to run for office this fall, on winning their particular election, the first understanding that they

might have - if this is in effect - is once they've been served by the Clerk or the Secretary of the Municipality, of a form indicating what they have to disclose. Would that be a fair statement?

HON. A. ADAM: That's a fair statement. That's a very fair statement, you answered your question.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: For heaven sakes, don't the government take on an advertising campaign now and let everybody know it.

MR. CHAIRMAN: I missed your comment, Mr. Filmon, could you repeat it and could we have some order please?

Mr. Filmon.

MR. G. FILMON: I think that the point that was being made by those who criticized the date October 1st, was that those who were currently elected councillors would have to make their declaration prior to the election, whereas their opponents would not have to and that would be an unfair situation.

MR. CHAIRMAN: Thank you for the explanation, Mr. Filmon. Is there any further discussion? The amendment, as moved—pass.

HON. R. PENNER: I move:

THAT Legislative Counsel be authorized to renumber the provisions of Bill 47 in order to eliminate decimal points.

MR. CHAIRMAN: Is there any discussion? Pass. Page 14—pass; Preamble—pass; Title—pass; Bill be reported—pass.

BILL 114 - THE LEGISLATIVE ASSEMBLY ACT

MR. CHAIRMAN: Bill 114, page-by-page, or section-by-section?

HON. R. PENNER: Bill-by-bill.

MR. CHAIRMAN: Bill 114, are there any amendments?

HON. R. PENNER: No.

MR. CHAIRMAN: There are no amendments? Bill—pass; Preamble—pass; Title—pass; Bill be Reported.

Being no further business before the committee.

Committee rise.

WRITTEN SUBMISSION

(Brief submitted by the Manitoba Association for Rights and Liberties)

THE CONFLICT OF INTEREST ACT (BILL 18)

MARL approves generally of the principles and practices contained in the proposed Conflict of Interest Act.

We wish, however, to draw to your attention a few sections where because of ambiguity or other factors the bill needs clarification. We are also opposed to the principle of ex parte hearings.

We would appreciate your consideration of our concerns regarding Bill 18.

1. Section 4 — The term "nomination" is not defined. Party nominations of candidates may take place as long as a year-and-a-half before the official nomination is put forward for the seat. Is the nominee considered to be a conflict-of-interest situation from the date of the party nomination or of the official registration of nomination? If the former is intended there may be unnecessary hardship for the nominee. Moreover, such a nominee, not yet elected, is not privy to the kind of information that might lead to conflict of interest. We suggest the term "nomination" be clearly defined.
2. Section 21 — This section states that "every member who violates any provision of this Act is disqualified from office and his seat in the Legislative Assembly is vacant." Does this mean that the offending member is permanently barred from holding a seat? Or may he/she be allowed to run again either in the by-election in the next general election and so give his/her constituency the opportunity to decide whether it wishes to be represented by him/her? We suggest a clarification of this section.
3. Section 23 — This section allows for an application regarding alleged conflict of interest to be made ex parte, that is, without the presence of the person alleged to have offended the Act. We oppose ex parte hearings on principle and cannot see the need for ex parte proceedings in this Act, especially as there is a legal remedy available to protect evidence.
4. Spouse. We recommend that the word "spouse" be replaced with the words "member of the household." If the person in possible conflict of interest is aware of the financial affairs or holdings of any members of his/her immediate household, whether or not those members are dependent on him/her, the possibility of conflict is as strong as if the household member is a spouse.