



Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

PRIVATE BILLS

Chairman
Mr. D. James Walding
Constituency of St. Vital



9:45 p.m., Friday, June 4, 1976.

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Chairman: Mr D. James Walding.

MR. CHAIRMAN: Order please. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, before we receive representations on Private Members' Bills I wonder if committee members would give me leave to withdraw the Kernested Bill that I introduced. The reason is that the amendments introduced by the Attorney-General to Bill 39, The Municipality Inquiries Act, he indicates will take care of this particular case so there's no real reason for pursuing the bill according to those amendments, if I may have leave of Committee. No, it's not the report.

MR. CHAIRMAN: The Chair is under the impression that only the House can give leave to withdraw a bill. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, a motion that the bill not be reported might be the proper procedure and I would not move it easily except at the invitation of Mr. Axworthy. On the assumption that that is the way we'd like to do it . . .

MR. CHAIRMAN: The Chair's just been advised that if the committee does not report the bill back to the House then that is the end of it.

MR. CHERNIACK: Well, we don't even have to move that.

MR. CHAIRMAN: I believe we would have to go through the formality of voting down or refusing to report the bill back.

MR. AXWORTHY: Mr. Chairman, without holding up proceedings I wonder if legislative counsel could just confirm that interpretation that the proposal put forward in the Kernested Bill is no longer required under the amendments to Bill 39.

MR. TALLIN: That's true if the facts as alleged in the preamble are correct, that's the only thing I can go on here.

MR. AXWORTHY: Well, if there is any question then I would proceed with the bill, but I . . .

MR. TALLIN: I presume that the death did occur on the second of August, 1974, after the date that the amendments to The Fatal Accidents Act would be applicable.

MR. AXWORTHY: It would be applicable..

MR. TALLIN: Right.

MR. AXWORTHY: On that basis, Mr. Chairman, I think the Committee could not report the bill.

MR. CHAIRMAN: Is that agreed? (Agreed) Fine.

There are two delegations before the Private Bills Committee, Mr. Buchwald on Bill 45. Would you come forward please?

BILL 45 - THE JEWISH FOUNDATION OF MANITOBA

MR. BUCHWALD: Mr. Chairman and members of the committee, I have undoubtedly a disappointment for the committee. I really don't intend to speak to this bill but rather to be available to answer questions on it.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I would like Mr. Buchwald to confirm that we had previously, just after it was too late to have the bill amended in print, that I'm going to ask that there be an amendment - if members would care to look at their copy of the bill then they'll understand the motion all at once and we could possibly deal with it quickly. In order to make sure that there are annual meetings at which the Board will be elected, I propose that Section 6, subsection 1 to add the words at the end "and shall be elected at the annual meeting of the members of the Foundation called for such purposes;" and then Section 6, subsection 2 at the beginning we would add the words "the procedure for the election and fixing the terms of office shall be determined by the by-laws of the Foundation." I would just like Committee to know that Mr. Buchwald, or his board, is in agreement with what . . .

MR. BUCHWALD: Yes, we are quite in agreement with the amendments, and as a matter of fact, Mr. Chairman, I should like to say to the committee, we're not only in agreement with the amendments but we want to express our appreciation to Mr.

(MR. BUCHWALD cont'd) Cherniack for drawing the ideas implicit in the amendments to our attention; they were an oversight on our part and we think that they add to the Charter of the Foundation which is being amended by this bill. Thank you.

MR. CHERNIACK: Thank you.

MR. CHAIRMAN: Are there any further questions of Mr. Buchwald? If there are none, thank you.

MR. BUCHWALD: Thank you.

MR. CHAIRMAN: Mr. Schulman on Bill 78. Mr. Buchwald.

MR. BUCHWALD: I'm sorry, Mr. Chairman, another oversight. I'd like to make the request that there be a refund, or partial refund, of the fees paid on this request for an amendment, it is a charitable foundation. It's just a request, Mr. Chairman.

MR. CHAIRMAN: I'm sure one of the members would be prepared to make such a motion.

MR. CHERNIACK: Well I think usually there is that motion at the end, those to whom it would apply.

BILL 78 - ERNEST ROBERT ANDERSON

MR. CHAIRMAN: Mr. Schulman, Bill 78.

MR. SCHULMAN: Mr. Chairman and members of the Committee. There's four points that I'd like to make. The first is that Mr. Anderson, the Petitioner, would be here because it's a matter of considerable concern to him but I was informed this morning by his wife that he had a stroke two weeks ago and he's seriously ill in the hospital. As a result I'm here to make a couple of points with respect to the bill.

The second point I'd like to make is that Mr. Anderson has been up to see me several times in the past year or so with respect to the subject matter of the bill, the proposed action. I think it's fair to say that I did express the opinion that but for the fact of the limitation period I thought that if the facts that he presented to me were true that he might have a reasonable cause of action.

The third point I'd like to make is that the facts of the allegation, you don't have the facts before you but Mr. Anderson's allegation is that in 1962 he obtained a mortgage loan from a company for the purpose of renovating a property which he owned. He says that it was a term of the mortgage loan that he would assign the rents to the second mortgagee - there was an existing first mortgage - and that the second mortgagee who had financed the renovations on the property undertook to keep the first mortgage in good standing. Renovations took place; moneys were advanced but the first mortgage fell behind, foreclosed and an officer of the second mortgagee bought the property in, at the sale.

Mr. Anderson in fact commenced action in the Court of Queen's Bench in 1964 suing for damages. I think there was an allegation of a conspiracy but he sought damages. I think the main point in support of the bill is that he actually sought relief in the matter ten years ago; he commenced an action; the action came on for trial in the Court of Queen's Bench and as I understand the papers that he brought to me, the matter came on for trial but could not be completed because of the form of his pleadings. He required a plea that the lending agreement be rectified in order to include an allegation that there was a commitment that the first mortgage would be kept in good standing and the trial judge granted the amendment. The Court of Appeal on appeal held that the amendment was inappropriate and so in effect told him, you've got to start your case again. Mr. Anderson was advised that there were costs in the order of \$500 to be paid and the matter lay dormant from 1965 until the last year or two when he sought counsel to revive the matter.

I do stress I think the most important factor in support of the bill is that it isn't that the man sat back for twelve years and did nothing to assert his claim. He sued on it promptly and he brought the matter to trial promptly and it was because of the form of his pleadings that the matter was not brought to conclusion at that time. I think it can be said that the defendants, having been alerted at the time, have not been seriously prejudiced although certainly many years have elapsed since that time.

The other point that I would make is that in light of Mr. Anderson's illness and according to Mrs. Anderson this morning, the doctors still do not know what the future holds for him. He's 75 years old and he may recover or he may not recover.

(MR. SCHULMAN cont'd) Section 2 of the bill asks that the limitation period be extended for 60 days from now. I would hope that if the Legislature passes the bill that that section could be amended to read to allow him one year from now, to give him an opportunity to recover if he's going to recover and regain his health and pursue the action. I'm quite certain that he's too ill to get on with the matter within the 60 days. That's my submission.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, there are a few questions I'd like to ask you and I'm really sorry Mr. Anderson isn't here. I'm sorry for his own sake. I know him and I'm sorry to hear that he's not well. It's unfortunate that he couldn't answer some of the questions that I have in my mind and therefore I wonder Mr. Schulman if you can try to help me out on this. Is Mr. Anderson alleging that he had not received notice of the foreclosure proceedings?

MR. SCHULMAN: No, he's not.

MR. CHERNIACK: What he is saying is that he assumed that the second mortgagee would keep the mortgage in good standing.

MR. SCHULMAN: Yes and more than that. But that was the agreement although it wasn't reduced to writing.

MR. CHERNIACK: The other question that I have in my mind, Mr. Chairman, was whether there's any possibility of knowing what kind of equity Mr. Anderson had in the property at the time this action was commenced compared with the value of the property now, assuming that there's an enhancement. I must tell Mr. Schulman that I have in mind the possibility that it's worth \$500 now to start an action but it may not have been worth \$500 in the last twelve years to start an action.

MR. SCHULMAN: Well I can't comment on the size of the equity except that it was sufficient that he saw fit to commence an action and he hired counsel and the matter was brought on to trial. So he certainly felt that there was sufficient injury to warrant the claim. As I understand it at that time he did not have the \$500 in which to pay the costs.

MR. CHERNIACK: There's no allegation in the Petition itself that he couldn't raise the \$500 during these last eleven years.

MR. SCHULMAN: I can't give you details other than my information is that at the time he did not have the \$500. Now I can't account for the lapse of time. I know that Mr. Anderson would have had a presentation to make on that point and I regret that I don't have the information.

MR. CHERNIACK: Mr. Chairman, I have one other question for Mr. Schulman. I asked him the question already and he couldn't answer it. That is whether there's any way of knowing whether or not the other parties to this, the potential defendants, have any knowledge of this bill. We don't have a Clerk left here as to whether or not there's any. There's no representation on it and I was just wondering whether they had knowledge of this. I don't know. Could Mr. Tallin tell us, is there any requirement that they should have?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Yes, I think the rules would specify that there should be notice to people with adverse interests.

MR. CHERNIACK: Notice of appeal or notice of the bill?

MR. TALLIN: Notice of the bill.

MR. CHERNIACK: Given by the Clerk or by the . . .

MR. TALLIN: By the Petitioner usually.

MR. CHERNIACK: Mr. Schulman doesn't know.

MR. SCHULMAN: Well I don't know. It's interesting that there's no one here to oppose it.

MR. CHERNIACK: Well then there's no use my pressing him on that question. He doesn't know the answer.

MR. CHAIRMAN: Are there any further questions? Hearing none, thank you Mr. Schulman.

MR. SCHULMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I've had occasion to talk to Mr. Mooney about Bill 77, the Carman Golf Club and also to Mr. Henderson, the mover of it. I wonder if we can ask Mr. Mooney to come up so I can ask him a question.

MR. CHAIRMAN: Certainly. Will you come forward, Mr. Mooney.

MR. CHERNIACK: Mr. Mooney, I think you represent the Carman Golf Club.

MR. MOONEY: That is correct.

MR. CHERNIACK: I just want to confirm with you that we've already discussed that Section 12, subsection 2 appears to be missing from the bill. I've already cleared with Mr. Mooney and Mr. Henderson a proposal to include as subsection 12(2) to the bill a provision which is somewhat lengthy but is identical with previous Acts which provides that by-laws passed by the directors must be confirmed at Annual Meeting of Shareholders. Mr. Mooney, I just want to confirm that you've seen it.

MR. MOONEY: Yes we have discussed it. I have seen it and that is satisfactory to us.

A MEMBER: If George says it's okay, let's pass it.

MR. MOONEY: I'd like to thank Mr. Cherniack for bringing another omission to the attention of counsel. Thank you gentlemen.

MR. CHAIRMAN: Do members of the committee have any questions of either of the other two delegations who are willing to answer questions on Bills 35 or 32? Mr. Steen.

MR. STEEN: Mr. Chairman, the people representing Fort Garry Trust are here. Did they say that they were just here in case there were questions or did they want to make a statement?

MR. CHAIRMAN: They're here to answer the questions. That's why I'm asking if there are any members of the Committee wishing to ask questions on 32 or 35. If there are none, we will proceed to clause by clause consideration of the bills.

A MEMBER: Proceed.

BILL 24 - KERNESTED

MR. CHAIRMAN: We will begin then with Bill 24 and I will ask legislative counsel for his report on this bill. Mr. Einarson.

MR. EINARSON: Mr. Chairman, I thought that before Mr. Axworthy left it was agreed that the motion was that the bill would not be reported, Bill 24 would not be reported. Was that not the understanding of the committee and then Mr. Axworthy left on that account?

MR. TALLIN: Right.

MR. CHAIRMAN: Then Bill 24 not be reported.

Bill 32, Mr. Tallin.

BILL 32 - TRI-STATE MORTGAGE CORPORATION

MR. TALLIN: Yes. If you don't mind I'll just abbreviate my reports. I've examined the bill and have not noted any exceptional powers sought or any provision of the bill requiring special consideration except the proposed Section 8.1 of the Act which would authorize the Corporation to hold shareholders meetings outside the province.

MR. CHAIRMAN: Report clause by clause? Mr. Steen.

MR. STEEN: Mr. Chairman, I was looking at the bill and wasn't paying proper attention to him. Would he repeat what he said about holding meetings outside the province.

MR. TALLIN: Yes. Section 8.1 on Page 2 of the bill would authorize the corporation to hold shareholders meetings outside the province.

MR. CHAIRMAN: Page by page?

A MEMBER: Page by page.

MR. CHAIRMAN: Page 1--pass; Page 2--pass; Preamble--pass; Title--pass. Bill be reported.

Bill 35. Mr. Tallin.

BILL 35 - FORT GARRY TRUST COMPANY

MR. TALLIN: This is a nil report. There's nothing unusual in the bill. I would like to point out that there was a technical error in the drafting of the bill where there's reference in the Preamble and in Section 1 to Chapter 81. It should be Chapter 85. Could we just deal with that as a correction amendment?

MR. CHAIRMAN: Agreed? (Agreed) Page by page? Page 1--pass; Page 2--pass; Preamble--pass; Title--pass. Bill be reported.
Bill 45. Mr. Tallin.

BILL 45 - THE JEWISH FOUNDATION OF MANITOBA

MR. TALLIN: Again this is a nil report.

MR. CHAIRMAN: You have two amendments, Mr. Cherniack? Page 1?

MR. CHERNIACK: Page 1. There's some silly rule I think that says that the mover can't amend it, for some reason I've never understood. May I appeal to some member of the Committee to move it?

MR. CHAIRMAN: Mr. Steen.

MR. STEEN: As reported or does it have to be read in?

MR. CHAIRMAN: It has to be read into the record. Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, I move that Section 6 of an Act to . . . Incorporate the Jewish Foundation of Manitoba, Chapter 90 of the Statutes of Manitoba current session (1964) as set out in Section 1 of Bill 45 be struck out and the following section be substituted therefor:
Board:

6(1) The affairs of the Foundation shall be administered by a board consisting of 20 persons all of whom shall be residents of Manitoba and shall be elected at the annual meeting of the members of the Foundation called for such purposes.
Election and terms of office of the members of the Board:

6(2) the procedure for the election and the fixing of the term of office of the members of the Board shall be determined in accordance with the by-laws of the Foundation.

MR. CHAIRMAN: You've heard the amendment. Is it agreed? (Agreed) Is the second amendment on the same page? --(Interjection)-- Page 1 as amended--pass; Page 2--pass; Preamble--pass; Title--pass. Bill be reported. Mr. Cherniack.

MR. CHERNIACK: There is the tradition, long accepted, that a charitable foundation may apply to have its fees waived. I would therefore move that the fees paid in connection with Bill 45, an Act to amend an Act to incorporate the Jewish Foundation of Manitoba, be refunded, less the costs of printing.

MR. CHAIRMAN: You've heard the motion. Are we all agreed? (Agreed)
Bill No. 77. Mr. Tallin.

BILL 77 - CARMAN GOLF CLUB

MR. TALLIN: This is essentially a nil report. There's no powers which are unusual in respect to golf clubs and curling clubs.

MR. CHAIRMAN: There is an amendment to come on Page 1? --(Interjection)-- Page 1--pass; Page 2--pass; Page 3--pass; Page 4--pass; Page 5 - Mr. Cherniack.

MR. CHERNIACK: I move that Section 12 of Bill 77 be amended by adding thereto after subsection 1 thereof the following subsections:
Confirmation of By-laws:

12(2) Every such by-law and every repeal, amendment and re-enactment thereof, unless in the meantime confirmed at a general meeting of the club duly called for that purpose, shall have force only until the next Annual Meeting of the club, and in default of confirmation thereat shall and from that time only cease or have force and in that case no new by-law to the same or like effect shall have any force until confirmed at a general meeting of the club.

MR. CHAIRMAN: Pass? (Agreed) Page 5 as amended--pass; Page 6--pass; Preamble--pass; Title--pass. Bill be reported.

BILL 78 - ERNEST ROBERT ANDERSON

MR. CHAIRMAN: Bill 78. Mr. Tallin.

MR. TALLIN: Yes. I've examined this bill and if enacted the bill would authorize the Petitioner to commence a new action in respect of a matter which arose in the years 1962, '63 and '64, the limitation period for which has expired. The previous action was commenced in 1964 by the Petitioner but was discontinued.

MR. CHAIRMAN: Page by page. Page 1--pass; Page 2--pass - Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I propose, since Mr. Petursson can't make the motion, I propose to make a motion to amend the time limit. Mr. Chairman, I intend to vote against the bill and speak against it but I think that it's only right that in case it passes it should be amended properly. I propose to move the amendment and then when it comes to reporting stage I would like to speak and oppose it.

I move that Section 2 of Bill 78 be amended by striking out the figures and word "60 days" in the 2nd line thereof and substituting therefor the figure and word "1 year".

MR. CHAIRMAN: You've heard the amendment. Agreed? (Agreed) Page 3 as amended--pass; Preamble--pass; Title--pass. Bill be reported. Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, firstly I should say that I wasn't in the House at the time this was dealt with, but I have read the comments made by - I think there was a mover and then I think Mr. Jorgenson and Mr. Green both spoke and expressed their opposition to the principle. They expressed their opposition to the principle of extending limitation periods generally and both indicated that since they had already in the same day passed No. 24, with which they disagreed, they felt that it appeared to them - I'm not quoting them word by word - that it would be passed anyway by the Legislature, come into committee and I can't disagree with that because I think it's well that one gets an opportunity to hear the arguments presented. I have a real problem with this one because it seems to me that when we have a law dealing with a limitation period that we have to have some respect for it. Now I'm just quoting what Messrs. Jorgenson and Green said so it's nothing original. But in this case it's not a limitation only posed by law it's also one, a requirement by the court that the Petitioner may not start a new action without paying court costs in the sum of \$500 and the preamble says, a sum that he was then unable to pay.

Mr. Chairman, I think it's kind of an abuse of the court process to come along 11 or 12 years later and ask for the right to go back to court - and he's not asking for the right to sue, he's asking for the right to go back to court - to have the court decide whether or not to let him sue. Yet it seems to me that it is an abuse and I do - now I don't know whether his case is stronger or weaker because of the time that has transpired. It could be stronger to the extent that verbal evidence has to be given and some of the witnesses for the defence might not be available or may justifiably have forgotten certain things and it might put the defendants in a difficult position. On the other hand it may well be that the plaintiff himself will have lost the ability to prove his case because maybe he doesn't have the proper witnesses.

I have the unhappy feeling that it's the enhancement of value that has taken place in the interval that may be a factor in this and I feel I may be very unfair to Mr. Anderson because he's not here. On the other hand it's a coincidence that I happen to know both sides of this situation and have discussed it only with him, I haven't seen the others at all. He spoke to me about it and I told him then that I couldn't really understand the justification to reopen something after 11, 12 years. I'm sorry that I can't say it to him now, and that he's not well. The only thing I can say is that there's nothing that I know of that would bar him from coming back next year and trying again. There's no limitation on that. You can come to the Legislature all the time.

I have to say that I think that this is one of the less compelling arguments and therefore I propose to vote against the reporting of the bill.

MR. CHAIRMAN: Mr. Enns.

MR. ENNS: Mr. Chairman, I also did not have the opportunity of hearing the introduction of the bill but like Mr. Cherniack have discussed it briefly with my House Leader and then of course listened to the representation made tonight on the bill. In

(MR. ENNS cont'd) addition to what Mr. Cherniack has remarked, and he obviously has some direct knowledge of the case, but just from somebody that has no knowledge of the situation of either the defendant or the plaintiff, I was troubled with the lack of what seemed to me somewhat critical, that we couldn't ascertain today in the argument whether or not notice had in fact been given of the action to the defendant. That bothered me. It seemed to me that counsel acting on behalf of the plaintiff, whether it was his responsibility - I understand from Mr. Tallin that it's the plaintiff's responsibility to indicate to the defendant and the counsel can check me on that, when this action is proceeded with here - that that notice, by law, has to be given. It may well have been given but I haven't been informed of that tonight at this committee meeting. For those reasons I find it difficult to support the bill and will be voting against it.

MR. CHAIRMAN: Mr. Axworthy.

MR. TOUPIN: Mr. Chairman, that's equally the reason why I find it very difficult to vote for this bill at this stage not knowing. If at least we would have as members of the committee been informed that the defendant had been notified and had the opportunity to make representation we would feel much better to let this go through committee stage, but I equally can't vote for it for that reason.

MR. CHAIRMAN: Mr. Einarson.

MR. EINARSON: Mr. Chairman, just quickly to say that I want to register my position as well, for the lack of information and the fact that the defendant wasn't notified, I must say that I can't support it.

MR. CHAIRMAN: Mr. Petursson. Would you use the microphone please.

MR. PETURSSON: Mr. Chairman, I feel that I have some responsibility here and unfortunately I am at a loss as to what I can do about it. I was requested to bring this bill in, which I did having known Mr. Anderson somewhat. I can't answer the questions about whether notice was given to the other parties involved in this or not.

I feel at the same time that a permission of the kind that he is requesting, this is not a new thing, that is a precedent is not being set in this. Precedents have been set before in somewhat similar actions. The details of course are different. It would only be in justice to him that he be permitted to proceed with the action that he proposes. If it is felt strongly among members that this sort of thing should not happen, that appeals of this kind should not be made, then there should be some legislation involved in connection with it so that it will not continue to be repeated. One bill was withdrawn, the first bill, which is similar in nature. Otherwise it would probably have passed because of precedents that have been set. I would suggest that even without the knowledge of what information has been given or through what channels, that it would be a matter of justice to Mr. Anderson to have this bill passed. I would suggest that members vote for it which I will do.

MR. CHAIRMAN: Any further debate? The question has been called for. Those in favour of reporting the bill back to the House please raise your right hand. Hands down. Those opposed. The motion is lost. The bill is not reported.

That seems to conclude all of the bills. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I have one motion to make that should be considered by committee if I may move it. It's a very simple one. It refers back to a bill that I moved last year in terms of the incorporation of St. Andrews River Heights Church and through a small inadvertence a slight part of the bill that would return fees to that church after incorporation had not been returned. I wonder if committee, if I could take their time just to move this motion and rectify that small inadvertence which I plead guilty to.

I'd like to move that the fees paid in connection with Bill No. 23, an Act to Incorporate St. Andrews River Heights Church Foundation, passed during the Second Session of the Thirtieth Legislature be refunded less the costs of printing.

MR. CHAIRMAN: Mr. Enns.

MR. ENNS: Just in speaking to that motion I have no objection to the motion. We just passed a similar motion for another charitable organization, except to ask the Clerk and the counsel if there is any difficulties involved in doing this. If there is none then certainly we'd be . . .

MR. CHAIRMAN: You've heard the motion. Is it agreed? Agreed and so ordered. If there is no further business before the committee, Committee rise.