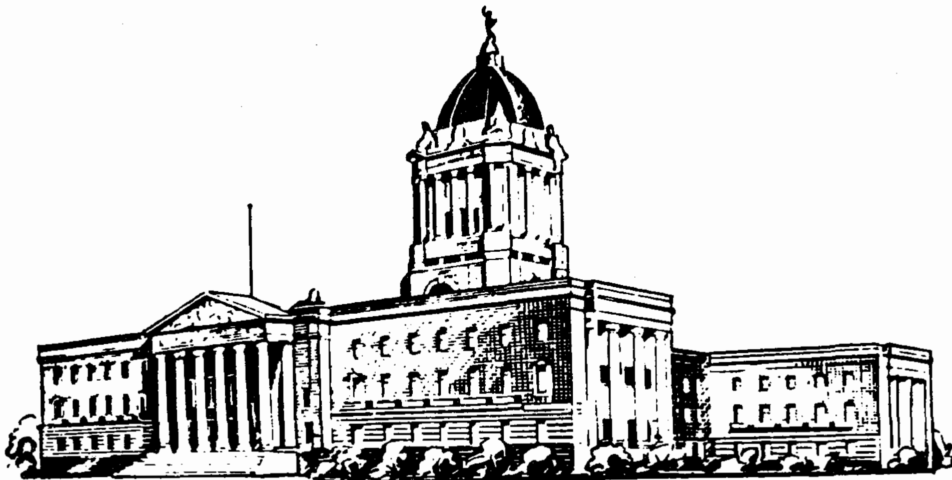
Legislative Assembly of Manitoba

HEARING OF THE STANDING COMMITTEE ON PRIVATE BILLS

Chairman

Mr. D. James Walding
Constituency of St. Vital



THURSDAY, June 9, 1977, 10:00 a.m.

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TIME: 10:00 a.m.

MR. CHAIRMAN, Mr. D. James Walding.

MR. CHAIRMAN: Order please. We have a quorum, gentlemen. This meeting of the Private Bills Committee will come to order. The following bills are before the committee for consideration this morning:

Bill No. 24, Bill No. 37, Bill No. 55, Bill No. 58, and Bill No. 71.

Are any members of the public present wishing to address the Committee on any of these bills this morning. If so, would you come forward please and give your name.

MR. DOUG STRANGE: Doug Strange on behalf of Bill 55 — in support.

MR. KNOX FOSTER: My name is Foster, Knox Foster, I am appearing in regard to Bill 55 as well — in opposition. With me is Mr. D. H. Ringstrom and Mr. M.T. Green.

MR. CHAIRMAN: Thank you. Is there anyone else wishing to make representation to the Committee this morning?

MS. BONNIE HELPER: Good morning, gentlemen. My name is Bonnie Helper. I am appearing as a proponent of Bill No. 58.

MR. CHAIRMAN: Thank you.

MR. HAMPSON: My name is Hampson regarding Bill No. 71, I have a few questions to ask.

MR. CHAIRMAN: Thank you. If there is no one else wishing to make representation to the Committee, I would call on Mr. Strange then, please, on Bill 55.

BILL (NO.55) — AN ACT FOR THE RELIEF OF ANNE MARIE MUMFORD

MR. DOUG STRANGE: Thank you, Mr. Chairman. This particular bill is dealing with a relief from an extension of time or Limitation of Actions Act which was passed by this Legislature. The bill asks that this Committee approve Bill 55 which would allow us to go on behalf of an infant, a two-year old child at the time this incident took place, to a judge and ask the judge to decide, not on the basis of the Limitation of Actions Act which sets out a two-year limitation period, but ask the judge to look at the equities of the situation. It asks the judge to decide whether this infant should be allowed to sue based on the facts that: (1) The reason for missing the limitation date, the two-year period, had to do with the child's mother, not the child herself. (2) No lawyer was involved who was consulted during the limitation period and that the mother finally consulted a lawyer after the limitation had expired.

The particular facts of this case, I think, are unique. This child was taken by her mother to the Health Sciences Centre on February 8 where the child was suffering from certain ailments. Treatment was prescribed and the child was then sent home. On February 9th, the child was again returned to the Health Sciences Centre. Again, some treatment was prescribed and the child was sent home. Some one week later, the child was then admitted to the St. Boniface Hospital where, following two operations, the child's health was severely impaired, in fact the child became a spastic quadrapalegic with optical blindness. What occurred was that the child had been suffering from acute appendicitis at the time that she had first gone to the Health Sciences Centre. On behalf of the Mumfords, we have alleged that there was negligence on behalf of the doctors and both hospitals who treated this child. The Limitation of Actions Act provides for certain extensions but The Limitation of Actions Act specifies certain facts that have to be outside the knowledge of the applicant. In this case, we brought an action on a Notice of Motion before a judge in the Queen's Bench saying that because Mrs. Mumford, the mother, was unaware, or was afraid to go to a lawyer to sue due to her fear that her child would be taken from her, that that was an excuse for her missing the limitation period. That originating Notice of Motion which went before Chief Justice Dewar was dismissed without written reasons. We then appealed this to the Manitoba Court of Appeal which three judges heard the appeal based on our arguments. That appeal was dismissed by a vote of 2 to 1 with the Chief Justice of Manitoba, Chief Justice Freedman, dissenting. Chief Justice Freedman quotes from a letter that was in evidence, written from a doctor at the Health Sciences Centre to the St. Boniface Hospital. I think it is important . . . this is directly from the Chief Justice's decision in reading the letter. I quote the last paragraph of this report and that's referring to the letter.

"I think, in retrospect, this child almost certainly had acute appendicitis at the time of the original examination which was perhaps not entirely satisfactory due to her attitude and irritability. The subsequent story is most interesting and if I see another child like this, she will certainly be admitted for observation and closer monitoring of her symptoms." And the Chief Justice continues, "This tells its own story."

He goes further in interpreting the sections of the The Limitation of Actions Act to say that the mother's actions, although unwise, were understandable when we think of the kind of person she is. Mrs. Mumford is 26 years of age; she lives in the core area; she is an Indian; has been on welfare for a great part of her life and she had a fear of the legal system. She filed an affidavit in the Queen's Bench expressing this fear. The Chief Justice found that that was an excuse under the particular sections of

the The Limitation of Actions Act. He ends his decision saying, "I would not deny her and the child their day in Court."

The Limitation of Actions Act is an Act that sets up very specific time limits, time limits that are arbitrarily chosen in an attempt to make sure that plaintiffs will not sit on their rights and allow time to elapse. Obviously that could prejudice a defendant in answering a case. In most cases, the extension sections certainly would be effective. What we're saying is, that in the particular facts of this case which may occur once in ten years, we should not be penalizing the child, because that is the person who suffered the damage, for the lack of education or the unsophistication of the mother.

In opposition, submission has been, I think, sent to some members of the Committee which attempts to deal and attempts to convince the Legislature that there is no fault, that there is a question of negligence that is going to be argued in front of this Committee. Our position on that is that the Legislature is not the forum to evaluate whether there is fault or negligence and that if that is to be done, it is to be made in front of a trial judge where witnesses can be called and cross-examined. If there is no valid claim in negligence, then, of course, a trial judge will dismiss the action and compensate the defendants with costs. That is our legal system.

My learned friends are also going to be arguing that there is a lapse of time that may prejudice the defendants but Bill 55 what it sets out is, it doesn't force a judge to hear the case on its merits. What it does is it asks the judge to look at the facts surrounding the matter and determine whether it is fair and equitable to hold the trial. If the judge decides at that hearing that the lapse of time has prejudiced the defendant, then he would dismiss the action. If, on the other hand, he finds that it has not prejudiced them, then he would order that Mrs. Mumford and the child be allowed to file their Statement of Claim and commence the actual action.

We have also felt that rather than abuse this Committee and the Legislature, it was necessary to try and bring Mrs. Mumford and the child within the sections of The Limitation of Actions Act. Those particular sections are, at best, obscure and very complicated. I believe that we argued in the Court of Appeal certain cases which had never come to light in Manitoba — they were from England — and England has a similar statute to ours. Our particular extension sections are the only ones in Canada so there was no Canadian cases to argue from. Our position quite simply is that this bill does not force the defendants into a trial; it puts it back into a judge. It says to a judge, ignore The Limitation of Actions Act but look at the equities. Is it fair that the child should be denied a day in court because her mother made a mistake? Our position, quite simply, is no. More and more these days there is the talk of children's rights. That is what we are asking for here. Relief to the child not to the mother. Thank you.

MR. CHAIRMAN: There may be some questions. Mr. Henderson.

MR. HENDERSON: Yes, I'd like to ask, were you handling this case in the earlier stages?

MR. STRANGE: No, I came into this case on the appeal to the Court of Appeal.

MR. HENDERSON: And was that before the limitation had run out?

MR. STRANGE: The limitation had run out one year before Mrs. Mumford actually went to a lawyer. She had never seen a lawyer; the limitation ran out and one year after the limitation date expired, she then saw a lawyer.

MR. HENDERSON: So then she was probably never advised by legal people that . . .

MR. STRANGE: She had never been advised that she had a case or she had any kind of action unti the limitation period had expired.

MR. HENDERSON: This case will be under the Legal Aid system now then?

MR. STRANGE: Yes, it is.

MR. HENDERSON: That will be all for now, thanks.

MR. CHAIRMAN: Are there any further questions? Mr. Banman.

MR. BANMAN: At the time when the Appeal Court handed down its decision, why was the case not taken one step further and taken to the Supreme Court?

MR. STRANGE: Why? For two very good reasons. (1) To get to the Supreme Court these days you are required to ask for leave. Our position simply was that we were dealing specifically with a Manitoba statute, found nowhere else in Canada, and that the Supreme Court, on that basis, would not grant us leave. (2) We felt that the case itself, the arguments that we presented, were, although based on the English statutes, it had taken the English courts some eight years to arrive at the fina position which we had to establish in Manitoba courts. On that basis, we felt that there would be number one, a vast delay in time even if we were to get to the Supreme Court, again a delay tha prejudices the child in her formative years when she needs some kind of assistance. (2) Number two We felt that the chances of winning were so slim that certainly we could have gone and had our time in Ottawa on Legal Aid certificate, but why put the child through the time delay and the expense to th people for, in effect, almost a futile cause to get into the Supreme Court. It would have delayed us a least two years from coming probably to the Legislature, certainly one year.

MR. BANMAN: Did you ask for leave from the Supreme Court? Did you file for leave?

MR. STRANGE: No, we did not. We made the decision . . .

MR. BANMAN: It was your feeling that you would not get leave though?

MR. STRANGE: Correct.

MR. BANMAN: But you didn't file?

MR. STRANGE: No, we did not. If we had filed for leave, of course, we would have missed this Committee because then we could not have come and asked for a bill to be presented to the House while we were continuing in the Supreme Court.

MR. BANMAN: Has there been any attempt to settle the matter out of court?

MR. STRANGE: Well, I was not privy to the conversations that took place prior to the Queen's Bench hearing. My understanding is that there was to be an agreement, that it was going to be consented to the Queen's Bench but one of counsel involved said that his clients refused to consent and would contest the extension application. At that point all counsel contested the application.

MR. BANMAN: Fine, thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, just to get the matter clear in my mind, this gentleman today, he mentioned the condition of this child. Did I understand him to say that she is blind for life?

MR. STRANGE: No, she is not. She is making some recovery. She is taking in special schools, she has had a number of operations on her legs, she is learning to talk again. This occurred five years ago when she was a healthy child and could talk so she is making some sort of come-back but she needs special care and attention.

MR. BILTON: And are you telling the Committee that had her case been diagnosed in the proper manner in the first place, that is an appendix, that none of these problems would have developed?

MR. STRANGE: Well, what we are saying is, let the judge decide. What has come out in the medical reports is the reason for this happening was the complications that occurred following the emergency appendectomy some nine days after the child had been brought to the hospital, or to one of the hospitals, that peritonitis set in, further complications set in and the child suffered a cardiac arrest.

MR. BILTON: And the child is normal in every other way but theway you have just outlined to us?.

MR. STNGE: The child was normal to start with and today she is a spastic quadrapalegic, learning to walk, having had a number of operations on her legs, going to a special school in order to teach her to talk again.

MR. BILTON: She will be afflicted for her whole life?

MR. STRANGE: For the rest of her life.

MR. BILTON: Thank you.

MR. CHAIRMAN: Are there any further questions? If not, thank you, Mr. Strange. Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I wonder if Mr. Strange could just clarify for the Committee because there is always some degree of ambiguity, that this particular bill only asks the judge to entertain the case in terms of whether it should be heard. In fact, it won't necessarily be heard as a passage of this, this bill just simply puts it into the judge's desk, in effect, to look at. Is that correct?

MR. STRANGE: Correct. The bill does not force the judge to hear the case on the merits.

MR. CHAIRMAN: Any further questions? If not, thank you, Mr. Strange.

MR. STRANGE: Thank you.

MR. CHAIRMAN: Mr. Foster, please.

MR. FOSTER: Thank you, Mr. Chairman, members of the Committee. I represent four of the doctors who are named in the proposed bill, Doctors Grewar, Greenberg, Crocker and Tweed. My learned friend, Mr. Ringstrom, represents the Health Sciences Centre, Children's Hospital, and Dr. Ferguson and my learned friend, Mr. Green represents the St. Boniface General Hospital.

I am speaking in opposition to Bill 55 and urging you not to enact it for reasons which I hope will be evident to you. My learned friend, Mr. Strange, in proposing the bill indicated to you his two reasons why the bill was sought and proceeded then to relate to you as the case was that an application already has been made to the Court of Queen's Bench and affirmed by the majority of the Court of Appeal for Manitoba indicating that the action should not proceed.

The Limitation of Actions Act, Part II, is unique in the Canadian jurisdictions as my learned friend, Mr. Strange, indicated. It does exist in England but nowhere else in Canada. And that' I submit or suggest, was enacted approximately ten 10 years ago to prevent such things as these numerous Acts coming before the Legislature and the Committees requesting relief where a limitation period had been missed, for whatever reason. The Legislature, by Part II of The Limitation of Actions Act, set out grounds and reasons which it would appear it thought were the basis for an extension of time.

One of those conditions or prerequisites relates to cause and merit and I certainly do not intend, as Mr. Strange indicated he did not intend, to argue the merits or the negligence here before you. I am sure you do not want to involve yourselves with that. However, it is important for your considerations, I submit, to bear in mind that one of the things which the Court has already considered in the application which was heard and dismissed, is the likelihood of success. Chief Justice Dewar, in effect, held that there was no case to meet, that the action should not proceed to trial and that finding

was upheld by the majority of the Court of Appeal. The likelihood of success then is importa because it is one of the considerations which follow from Part II of The Limitations of Actions Act ai while it is not necessary for you to consider the merits, I suggest that the court having alrea indicated by its decision that there is little likelihood of success, if any, then to now prescribe permit another application for the same purpose would be a waste of time and an unnecessa expense to all concerned.

One of your members did raise a question concerning proceeding to the Supreme Court on th decision by the Court of Appeal fo Manitoba and it was mentioned that Legal Aid was involved. It my understanding that Legal Aid did grant permission under its regulations for an application to I made to the Supreme Court for leave to appeal. However, no application was made for the reaso which Mr. Strange indicated which included, as I heard him, a reason that they didn't think th would succeed. So in my submission then, that being the case, I would suggest that this Committ can take it that he feels that at least on the law as it is now under The Limitation of Actions Act Manitoba, Part II, that that action was properly not permitted to proceed.

The purpose of limitation periods is one that can perhaps become philosophical in discussion b they are there for a reason. There must be some finality to claims; courts must be able to determi issues on fresh evidence. The events in question now thought to be litigated are over five years o and while it may appear to be harsh in this case because of the seemingly disastrous results, I wou submit that imposition of any limitation period at all times results in some harshness because extinguishes the right of action or the right to enforce a claim. That hardship is one that alwa applies in limitation periods and if, in this situation, it is suggested that this limitation period shou be removed then I would suggest that if hardship is the criterion then in all situations this Legislatu will be invited to remove the limitation period and the whole Act and in particular Part II, which w the practical solution arrived at by the Legislature, then should also be removed and repeale Harshness is also a consideration for the defendants as well, not only these proposed defendants b all defendants when they are asked to defend an action after the exploration of the limitation peri which has been the prescribed time.

For those reasons, then, Mr. Chairman and members of the Committee, I would request yo support in opposing and not enacting Bill 55.

MR. CHAIRMAN: Thank you. There may be some questions. Mr. Bilton.

MR. BILTON: It was, as you heard, as I did earlier, that this lady or the parent of the child w reluctant to, or didn't feel that she could take any action. Supposing that some action had been tak in the prescribed period, the two-year period, the year period, what would have been your reaction that?

MR. FOSTER: Well, of course it would have been defended but that would have been at least thr years ago at that stage.

MR. BILTON: I see. Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I just want to clarify in my mind. Mr. Foster said that both th Queen's Bench and the Court of Appeal had made decisions. It was my understanding no reaso were ever given as to why they decided the way they did. The only reason that was given was dissenting opinion given by Chief Justice Freedman. The other decisions were not in any w written. Is that correct?

MR. FOSTER: Well, Mr. Justice Guy of the Court of Appeal with whom Mr. Justice Monn concurred gave a very brief statement saying, "I would dismiss the appeal." He didn't give ar detailed reasons. The reasons of Chief Justice Dewar were quite brief as well and not recorded transcribed.

MR. AXWORTHY: So the court didn't express its rationale for not accepting?

MR. FOSTER: No, except that I think it is fair to say that when a dissenting opinion says one thin that is not the view of the others that don't concur in it. It is not the majority view.

MR. CHAIRMAN: Are there any further questions? Mr. Henderson.

MR. HENDERSON: Possibly I should have asked Mr. Strange this question but maybe you ca answer it. Where is the lady concerned now? What I mean is, is she the one that's wanting this ca brought before us?

MR. FOSTER: I can't answer that. I note that the affidavit which was found in support of th Queen's Bench application indicated she resided then in Vancouver.

MR. STRANGE: Mrs. Mumford does reside in Winnipeg. She has resided here all her life except f one six-month period some two years ago when she resided in Vancouver.

MR. HENDERSON: I might ask him a question now since you're . . . This is probably a litt irregular but if you will allow an aside. What I am just concerned about is, possibly because this ca is before Legal Aid and being paid for by Legal Aid, is Mrs. Mumford herself really wanting you pursue this case or is this on your own that you're pursuing this case?

MR. STRANGE: No, Mrs. Mumford does want us to pursue the case. We certainly wouldr

proceed without her wanting us to pursue the case. If we had wanted to pursue our own ambitions and be the big lawyer stars, we would have been in Ottawa losing the case in the Supreme Court of Canada on a Legal Aid certificate and taking the money.

MR. HENDERSON: Okay.

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

MR. FOSTER: Thank you, Mr. Chairman.

MR. CHAIRMAN: Is there anyone else present wishing to speak to Bill 55?

MR. RINGSTROM: Mr. Chairman, my name is Ringstrom. Mr. Foster introduced me as one of the speakers who might address you. I represent the Health Sciences Centre, the Children's Hospital, and Dr. Ferguson. Just a couple of points I would like to cover.

Mr. Strange read to you a paragraph from a letter in which Dr. Ferguson commented about if this . . ."the story is most interesting, if I see another child like this, she will certainly be admitted for observation." You will recall that paragraph. I would like to cover that letter in more detail for this Committee. The letter is dated the 22nd of February, 1972, and you will recollect that the first operation performed at the St. Boniface Hospital was on the 16th. The operation in which the child suffered her injury was on the 25th. This letter from Dr. Ferguson — and he is the director of the Outpatient's Department at the Children's Hospital, is addressed to Dr. June James who is the Chief Resident of Pediatrics at the St. Boniface Hospital. Now, you gentlemen may well be aware, that when something like this happens, there is an inquiry made back to find out what, if anything, may have gone wrong. Now, this is a letter from one specialist to another setting out what, in fact, had happened here. Now, I would suggest to you that to take that paragraph and say, "Ah-ha, that's an admission of negligence on the part of Dr. Ferguson," would be inaccurate. What you are seeing here s one doctor writing to another saying, this has gone on, we have added in fact to our experience and f we see this again, we may well do things differently. Now, I would submit that that really is a statement from a responsible professional who is trying, in effect, to increase his knowledge as he joes along. If we are to suggest that that means negligence, is to suggest that no professional trying o get on should ever express himself in other than "I did no wrong; my experience teaches me nothing" and I submit that we can't just sort of take that as negligence.

Speaking for my clients, they saw this child on the 8th and 9th of February. The problem did not arise until the 22nd and there is no suggestion that there is any connection between the injuries ustained in late February and their treatment or lack of it in early February. To connect these two ospitals and that doctor on this type of evidence, I would submit would be doing them an injustice. he courts have looked at this to see if there is any negligence, they have to this point declined it. I ubmit to take all of these people, these professionals, and put them in the jeopardy of a law suit on ne flimsiest of material would be to do them a solid injustice.

One thing I would like to put on as well. My learned friend, Mr. Strange, says, "We're not asking nis Committee to judge, merely to let a court decide if there is merits to be tried." I submit that that's recisely what the two cases have gone on to date about and I would also point out that in all the pecial Acts that were passed by this Legislature over the last some twenty years, only one was eclined by the courts and that was on technical grounds. That you may rest assured that if this bill is assed, that this matter will be in court , they are not declined.

Those are my remarks.

MR. CHAIRMAN: Are there any questions for Mr. Ringstrom? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I don't want to get into discussing the merits of the case of octors. I agree that that's not really our responsibility but you seem to suggest that when the two vels of courts heard the case that they were deciding on the actual action itself. It is my nderstanding in looking at those decisions that what they were deciding as to whether the case hould be admitted and that there is some confusion in the law concerning whether lack of nowledge of one's rights is an admissible reason under The Statute of Limitations Act and that goes ack into a series of British cases going up to the Privy Council which wouldn't address it. So it seems me that without having had any written reasons by the court, that the reasons that the case could ve been dismissed by them was on technical reasons of the law as opposed to the actual examining e case itself. Is that not a fair supposition?

MR. RINGSTROM: There are several standards to be met. One of them is that you have to show e court that you have sufficient evidence of negligence , that if the defence leads none, you will win. at's correct. The other one is that you must have some valid reason for having allowed the time to pire. Now, the only person who has written a decision is Chief Justice Freedman who said that he ould accept this misconception of hers as being the reason. The other judges did not cover it. That's e.

MR. AXWORTHY: But it would be fair to say that, again, because of the, I guess what we have been rning in Committees of the last couple of weeks and looking at other bills, the degree of small "c"

conservatism of the legal profession, particularly the judiciary as is claimed by many, that they woul be as apt to determine a decision on the technicality of the law as to whether a misconception or lac of rights was an admissible reason under the The Statute of Limitations and that they could constru their mandate in those fairly narrow terms. Is that not true?

MR. RINGSTROM: Well, when this Legislature passed the amendments to The Limitation c Actions Act, they adopted the British Act and the Manitoba courts have basically followed it but the have done some adapting on their own, but the courts have more or less assumed that if thi Legislature passed that Act, that that's what they wanted to follow and the reasons are there in tha Act. But what become narrow and technical grounds, I don't know. What they are saying is that ther is a very substantive reason why you have a Limitation of Actions Act, because a man should not s indefinitely in jeopardy of whatever he may have done. **ow that's not a technical term at all and they'r really saying is if you want to get around that, here are the things you shall meet, which is the word c this Legislature. But I am suggesting to you that it's a different thing when you are doing a automobile case or something where a man has caused an injury to another than dealing with medical case because you are putting up a row of practitioners here and you are saying to them, "Yo are all going to be accused of negligence some years after the event took place." That is something, would submit, far more serious than saying to a man, "You made an error in an automobile acciden or you have struck your neighbour or committed some trespass to his land." You're talking about th very reputations of a number of eminent medical people.**

MR. AXWORTHY: Mr. Chairman, I just want to clarify. I don't believe that that is what thi Legislature would be doing if the bill is passed. We would simply be referring it to a judge t determine whether then in fact further action should be taken and it would be up to the trial judg then to determine whether questions of length of time and so on would warrant the action not bein held. That's my understanding of it.

MR. RINGSTROM: Well, that's not exactly the case, Mr. Chairman. As I have said, there is only . . you will recall that a large of these bills were passed before the Limitations of Actions Act wa amended to allow late applications and in all those Acts that were passed, only one was declined b the courts. The courts are taking it that if these bills are passed, they will allow it unless there is som technical defence which would, in effect, prejudice the position of those defendants, but as far a deciding whether there is merit or negligence or what-have-you in allowing the action to go, they d not make that inquiry.

MR. AXWORTHY: Thank you.

MR. CHAIRMAN: Mr. Steen.

MR. STEEN: Yes, Mr. Chairman, to Mr. Ringstrom. Just carrying on on the same thought that yo have just concluded on, you I believe in the final comments during your argument made som comment that Mr. Strange said in representing the Mumfords that he was hoping to take this before judge and that that particular judge would then decide whether it should go to court. Is that correct Am I understanding you correctly?

MR. RINGSTROM: It follows on the previous question, Mr. Chairman. What you are doing i passing a bill allowing an application to be made to the Court of Queen's Bench for leave to sue afte the prescription of time. In other words, you don't pass the Act and he's free then to issue hi Statement of Claim. He must firstly go to court and have the Queen's Bench judge allow him to sue My answer to the earlier question was that that leave is given almost automatically, in all of the specia Acts previously passed it's only been declined to my knowledge on one occasion.

MR. STEEN: Mr. Ringstrom, it's been declined, as far as you are concerned, only once i approximately how many cases? Are you referring to just a handful or dozens of cases?

MR. RINGSTROM: I don't know . . . Well, you're closer to, I'd say 12, 20, somewhere in that area

MR. STEEN: In that area, okay.

MR. RINGSTROM: I can tell you the circumstance of why the other one was. They asked for leav to sue one person in a two-car automobile collision. When they went in for the application the cou said there's every expectation of the other person being liable as well and it would be totally unfair t allow the suit to go against the one and they declined it. And that's the only time.

MR. STEEN: I see. Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: I wonder, Mr. Chairman . . . during my experience in the Legislature an discussing bills similar to this in the past, I remember on one or two, if not three occasions, th Statute of Limitations was used much as it's being used this morning and the cases I am thinking of, was the legal profession that let it go beyond the limited period and in this particular case, we hav this lady who had no knowledge of what she might be able to do for her child as has been outlined thi morning. What do you think of that, that on the one hand I've heard it argued that a bill should be pu through and it was entirely the fault of the legal advisor of the particular individuals?

MR. RINGSTROM: Yes, that's quite true and for a personal reflection, I think in those instance that the claim should go against the lawyer's insurance company rather than against the defendant

in the proposed action but that, I guess, is a moral question between us. But the whole reason for the amendment to the Statute of Limitations back in, I think it was 1967, was to get away from these applications, was to say that it was not in effect just for this Legislature to pick and choose as to who could come before them and avoid the effect of the law. They said, "Fine, now here is an amendment; you may now take your application to the court and there decide the merits of allowing a late suit." I submit that this is the first one that I am aware of where such an application has been brought under the new Act, has failed and the people have come in before you. I may be faulty there but I don't know of any others.

MR. CHAIRMAN: Mr. Petursson.

MR. PETURSSON: Thank you, Mr. Chairman. You make reference to the original surgery and what you have called an accident which was discovered somewhat later. The accident, was that as a result of the surgery? It's a case of peritonitis, is it? .

MR. RINGSTROM: A series of events as I understand them chronologically were: the infant was brought to my clients' hospital on the 8th and again the 9th of February. She was then taken to the St. Boniface hospital, I believe something like the 14th, 15th and 16th, in there. An exploratory operation was performed on the 16th by the St. Boniface because they couldn't detect the problem either. Complications set in on that operation; a subsequent one was performed I believe by the 26th and that is when the cardiac arrest occurred.

MR. PETURSSON: You don't pin-point exactly when certain things developed or were detected.

MR. RINGSTROM: I believe that they have been set out . . . Yes, she went to the Children's Hospital on the 8th and 9th; February 16th the exploratory operation was undertaken at St. Boniface; February 25th a deterioration of the infant's condition continued and the operation was performed then and the cardiac arrest occurred then.

MR. PETURSSON: She was admitted on the 8th or 9th?

MR. RINGSTROM: The 16th. She was admitted I believe it was on the 16th. I'm sorry, I'm reading from a sequence of events which may not be complete.

MR. PETURSSON: Was there any diagnosis at that time?

MR. RINGSTROM: I'm sorry. She first went to the St. Boniface on the 14th; she was examined by Dr. Grewar; admitted to St. Boniface then as a patient. On the 15th, it's alleged her appendix ruptured and then the operations were later on the 25th. I'm reading from two different documents and I don't know how entirely accurate but give or take a day of those.

MR. PETURSSON: You mean there was a rupture of the appendix on the 15th and she was operated on on the 25th?

MR. RINGSTROM: Well, that's the odd . . . I'm looking at a submission that's been put together by the solicitors acting for the St. Boniface Hospital and they identify the hospital operation on the 16th of February as being exploratory only. The affidavit by the mother says that there was a burst appendix on the 15th. I don't know which is the accurate one there but it was sometime later. . . the subsequent operation in which the cardiac arrest took place was some days later.

MR. PETURSSON: On the 16th had they identified exactly what the difficulty was, as a burst appendix?

MR. RINGSTROM: Yes.

MR. PETURSSON: And they didn't operate . . .

MR. RINGSTROM: Well, I don't know if it was a burst one, sir, all it is saying in the summary that I have from Mr. Foster is that on the 16th there was an exploratory operation , I would assume they found the appendicitis at that time.

MR. PETURSSON: On the 16th? And the surgery, that didn't take place until ten days later?

MR. RINGSTROM: No, then there was subsequent surgery. There were two surgical operations. There was the one on the 16th when the appendix was removed and on the 26th when they went back to cure the problem . . .

MR. PETURSSON: But they had been aware that there was some condition that was serious.

MR. RINGSTROM: Yes, she was not making the recovery I gather that they expected and that's why the subsequent surgery was undertaken.

MR. PETE Is it conceivable that they had neglected to keep a close watch on this condition?

MR. RINGSTROM: The only material I have seen is that it was monitored very closely and, of course, the letter I read out to you earlier came over on the 22nd from the Children's so they were already going into an inquiry before the second operation took place. I can only assume that there was close monitoring of the symptoms.

MR. PETURSSON: When there was at least the appearance of a serious condition existing, it seems that there was some sort of undue delay in trying to deal with the problem.

MR. RINGSTROM: I don't believe there's been any suggestion of that yet, sir, it's just . . .

MR. PETURSSON: No, but it appears that way to me.

MR. RINGSTROM: I don't know. I would be well outside my field to make any comment about that.

MR. PETURSSON: Thank you.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I just wanted to ask Mr. Ringstrom, he made a statement that as far as he knew, under the previous record, most bills that ask leave for examination by a judge are automatic. Is he aware that last year there were, I think, only two bills of this nature passed and both were referred to courts. One was not given automatic leave; it was in fact dismissed by the court?

MR. RINGSTROM: No, I didn't. I wasn't aware of those.

MR. AXWORTHY: Okay, thank you.

MR. RINGSTROM: I know there was a gap of about eight years where there were none.

MR. CHAIRMAN: Mr. McGill.

MR. McGILL: Mr. Chairman, I wanted to ask Mr. Ringstrom about the Statute of Limitations in Manitoba. He mentioned that it was modelled after the British law. I take it that this law, this Statute, doesn't provide for any extenuating circumstances at all, that the law is very clear that there are no exceptions, that there are no situations where the law would provide any relief. Mr. Ringstrom, do you feel that that law is good or do you think there is some need for re-examination of The Statute of Limitations? In view of our experience in this Legislature over the past few years and the number of bills that have come before us to ask for relief, do you feel that we are well served by the law in its present form or that we should be looking at the law itself?

MR. RINGSTROM: Well, firstly, sir, on the technicalities, I would agree that the bill is not clear and it places a fairly heavy onus on the person who is applying for leave to sue after the prescription date. To suggest that it should be revised . . . It's difficult for me as a lawyer to direct my mind to a Legislative question but I would point out that over the last several years that the time for bringing actions has been enlarged by this House. The new Limitation of Actions Act now has been changed. Automobiles are two years; medical negligence is two years; damage to property in all cases is six years. Much better than it was during the years that you had those rash of applications when it was one year for an automobile and there were special limitations in The Municipal Act and various statutes such as the City of Winnipeg Charter, the Brandon Charter. All these had their own specific limitation periods and I suggest to you that the object of them was to provide protection to these various interests such as the cities and what-have-you. Those have been wiped out now and you're back to where pretty well all those actions are two years. So I would suggest that there isn't the need probably for anything much more than that.

In the pace of times as we go now, to suggest that we should leave at jeopardy hospitals, doctors and anyone, motorists, in excess of two years, I would suggest would be more of an injustice than to suggest that some people at some time are going to be victims. You've got to say to somebody at some specific time what's passed is passed and get on with what the future is. This is why I would submit that this Committee must always look very carefully at this type of Act because you are making a clear exception and going back to say to somebody, you are not being given the protection of the law that everybody else is and I suggest that it can't be passed merely by saying that we'd like to do something for a victim, because the victim really becomes the system.

MR. McGILL: Thank you.

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

MR. RINGSTROM: Thank you, Mr. Chairman; thank you members. .

MR. CHAIRMAN: Is there any one else present wishing to speak to Bill 55? If not, I will call on Mrs. Helper on Bill 58.

BILL (NO. 58) — AN ACT FOR THE RELIEF OF PETER MARTENS

MS. HELPER: Thank you, Mr. Chairman. Gentlemen, Bill No. 58 is again a bill asking this committee to allow a direction to court to have an extension made under The Limitation of Actions Act. To give you a background in this particular case, this involved an automobile accident that took place in February of 1974. Although this committee is not involved with the merits of each individual bill, I must advise that there is no question of liability in this particular case. The applicant himself was involved in negotiations with the Manitoba Public Insurance Corporation and these negotiations continued on for a two-year period. The applicant had no knowledge of the Statute by Limitation although he was advised of a two-year period and it was his understanding that he did not require independent legal advice until the two-year period had elapsed. It was also his information or his understanding that as long as he was involved with medical doctors and continuing to receive treatment for the injuries received in February of 1974, that the limitation date continued to run and the case would not close.

In December of 1975, one month before the two-year period, a letter was received by the applicant from the Manitoba Public Insurance Corporation making an offer of settlement. Again, there was no legal advice given to the applicant and, on his own, he rejected the offer. On March 1st, 1976, after the limitation date had passed, a letter was received by the applicant from the Manitoba Public Insurance Corporation asking if he did have legal advice. Now, already at this time the limitation date had passed. Legal advice at that point would have been pointless; there was no statement of claim issued

on behalf of the applicant. The applicant is still under medical care and receiving treatment and it was not until October, 1976, after his last medical visit that the applicant did go to see a lawyer. It was at that time he was advised that his claim was statute barred and the application for the extension was made on his behalf at that time by our firm.

Again, I wish to point out that as a result of the injuries received by the applicant in the accident of 1974, the applicant is no longer able to carry on his occupation that he had prior to the accident of February, 1974, and is now presently maintaining himself and his family on a much lower scale.

The purpose of this bill is to allow an application to the Court of Queen's Bench for then the court itself to consider whether or not an action can be initiated or should be initiated based on the justice of the case. The bill is not a direction to the court to allow the statement of claim to be issued but merely to enable the application to be made. I wish to point out that it is a question in this case for the applicant, it is simply a matter of quantum of damages that will be a consideration for the court and not a question of liability.

I have no other submission to make with regard to this bill.

MR. CHAIRMAN: Mr. Henderson.

MR. HENDERSON: Yes, I would like to ask Mrs. Helper. After the accident, did you say that there was two years that elapsed in there in which the person was sick, Mr. Martens, and that he had no legal advice or that he wasn't before the courts during that time?

MS. HELPER: He was not before the courts and he did not see a lawyer during that period, from February of 1974, the time of the accident, until October of 1976.

MR. HENDERSON: He never saw a lawyer during that time.

MS. HELPER: Not to my knowledge, no.

MR. HENDERSON: And by that time, the time elapsed.

MS. HELPER: Yes.

MR. HENDERSON: There was a settlement offered to him at some particular time, was there not?

MS. HELPER: December 19th was the date of the letter offering a settlement.

MR. HENDERSON: Of 1975.

MS. HELPER: Of 1975. Just about five weeks before the limitation period had elapsed.

MR. HENDERSON: And such a letter as that doesn't contain anything about that he has, you know, any rights to appeal it or anything like that?

MS. HELPER: I have a copy of the letter and it simply sets out the settlement and there is no question of his rights as far as Statute by Limitations.

MR. HENDERSON: Thank you.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: With regard to this particular bill, what are we dealing with? Are we dealing with a number of things? In other words, are we dealing with a loss to Mr. Martens with regard to his motor vehicle?

MS. HELPER: No.

MR. BANMAN: Or are we dealing specifically with personal injury?

MS. HELPER: It is the personal injury. The bill really isn't dealing with that; it is simply to allow the application to court to see whether a statement of claim can issue, based upon the loss suffered by Mr. Martens.

MR. BANMAN: I wonder, in the bill, there is one John Berger named in this particular bill. Will action be taken against that particular individual or against Autopac?

MS. HELPER: Both parties will be involved. Autopac will step in as the insurer of Mr. Berger, the driver of the other automobile.

MR. BANMAN: Thank you.

MR. CHAIRMAN: Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, I would just like to find out why is it that the applicant didn't have legal advice or was it just simply that he didn't know what . . . It would seem to me that in most cases of this kind, it's normal recourse to go to a lawyer. What was his reason for not?

MS. HELPER: His understanding was that he didn't require a lawyer until a two-year time period had elapsed.

MR. AXWORTHY: Until the two year time period had elapsed.

MS. HELPER: It was a misunderstanding of his rights.

MR. AXWORTHY: I see. Okay. Thank you.

MS. HELPER: And, you know, the advice given to him was not by a lawyer, it was by one of the adjusters so that I don't know the type of explanation but that was his understanding.

MR. AXWORTHY: You mean that an Autopac adjuster gave him that advice or someone whom he had taken the car to? Who was responsible for it?

MS. HELPER: The Autopac adjuster with whom he was negotiating the settlement.

MR. AXWORTHY: In effect, whether deliberately or not, probably not . . .

MS. HELPER: Probably not.

MR. AXWORTHY: . . . just suggested that he didn't have to seek legal advice until after two year: was up.

MS. HELPER: That's correct.

MR. AXWORTHY: I see.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, in the remarks we heard a few moments ago, I understood you to sa' that a letter of settlement was sent out by Autopac five weeks before the Statute of Limitations tool effect.

MS. HELPER: That's correct.

MR. BILTON: And he refused the offer.

MS. HELPER: That's correct.

MR. BILTON: Why would he not take action then or get legal advice during that five weeks? Have you got any answer for that?

MS. HELPER: Because his understanding was that as long as he was receiving medical treatmen that the case would not be closed and he was still receiving medical treatment until October of 1976 eight months after the offer of settlement. It was not until October of 1976 that he was advised that he no longer had a case.

MR. BILTON: Was it the . . .

MS. HELPER: Autopac advised him, not a lawyer.

MR. BILTON: Was the letter signed by a legal authority of Autopac?

MS. HELPER: No. It wasn't by letter.

MR. BILTON: Is this man making his claim now or is this bill being developed on the strength o' the fact that Legal Aid is taking up his case?

MS. HELPER: No.

MR. BILTON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: If the bill were not passed, is Mr. Martens entitled to the settlement that Autopac offered him or will he be subject to no settlement at all?

MS. HELPER: No settlement at all. Unless there is a special application for an *ex gratia* payment which Autopac will accept. It is simply at their discretion. He has no legal recourse without this bil being passed. It is simply a matter of the whim of Autopac at this point.

MR. CHAIRMAN: Are there any further questions? Mr. Bilton.

MR. BILTON: One final question, Mr. Chairman. This gentleman's condition, is he going to be incapacitated for the rest of his life? And to what extent?

MS. HELPER: The medical reports at this point indicate that he cannot return to his painting occupation that he had prior to the accident. He is presently maintaining himself as a caretaker at a much reduced standard of living.

MR. BILTON: May I ask, is he crippled?

MS. HELPER: No, he is not.

MR. BILTON: Well, what would be the cause of his condition that he couldn't go back to painting?

MS. HELPER: The type of injury he received was a whiplash injury and the type of occupation as painting requires reaching and stretching, and that kind of activity is not available to him right now because of the pain that he position. experiences when putting himself in that kind of a physical

MR. BILTON: Will he have continuing medical attention henceforward?

MS. HELPER: Yes.

MR. BILTON: Thank you.

MR. CHAIRMAN: Mrs. Helper, can you inform the Committee whether Mr. Berger was informed of this bill?

MS. HELPER: I have no knowledge of his being informed of the bill. Autopac I believe is aware of the bill but I am not aware of Mr. Berger being informed.

MR. CHAIRMAN: The House works to a rule 117(2) which says "Where the consent of a person whose interest or property may be affected by a private bill is not produced to the Committee, the Committee may require the petitioners to serve a copy of the proposed bill on the person and notify the person of the time and place where committee will again consider the private bill." Do you have such consent or can you inform the Committee whether notice was given?

MS. HELPER: No notice was given to my knowledge and I do not have a consent.

MR. CHAIRMAN: Any further questions? Hearing none, thank you, Mrs. Helper.

MS. HELPER: Thank you.

MR. CHAIRMAN: Is there anyone else wishing to speak to Bill 58?

BILL (NO. 71) — AN ACT TO AMEND AN ACT TO INCORPORATE THE SOCIETY OF INDUSTRIAL ACCOUNTANTS OF MANITOBA

MR. CHAIRMAN: Mr. Hampson on Bill No. 71.

MR. LEONARD W. HAMPSON: Yes, my name is Hampson and I am with the Certified General Accountants Association of Manitoba. I really would just like a point of clarification on the bill. The bill, the way I read it, indicates that the Society has applied for a change of corporate name and it is not the intention of the bill to change the designation. Can I have that confirmed?

MR. CHAIRMAN: Legal counsel is not with the committee at the moment. Mr. Banman.

MR. BANMAN: I wonder if Mr. Hampson could repeat that. I didn't get what he was saying.

MR. HAMPSON: Well, it's very simple really. I have the bill in my possession and it indicates that the Society has applied for a change in corporate name from the Society of Industrial Accountants to the Society of Management Accountants. Our association, which is the Certified General Accountants Association of Manitoba, has no objection to that change of name. We do have some concern about a change in designation, but since the bill does not appear to incorporate a change in designation, I would like that clarified. The designation at the present time is registered Industrial Accountants. I understand the bill does not change that designation and will continue to be registered Industrial Accountants. Can the committee clarify that for me?

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, in the drawing up of this Act, are you telling us that your organization in no way participated in the development of the wordage of this Act?

MR. HAMPSON: It is a different organization. We're the Certified General Accountants and that is another professional body. It is the Society of Industrial Accountants.

MR. BILTON: Well, I don't know . . . how do you you deal with it, Mr. Chairman. The mover of the bill is at fault. What can we do? Set it aside?

MR. CHAIRMAN: Mr. Hampson, the person who introduced the bill into the House is not a member of this Committee. Have you spoken to him about your question?

MR. HAMPSON: No, I have not.

MR. CHAIRMAN: Well, have you spoken to the legal counsel for the group introducing the bill?

MR. HAMPSON: Our own legal counsel has indicated that it would not change the designation of the bill as it is printed. Much of my concern really rested on what would happen at Committee today. If there are no further comments on the bill at ommittee, I would assume that my question would be answered. C

MR. CHAIRMAN: I can quote for you the petition of the Society to the Legislature, the petitioning for the bill where they say: (2) That it is desirous of changing its name from the Society of Industrial Accountants of Manitoba to The Society of Management Accountants of Manitoba. Does that answer your question?

MR. HAMPSON: I believe it does.

MR. CHAIRMAN: Did you have any other point to make to the Committee on the bill?

MR. HAMPSON: Simply that if there was a change in designation involved other than a change in name, we would then like to speak to that separately.

MR. CHAIRMAN: Mr. Banman.

MR. BANMAN: I wonder, Mr. Chairman, if Mr. Hampson could tell us that, in the present form, you have no objection to the bill. But do I understand you correctly that you were concerned that there might be some changes made in Committee, is that right?

MR. HAMPSON: That's right, Mr. Chairman.

MR. BANMAN: So, the way the bill sits now without any amendments to the bill would be acceptable as as your organization is concerned.

MR. HAMPSON: That's right, Mr. Chairman.

MR. BANMAN: I should add, I spoke on the bill during second reading after the mover of the bill introduced it, and he also provided me with a copy of his speaking notes, and from what I have gathered in the bill that all it does really is change the name from "Industrial" to "Management." If the bill passes the way it is, your body has no objections.

MR. HAMPSON: We've given written consent to the Society for that change. I can give you a little more background — my concern really emanates from something that happened in the Province of Newfoundland. The same petition was presented, and at the Committee level, change in designation was also given. If that is not contemplated, I have no further questions.

MR. CHAIRMAN: When you say "designated," are you referring to the initials after the names?

MR. HAMPSON: The initials, that's right.

MR. CHAIRMAN: There are no proposed amendments to the bill at Committee stage, Mr. Hampson. Any further questions? Hearing none, thank you, Mr. Hampson.

Is there any one else present wishing to speak to the Committee on any of the bills before it this morning? Hearing none, can we consider the bills in the order that they appear?

The Committee is required to receive a report from legal counsel before we proceed. The Committee recess for five minutes.

MR. CHAIRMAN: Order please. We have a quorum, gentlemen. The Committee will come t order. Bill No. 24. Mr. Tallin will report on this bill?

MR. TALLIN: Yes. I have examined the bill and have not found any exceptional powers sought c any other provision which, in my opinion, requires special consideration.

MR. CHAIRMAN: There is one amendment that comes on Page 11. Can we take it page by page Pages 1 - 11 were read and passed. Mr. Bilton, would you care to move the amendment?

MR. BILTON: I so move that Section 27 of Bill 24 be struck out and the following sectioı substituted therefor: Corporation deemed co-operative corporation.

27(1) The corporation shall be deemed to be a co-operative corporation operated on a co-operativı basis for the purposes of Part X of The Companies Act, being Chapter C160 of the Revised Statute: and for the purposes of The Cooperatives Act.

27(2) Except where inconsistent with this Act, The Cooperatives Act applies to the corporation. Application of Part X of Companies Act.

27(3) Except where inconsistent with this Act, prior to the coming into force of The Cooperatives Act Part X of The Companies Act, being Chapter C160 of the Revised Statutes, applies to the corporation Application of other Parts of The Companies Act.

27(4) Except where inconsistent with this Act or Part X of The Companies Act, being Chapter C160 o the Revised Statutes, prior to the coming into force of The Cooperatives Act, the other provisions o The Companies Act, being Chapter C160 of the Revised Statutes, apply to the corporation.

MR. CHAIRMAN: Could you explain that to the Committee, Mr. Tallin?

MR. TALLIN: I would hope so. When I was reading through the bill to make my report, I discoverec that the solicitor who drafted the bill had neglected to make any reference to the The New Cooperatives Act which came into force on June 1st. And at the time we were discussing this, we didn't know when it was going to be coming into force. What he really wanted was to have the status of this corporation established as a co-operative for the purposes of the legislative enactments o Manitoba. He had done so only with reference to the old Part X of The Companies Act, in accordance with the provisions of the new Corporations Act, continued in force, with respect to co-operatives but only until The Cooperatives Act was to come into force. So that if the section is left unamended, i will mean that this new corporation will cease to be treated as a co-operative as of June 1st.

You'll notice that on the next page, the Act is to be retroactive to January 1st, 1977, so that there is that five-month period when they must continue to be treated as a co-operative under the olc Companies Act provisions. But as of June 1st, they wish to be treated as a co-operative under the new Cooperatives Act, and this is to make it clear that they will be treated as a co-operative under both Acts whether it's with reference to the period of January 1st, 1977 to June 1st, 1977 or after June 1st, 1977.

MR. CHAIRMAN: Mr. McGill.

MR. McGILL: Mr. Chairman, just a technicality in the amendment. Can the legal counsel explain the difference between a co-operative corporation and a cooperative corporation? Well, is there some significance in the way it's spelled? It's hyphenated in some places and it's not hyphenated in others. **MR. TALLIN**: Generally speaking, our tendency is to try and eliminate hyphens as much as possible. The Cooperatives Act has no hyphen in it, but the general spelling of co-operatives in ordinary parlance, has a hyphen in it. That's why you'll find the two references here. The name of the Act, The Cooperatives Act has no hyphen in it.

MR. McGILL: Is there any justification for making that change in spelling?

MR. TALLIN: In the spelling of co-operatives in the new Act?

MR. McGill: Yes.

MR. TALLIN: No. I don't know except that elsewhere the hyphen is being left out, by no means universally. A hyphen causes some difficulty technically at times in splitting words because you have got a hyphen plus a hyphen. We have no basic objection to it being continued as a hyphenated word, except that last year or two years ago The Co-operatives Act was enacted without it, that's all. I now refer to it as The Cooperatives Act without the . . . .

MR. McGILL: I just feel that the word spelled with a hypen is more explicit and more meaningful than spelled without one.

MR. TALLIN: Yes. You know, a century-and-a-half ago adverse was spelled with a hyphen too.

MR. McGILL: I didn't have that problem in dealing with that change, but I do have . . . .

MR. TALLIN: No, it's just a tendency that the suffixes and prefixes are more and more being added in as part of the word, rather than as a hyphenated adjunct to the word. There is no uniformity here in drafting at all.

MR. McGILL: No.

MR. CHAIRMAN: The amendment as read—(Agreed). Page 11 as amended—pass; Page 12—pass; Schedule A—pass; Preamble—pass; Title—pass. Bill be reported. (Agreed)

BILL (NO. 37) — AN ACT TO AMEND AN ACT TO INCORPORATE HELLER-NATOFIN (WESTERN) LTD.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I have examined this bill and not found any exceptional powers sought or any other provision which, in my opinion, requires special consideration.

MR. CHAIRMAN: Page by page. Page 1—pass; Preamble—pass; Title—pass. Bill be report. (Agreed)

BILL

MR. CHAIRMAN: Mr. Tallin. (NO. 55) — AN ACT FOR THE RELIEF OF ANNE MARIE MUMFORD

MR. TALLIN: I have examined this bill and I wish to bring the attention of the Committee to the fact that if the bill is passed, it would authorize Frances Mumford, the petitioner, to apply on behalf of her daughter, Anne Marie Mumford, to the Court of Queen's Bench for permission to commence an action which would otherwise be barred by The Limitation of Actions Act.

MR. CHAIRMAN: Mr. McGill.

MR. McGILL: Mr. Chairman, this is an appeal that is a very difficult one to deal with because of the emotional aspects and the feeling that I think we all have in sympathy for the child who has suffered such grievous physical difficulties as a result of the failure to appreciate the real nature of her illness.

In looking at the doctors' reports and in listening to the evidence, it seems to me that the doctor was performing his duties to the best of his ability, and the duties which a medical doctor has to perform are in the nature of an art rather than a science and I suppose it is possible that under almost any circumstances, a medical doctor could fail to perceive the real difficulty, particularly, I suppose, in an infant two years old. The question really, I suppose, is whether this Committee should set aside the Statute of Limitations and allow an action to proceed.

I am rather inclined to agree with those people of some legal experience who spoke in the Legislature and said that we should not be put in the position of having regularly to deal with particular appeals and to set aside the law, but if indeed the law is at fault, then it should be amended. I have heard this statement made by more than one member in the legal profession in the Legislature in relation to these bills, and I have listened and read the judgments handed down by the Court of Appeal. I am inclined to feel that the Committee should not lightly set aside those decisions that had been made by people learned in the law, and for that reason I would have difficulty in supporting this bill.

MR. CHAIRMAN: If there is further debate, it should come on the motion to report the bill. Can we go through the rest of it?

Page 1—pass; Page 2—pass; Preamble—pass; Title—pass. Shall the bill be reported? Mr. Axworthy.

MR. AXWORTHY: Mr. Chairman, just speaking to the bill, I am the proposer of it and I do so for some reasons, and in no way contradicting the sentiments of Mr. McGill. I too agree that perhaps the proper course of action ultimately should be to change The Statute of Limitations Act, but in the meantime some people are going to suffer and I don't think it is something that we should also pass by lightly, that if the Act itself has some limitations or some inaccuracies that in the meantime the Legislature should automatically disavow itself of the right to make some judgments. I too would not want to comment on the merits of the case, as to whether the doctors acted properly or whether they did not. I don't think anyone on this Committee is in a position to judge that and I don't think we should get into that.

But let me explain to the Committee what I conceive to be a very important problem with the existing Act, and as a counsel for this Committee explained, The Statute of Limitations Act here is based upon the English Act, and having read some of the judgments surrounding the English Act, particularly those of the Privy Council, there has been a series of disputes in their courts there concerning whether the question of lack of knowledge of the law is an extenuating circumstance under the Act. And I believe there was a Privy Council judgment of 5-to-4 split against that in the Privy Council judicial committee. And that has been a point of dispute in the law in the British system which I think our own courts have interpreted very narrowly.

The merits of this case, as it went through the courts, was not debated upon whether the substance of the bill . . . but was debated more on the technicality that our present Statute of Limitations Act does not acknowledge the fact of ignorance as being a reason, and I think that that was the brunt of Mr. Justice Freedman's remarks, that ignorance of the law, particularly in the circumstances that Mrs. Mumford was in, is a good reason for overturning it.

Therefore I think that we shouldn't make a couple of mistakes. First off I don't think we should make the mistake of trying to judge on the case itself. I think what we should be judging is whether in fact this child shall have the opportunity to go to court to let a judge decide the merits of the case. That, I think, is the issue, not whether the doctors are right or the parents are right. All we are simply

saying is, should this child have a right to And that that a day in court? the day in court has bee denied because of the interpretation of the law by our judges based upon British precedent thа ignorance or lack of knowledge of the law is not a sufficient reason for extending The Statute c Limitations. That has been the basis of court decisions in the past, which I assume has been th reason for the majority of reports in our own courts, although they didn't so state. But that certainl was the meaning you could draw from Chief Justice Freedman's remarks, because that was th argument that he was using, that he feels that ignorance of the law based upon particular socio economic reasons pertained in this case. Therefore I would hope the Committee would recogniz that perhaps Mr. McGill is right and other people who have spoken in the Legislature are right, tha perhaps The Statutes of Limitations Act should be amended to include other criteria, such as the on of ignorance of the law and lack of legal advice. But in the meantime I wouldn't want to see us denyin this particular child her day in court simply because the law itself may be imperfect, and therefore would hope the Committee would support this bill.

MR. CHAIRMAN: Any further comments? Mr. Bilton.

MR. BILTON: Mr. Chairman, I think the comments made by both Mr. McGill and my friend acros the way . . . I, too, it is just pulling at my heartstrings to think of that youngster going through life a she will have to go through life. But at the same time with the five minutes or ten minutes talk that w have had from the several people and the facts behind the case, I feel so inadequate to give an opinio as to how I would vote at this particular time. And if, as has been said, the law if wrong, the law shoul be corrected; but I also think of what this may do to — not necessarily the medical profession as suc — but the individuals being brought to court and what it may, as was outlined to us this morning, wha it may do to those men in the years to come in their approach to their profession in bringing medica attention to those in need of it.It is a very very difficult position for the Committee to be in, and I don feel under the circumstances that I could deter from The Limitations Act. It is there for that purpose

What does bother me is that is has taken so long for these people to ask for relief for this child, an somewhere along the line, along the road, something is missing and the Committee hasn't bee informed of it. What that something is I have no right to give an opinion on, but with what we hav heard this morning, as I say, it is an awful decision for us to have to make under these circumstance: And, Mr. Chairman, I still haven't quite made up my mind what I am going to do.

MR. CHAIRMAN: Mr. Petursson.

MR. PETURSSON: My feeling is that people become involved in a situation of this sort, of delayin taking action, simply because they don't know there is such a thing as a Statute of Limitations. And am sure that if you were to stop ten people on the street and ask them what is the Statute (Limitations and what does it allow, what does it require, nine of them wouldn't have any idea.

Now as far as the medical profession is concerned today, they are doing their job as they see it; bı I have had in my lifetime four different occasions on which I know that the doctors involved made mistake, and on a couple of occasions it was just pure neglect. I feel that it is fit and proper when case of this sort arrives or comes up, that the medical profession should be in a position to defen itself regardless of what the law says about the limitations on making claims.

I would find it very difficult, impossible really, to vote against this bill. I am compelled to vote for i Now I have just received an urgent message, Mr. Chairman, to make a phone call before 12 o'cloc but that is my position and I have no hesitation in making it known.

MR. CHAIRMAN: Any further discussion? Ready for the question? Shall the bill be reportec Those in favour, say aye; those opposed say nay. In my opinion the ayes have it. I declare the motic passed.

You wish a division? —(Interjection)— A division has been requested. Those in favour of the bi raise one hand —5. Those opposed —4. The motion is carried, the bill will be reported.

BILL (NO. 58) — AN ACT FOR THE RELIEF OF PETER MARTENS

MR. CHAIRMAN: Mr. Tallin

MR. TALLIN: I have examined the bill and I would like to bring to the attention of the Committe that if the bill is passed, Peter Martens, the petitioner, would be authorized to apply to the Court (Queen's Bench for permission to bring an action which otherwise is barred by The Limitation (Actions Act.

MR. CHAIRMAN: Can you report to the Committee on our Rule 1(17)(2)?

MR. TALLIN: Yes. This is a rule which was brought in some ten years ago, I suspect, that reads a follows: "Where the consent of a person whose interests may be affected by a private bill is n produced to the Committee, the Committee may require the petitioners to serve a copy of tł proposed bill on the person and notify the person of the time and place where the Committee w again consider the private bill."

MR. CHAIRMAN: Mr. Tallin informs me that MPIC is apparently aware of the bill, but he does n know whether Mr. Berger is aware of it, and Mr. Martens' counsel this morning reported to us that sł

had not served such a notice.

Mr. Johannson.

MR. JOHANNSON: Mr. Chairman, since the rules of the Committee have not been abided with on this matter, it is pretty clear that we can't proceed with the bill. The Committee can't report it.

MR. CHAIRMAN: I am informed the Committee does have the power to proceed if it wishes, or it may require that the petitioners serve a copy. It is up to the Committee.

Mr. Banman.

MR. BANMAN: I wonder if I could suggest to the Committee that possibly what we could do is inform Mr. Martens' lawyer that Mr. Berger should be notified, and then possibly, if time permits, call the Committee once again to deal with that particular bill. I don't think it is right to have Mr. Berger named in the action and him not being aware of any legal ramifications as far as he is concerned.

MR. CHAIRMAN: If that is the will of the Committee, then we probably should have a motion to that effect requiring the petitioners to serve the notice. Would you so move, Mr. Banman?

MR. BANMAN: So moved.

MR. CHAIRMAN: Any discussion? Mr. Axworthy.

MR. AXWORTHY: Just to follow through, I guess the implications would be that Mr. Berger would be so notified and this Committee would reconvene if so required, if he wanted to make representation. Is that the import of this motion?

MR. CHAIRMAN: A motion would require the petitioners, that is Peter Martens to serve such a notice on Mr. Bergen informing him of this bill and of the next meeting of the Committee.

MR. AXWORTHY: I see. But, considering that we may only be in session for a week to ten days — who knows? — but within a relatively short period, I presume that we could still be reconvened — Mr. Marten's counsel did follow the proper procedure, is that correct? In other words, this motion would not in effect disallow this Committee from considering this bill during this session.

MR. CHAIRMAN: Would not prevent the Committee from hearing it again. —(Interjection)— Oh, I'm informed that it's possible that the bill could be referred to another Committee, if Private Bills does not meet again. It would not preclude it from being heard at this session. You have heard the motion. Are we agreed? (Agreed). Mr. Johannson.

MR. JOHANNSON: I don't quite recall the wording of the rule, but does it require that Mr. Bergen be given the date of the next sitting of Committee in the notice?

MR. TALLIN: Yes, it would seem so.

MR. JOHANNSON: So, we would have to establish a date at this time would we not? You could fix a date perhaps at nine o'clock in the morning next week, Tuesday or something like that, which is a time when the other Committees usually aren't meeting — or 9:30. . . 9:00.

MR. CHAIRMAN: Mr. McGill.

MR. McGILL: On the same point, I would like to ask legal counsel if we are establishing a precedent here by having had a bill brought before us, having had the applicants fail to comply with the necessary requirements, and now setting the bill aside and providing an opportunity for those requirements to be fulfilled? Is this something that the Committee has done previously?

MR. TALLIN: This is something that the Committee has never had to do previously, because in a bill of this nature, the parties that were affected have always been represented before the Committee.

MR. McGILL: So that to your knowledge, that, there never has been a failure on the part of an aggrieved person overlooking the fact that the person affected by the bill had not been duly notified?

MR. TALLIN: That's right.

MR. McGILL: This is the first time it has occurred.

MR. TALLIN: This is the first time that I can recall. Yes.

MR. McGILL: Is there any way that we can prevent such an occurrence in the future? Are there any instructions issued by legal counsel when such a bill is requested, in terms of what they need to do in suitably notifying those other parties who might be affected by the passing laws?

MR. TALLIN: Well what we usually do is advise the counsel who want private bills to get a copy of the rules of the House from the Clerk and advise them that part — whatever it is of the rules dealing with private bills — Part 14 it is, that they should look at the whole bill. Usually by the time problems of this nature get before the House, there are counsel for all sides and the counsel knows what the other parties are doing. Because it's part of the general practice of law, that if you are taking an application to affect somebody else's right, you notify his counsel. In this case, I don't know even whether Mr. Bergen has ever had a counsel, but in that case the normal duty of the petitioner would be then to deal directly with the person whose rights and interests he's wishing to effect.

MR. TALLIN: But, Mr. Martens has counsel. Would it be normal for counsel — one learned in the law — to be aware of the fact that any person affected by passage should be notified.

MR. McGILL: If he is a member of the Law Society, I would think that it would come as second nature to him that he notifies people when he is trying to effect their rights.

MR. TALLIN: Well, Mr. Chairman, I think the Committee needs to consider that point, that we have had a representation by legal counsel on se behalf of the applicant, and that counl has failed to

perhaps do what would normally be done and what would be considered regular practice in this cas

MR. CHAIRMAN: You have a motion before you. Any f urther discussion? Is it agreed? (Agreed

MR. CLERK: Mr. Chairman, for clarification, may I ask if the date of the next Committee has bee set?

MR. CHAIRMAN: Not to my knowledge. The Committee has control of it's own affairs. Might suggest Tuesday morning — 9:30? Would that be agreeable to the Committee? (Agreed). The ne bill be before the Committee is Bill 71. Mr. Tallin.

MR. TALLIN: I have examined the bill and have not found any exceptional power sought or an other provision which in my opinion requires special consideration.

MR. CHAIRMAN: Page by Page? Page 1—pass; Page 2—pass; preamble—pass; title—pass. Bi be reported. Mr. Axworthy. There being no further business before the Committee . . .

MR. AXWORTHY: Mr. Chairman, I wonder if it would be in order for me to move a motion askin for an extension of time for the receipt of petitions for Private Bills? If the Committee would allow m to make such a motion, I would so move that the time for receiving petitions for Private Bills by th Legislative Assembly be extended to the Sixteenth day of June 1977; that the time for receivin Private Bills by the House be extended to the Twenty-third day of June 1977.

MR. CHAIRMAN: It has been moved to extend the time allowed for the receipt of petitions and fc bills, June 16th and June 23rd. Is there any discussion? Mr. Axworthy.

MR. AXWORTHY: I could speak to the motion, Mr. Chairman. It deals with one private bill th pertains to an application for changes in the Act on a private corporation which is in the area recreation and is seeking to get a liquor licence. It seems to fall between the present requirements the Liquor Control Act. The matter was referred to the Attorney-General under the Liquor Contr Commission at the beginning of the session for their advice and recommendation as to how t proceed. A report was received by them in early April — mid April I guess it was, two or three mont after the session had begun, suggesting that the Private Member's Bill be introduced. The parti were so notified and steps were taken to do so. There was some confusion on the part of legal couns for the corporation concerning the publication notices when they were to be received and deposite with the Clerk of the House, and it's the fault really of counsel not fully understanding the instructions. As a result the time lapsed according to the Committee, and therefore, I'm specificall asking leave to introduce the bill for second reading and take our chances from that point on. And Committee in fact is setting a further meeting date for Tuesday, then it may be possible to have considered before that time in the House for second reading.

MR. CHAIRMAN: Mr. Johannson.

MR. JOHANNSON: Mr. Chairman, the date specified in the notice will probably fall after th House if prorogued, and we would be in an anomalous position of having a House prorogued with motion passed which would still allow Private Bills to be sent in.

MR. TALLIN: That's not been unusual in the past.

MR. AXWORTHY: I think that's happened quite often in the past.

MR. JOHANNSON: Mr. Chairman, I think the House has a great deal of legislation still to proces I would not particularly be in favour of this resolution.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, it would seem to me that all this Committee can do is recommen that it will be for the House to decide as to whether or not that extension will go forward, and I thir maybe we should put the responsibility on the House to determine as to what should be done in th particular case whether this Committee recommend it or otherwise.

MR. TALLIN: It has to make the recommendation. The recommendation for the extension has come from a Committee.

MR. BILTON: It has to come from this Committee. Well, it will still be determined in the House, w it not, Mr. Chairman?

MR. CHAIRMAN: If it comes as a recommendation and a motion is moved in the House to extend.

MR. TALLIN: Well, I think we should put it to a vote.

MR. CHAIRMAN: Any further discussion? Those in favour of the motion?

MR. CLERK: Four. .

MR. BILTON: I think the motion to extend the time was recommended to the House. That's wh we are doing, are we not?

MR. CHAIRMAN: Yes, that is the import of the motion. Those opposed to the motion?

MR. CLERK: Five.

MR. CHAIRMAN: The motion is lost. There being no further business before the Committe Committee rise and report.