The Assembly met at 9 a.m.

Prayers

ORDERS OF THE DAY

GOVERNMENT ORDERS

ADJOURNED DEBATES

SECOND READINGS

Bill No. 73

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Shillington that **Bill No. 73 — An Act respecting Certain Services with respect to Co-operatives, Credit Unions and Names of Homes** be now read a second time.

Mr. Neudorf: — Mr. Speaker, thank you very much. On this particular item we as the opposition have been wondering all morning exactly what the business of the House was going to be. And we just heard now, two minutes before the 9 o'clock, exactly what the business of this House was going to be. So we have now a situation where the opposition is trying to do its job but finding it extremely difficult to do so — and their members opposite are yacking.

Mr. Speaker, we are finding it very, very difficult to work under circumstances like this, to do a credible job. And right now the critic on Bill 73, An Act representing Certain Services with respect to Co-operatives, Credit Unions and Names of Homes, be now read a second time, it's going to very difficult for us to operate under a situation like this, Mr. Speaker, where we're not sure what's going to happen from one moment to the other.

Now I accept the promise of the House Leader on the government side that from here on in, we are going to get the agenda the night before, so at least we have some time to prepare for the proceedings of the House. But this way we cannot operate. It's not going to be possible for us to do our job under these kinds of circumstances.

So on this particular Bill, Mr. Speaker, I move that debate be adjourned.

The division bells rang from 9:04 a.m. until 9:14 a.m.

Motion negatived on the following recorded division.

Yeas — 8

Neudorf	Britton
Swenson	Toth
Boyd	Goohsen
Martens	D'Autremont

Nays — 31

Van Mulligen	Bradley
Thompson	Lautermilch
Wiens	Calvert
Simard	Murray
Tchorzewski	Johnson
Lingenfelter	Sonntag
Koskie	Flavel
Anguish	Scott
Solomon	McPherson
Carson	Wormsbecker
Mitchell	Knezacek
MacKinnon	Harper
Penner	Keeping
Cunningham	Carlson
Upshall	Langford
Hagel	

Mr. Goohsen: — Thank you, Mr. Speaker. I realize that this is a rather short-looking Bill. But just having checked it over very quickly, I see that just like everything else that this government has done that the people out in Saskatchewan are complaining about, this administration goes on to turn open the valves, to open the doors for increased fees with absolutely no direction and no guidance and no limitations.

Under 4(2) of section 4 it says:

> . . . "fee of $5" and substituting "the fee prescribed in the regulations".

Which means that the regulations can be set up by opening the door wide open, in my interpretation here. And it looks to me that you could just about set this fee at any price you want.

Now I wonder how the folks in the co-operative systems and the credit union systems are going to feel when they find out that they maybe get a 100 or a 200 or maybe even a 700 per cent increase, like a lot of other things are being increased in this province. And I just wonder how happy they're going to be about a simple little two-page Bill, that maybe turns the doors wide open to increase their costs by hundreds of per cent and have nothing to say about it and no recourse whatever in legislation, just having a decree ordered and they start to pay.

And, Mr. Speaker, I think this is symptomatic of everything that this government is doing in every Bill. Every Bill that they come up with, they come up with some little, sly little sentence that is going to really hit people hard and affect their lives in a major, major way.

And you've increased costs on every front to every person in this province. No matter where you live or what you do, you can't escape this administration from getting into your pocket-book. They're straight into your bank account, straight into your pocket-book, and they're just doubling and tripling and quadrupling all of your costs, all of your expenses, all through the whole system.

And here is another plain example of that, so bright and early on a Monday morning, trying to slip through a quiet little Bill that they say is non-controversial, not telling the opposition what's coming up. Two minutes before we walk in the door they say, we're going to give you this nice, non-controversial Bill and let you pass it through; just swoosh right through under the door, no problem at all. And everybody's costs will just go sky-rocketing up,

and nobody's supposed to say a word.

Well I said a word, and I don't like it. And that's what I've got to say about it.

Some Hon. Members: Hear, hear!

Hon. Mr. Mitchell: — Mr. Speaker, this Bill was spoken to in second reading on July 23. Now my math is not that red-hot, Mr. Speaker, but I think that's probably something like 18 days that the matter has been adjourned. So I think it's a bit . . . And notwithstanding the remarks from the hon. member from Maple Creek, anyone on studying the Bill would recognize that it is innocuous to put it at its maximum.

In light of that, it's a little puzzling why my friends opposite have taken the position that they have this morning, as though we had laid on them some stunning tactical move that caught them by surprise, left them with their trousers down. I want to assure my friend from Rosthern that I am certainly not . . .

The Speaker: — Order, order. I believe that the Minister of Justice has the floor and I ask all members to please give him that right, on both sides.

Hon. Mr. Mitchell: — Thank you, Mr. Speaker. I will just . . .

The Speaker: — Order. I have just said, give the Minister of Justice his chance to speak. I'll ask all members. I wasn't pointing out anybody. I'm just saying, all members, give the Minister of Justice his due.

Hon. Mr. Mitchell: — Thank you, Mr. Speaker. We of course want to get on with this because we've got to get some work done in this House. It's day 62 and we're sort of knee-deep in maple syrup here and not making any progress at all.

So I just want to assure my friend from Maple Creek that there is nothing sly about the Bill, that we will have an opportunity in committee I would hope, to discuss the rather disastrous scenario that he raised during his second-reading intervention. And, Mr. Speaker, I would move second reading of this Bill.

Motion agreed to, the Bill read a second time and referred to a Committee of the Whole at the next sitting.

Bill No. 74

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Shillington that **Bill No. 74 — An Act to amend The Land Titles Act (No. 2)** be now read a second time.

Mr. Toth: — Thank you, Mr. Speaker. Mr. Speaker, I think we all realize it's early Monday morning. It was a very short weekend. A lot of MLAs have been on the road very early. And I don't know if we've seen a time where this legislature has seen a time when a government has tried to flex its muscle as . . .

The Speaker: — Order, order. I ask the member to get immediately to the Bill. I don't think we need any more reflection on what is happening in this House from one side or the other. Order! I've got the floor, I want to remind the member from Rosthern. I have the floor.

All members know that you are not to reflect, when you're talking about the principle of a Bill, on what is happening on the floor of the House as such. Let's get to the principle of the Bill, and I think we can make some movement.

Mr. Toth: — Mr. Speaker, when we look at the Bill presented before the House, and in light of Bill No. 74, An Act to amend The Land Titles Act, and they understand from second reading and following the minister and looking through the Bill, this is more of a Bill to clean up and give the Land Titles the ability to clean up some of their files.

Unfortunately, Mr. Speaker, when we talk about cleaning up files, maybe we need to talk about some of the clean-up regarding the whole legal system and the whole parliamentary and legislative system in this province.

I find it amazing that the opposition would be reprimanded for talking in broad terms, and yet the minister can stand up and speak fairly broadly. But I think, Mr. Speaker, when we talk about the Bill we have here, as I indicated the other day, I think we must also acknowledge the fact that when it comes to . . . there isn't anyone that doesn't approve or . . . doesn't like the idea of having paperwork pile up.

And certainly as MLAs (Member of the Legislative Assembly), I think we all realize that if we endeavour to file every piece of information that came across our desks, we would certainly build quite a file. And I can appreciate the fact that the Land Titles Office must find their files growing in record numbers as well. And this Bill, I believe, was created to address the fact of cutting down on the paperwork.

As well, Mr. Speaker, it does away with the fact that the Land Titles would have to go before a judge. And even though a lot of information has expired and just allowed to collect, the Land Titles themselves could just go and do away with this paperwork other than just keeping a file of one copy, rather than the exorbitant files that continue to build. And, Mr. Speaker, I must indicate that . . . as I indicated the other day, we really don't have anything against the intent of the Bill, and we will allow it to go to committee at this time.

Motion agreed to, the Bill read a second time and referred to a Committee of the Whole at the next sitting.

Bill No. 75

The Assembly resumed the adjourned debate on the proposed motion by the Hon. Mr. Shillington that **Bill No. 75 — An Act to repeal The Bulk Sales Act** be now read a second time.

Mr. Toth: — Mr. Speaker, here again is another one of the Bills that have been introduced by the government. As we've indicated in the past number of months, there are a

number of Bills that have been brought forward that are more of the housekeeping type of Bills. And we've allowed a number of these Bills to move forward without any major obstructionism or debate on them. And this Bill, at the same time, is one of those Bills that really doesn't have a lot in it that we, as an opposition, should hinder.

I see the purpose of the Bill was to protect wholesale and bulk suppliers against retailers who sell their stock in bulk without paying creditors first. And I think that was appropriate. And at this time, Mr. Speaker, we would certainly allow the Bill to go to committee.

Motion agreed to, the Bill read a second time and referred to a Committee of the Whole at the next sitting.

(0930)

COMMITTEE OF THE WHOLE

Bill No. 45 — An Act to amend The Business Corporations Act

The Chair: — I would ask the Minister of Justice to introduce his officials.

Hon. Mr. Mitchell: — Thank you, Mr. Chairman. I have with me today Mr. Tony Koschinsky, who is a Crown solicitor with the Department of Justice; Mr. Doug Moen, who is the co-ordinator of legislative services in the Department of Justice; and Ms. Mary Ellen Wellsch, who is the Public Trustee and is with me today in connection with the following Bill that the committee will be considering.

Clause 1

Mr. Boyd: — Thank you, Mr. Chairman. I wonder if the minister would take the time for us to explain the intent of this Bill, please.

Hon. Mr. Mitchell: — Mr. Chairman, as the member knows, the Bill is somewhat lengthy, covering as it does 10 pages, and it has a number of purposes. And I will touch on the highlights.

For the most part, the amendments are housekeeping in nature. For example, in a number of situations the amendments reduce filing requirements to ensure that corporations are not being required to file the same information or documentation with the government more than once.

The policy proposals in the Bill update the legislation to reflect current business practices. For example, where a person is granted a corporate name in error and the director requires it to change its name, the director is given the authority to compensate the corporation for actual expenses incurred without the need for it to resort to a court action. I think that's more of a housekeeping provision than it is one that reflects current business practices, but let me carry on with some that do.

Provisions dealing with loans and guarantees that may be provided by a company to its directors, employees, and shareholders, are modified to provide clearer directions to corporations as to what is and is not permissible. In addition, full disclosure of financial assistance granted to such persons will be required to be given to the shareholders.

Extra-provincial corporations are given the option of adopting a second corporate name for use in Saskatchewan where its registered name outside the province is too similar to the name of a Saskatchewan corporation. This is a practice that has worked well in Alberta and serves to reduce public confusion, and we propose that it be incorporated into our Act as well.

The requirement for Saskatchewan companies to have at least one director resident in Saskatchewan is being eliminated. This will, for example, allow corporations to remain registered in Saskatchewan even if the principals move out of Saskatchewan. To protect the public, such corporations are required to appoint a representative in Saskatchewan who can be served with documentation on behalf of the corporation, but the company will not need to have a resident director.

These changes, Mr. Chairman, have been put together in consultation with the Canadian Bar Association, Saskatchewan section, to ensure our corporation law is kept up to date. As I said, they are largely of a housekeeping nature.

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3

Mr. Martens: — Mr. Chairman, and Mr. Minister, would you give us an explanation of the Indian reserves being able to use this kind of a process as it is described here.

Hon. Mr. Mitchell: — Mr. Chairman, the current definition of municipality means a city, town, village, rural municipality, or northern municipality. That does not include an Indian reserve. And I think that my friend understands that Indian reserves would not fall within those definitions at all.

Everyone in the province lives within a municipality in the sense that they live either in a city, town, village, rural municipality, or northern municipality. But we were troubled about the status of Indian reserves and we want to make certain that the Indian reserves are included in the term "municipality" as that term is used in The Business Corporations Act.

Mr. Martens: — Could you give us the definition of the 3(c) item: ". . . permanent resident as defined in the *Immigration Act* (Canada)". Can you define why that's there and give us an explanation for that?

Hon. Mr. Mitchell: — Mr. Chairman, the term "landed immigrant" was a term under the Immigration Act of the federal government at the time that The Business Corporations Act was drafted. That legislation has now been repealed and the term "permanent resident" is defined under the Immigration Act and we have had to adjust our definition to take into account the federal

change.

Mr. Martens: — Through these explanations you have more than one place where it says that the corporation is not going to be required to register its office location in a municipality. Is that as I understand it or as I read it, or is that how you're going to define it? And if so, then where are you going to define its location to be a permanent address?

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, at the time of the incorporation of a business corporation, the articles set out an address, set out the location of a corporation. A corporation has to have a location. There has to be somewhere where the public can go to serve documents and make inquiries but that need not always be the location.

A corporation, like any of us, can move from time to time. And what we're trying to make clear is that they don't have to amend their articles of incorporation. They don't have to go back to the incorporating documents and amend those in order to give effect to . . . or give notice of their relocation. They can simply file a simpler notice under the Act that doesn't require that kind of formality of amending the articles.

Mr. Martens: — So when a business moves from Regina to Saskatoon, they wouldn't have to amend their articles. They would just have to send notice to the business corporations section of Justice and notify them of the change, so that that would be the method used?

Hon. Mr. Mitchell: — That's correct, Mr. Chairman.

Mr. Swenson: — Thank you, Mr. Chairman. I want to go back to section 3(b). Mr. Minister, as everyone knows, there are certain differences between an Indian reservation and other municipalities, the fact that the federal government still holds jurisdiction over the farm land . . . or land.

And I go to the case of aboriginals who farm, for instance, who don't have access to bank financing because they can't have a mortgage or a caveat placed on them. And I'm wondering how the changes that you're defining here are going to affect, for instance, the setting up of a gambling casino incorporated on an Indian reservation that will have shareholders, I presume, from both within and without perhaps on that reservation, and how these changes may affect something like that.

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, the provision is not intended in any way to facilitate any corporations having to do with gambling or anything like that. The idea of municipality in the Act has to do with the location of a corporation — where its office is, as I was discussing a moment ago with the hon. member from Morse. And Indians are perfectly entitled to set up corporations under this Act. While they themselves may be under federal jurisdiction under section 91, subsection 24 of the BNA (British North America) Act, none the less they are entitled of course to access to the idea of business corporations and to form a corporation under this Act and to become subject to its provisions.

And the change in the definition will make it perfectly clear that they are entitled to have a registered office on a reserve, even though at the moment a reserve is not included, or arguably not included, in the term "municipality" as it's defined in the present Act. By including the term "reserves" in the notion of a municipality, we make it perfectly clear and beyond argument that they will be able to have registered offices on the reserve.

(0945)

Mr. Swenson: — Mr. Minister, nobody was taking issue with their want to do that or their right to do it. But because of the set-up there is questions on liability and limited liability to a corporation, as I would understand the present laws governing an Indian reservation and assets. Any other municipality in this province or anywhere else, I have access as an individual or as a corporation to liability because of owning or leasing or various things.

Indian reservations have a different criteria attached to them. And I'm wondering if you're going to either come in regulations or with a subsequent Act that will try and define for me as an individual or as a company dealing with a company registered on an Indian reservation in the question of liability. Because you're obviously extending the right, I'm wondering about some of the other things that will go along with the right.

Hon. Mr. Mitchell: — Mr. Chairman, the changes that we're proposing will not affect the situations mentioned by the member. The jurisdiction over Indians and Indian lands will remain entirely with the federal government. It may be that coming out of the self-government negotiations that are described in the July 7 constitutional document, assuming that that document is adopted, or at least the part we're talking about is adopted, that situation may change. I have no way of knowing whether it will or not. That will be a matter of negotiation between the three levels of government.

But nothing that we're doing in this Bill is intended to, nor will it, affect the situation of Indian farmers, for example, wanting access to loans from the bank. Those kind of problems remain there and are not being addressed in this legislation.

And at the moment, we in this legislature are powerless to address that situation because Indians and Indian lands are a matter of exclusive federal jurisdiction.

Mr. Swenson: — Mr. Minister, I appreciate the problem you have, and that process may take a number of years to rectify itself. We may be to the end of the TLE (treaty land entitlements) process before that issue is addressed.

But with this change as I read it, and maybe you can tell me if I'm wrong, that for instance you could have someone with a pool of immigrant investment money looking for a suitable location to invest. Along comes an opportunity like a gambling casino, or like any other business that would need to be incorporated. This pool of capital is then invested with shareholders, perhaps some in the province, some outside the country even.

You then have that entity doing business with a whole lot of other folks, suppliers — I can think of all sorts of things. And then someone says, whoops, I've got a problems here and I'm going to have to go to court or I'm going to have to seek redress for that problem. You've extended the ability to register these corporations here, but all of a sudden I have an asset that I can't put a caveat against. I've got an asset that I don't have any ability to seek mortgage money on.

Now I'm saying to you, Mr. Minister, when you grant the privilege to anyone in society — aboriginal, non-aboriginal, whoever — you've got to have the ability for the rest of us to interact on a solid basis. And I don't think you want that situation arising.

Hon. Mr. Mitchell: — Well, Mr. Chairman, the member raises a question that is a problem, and we know it to be a problem because of past experience. It is, as I said earlier, a problem that we in this legislature are powerless to address. And we couldn't address it in this Bill in a direct way if we wanted to.

I might just add, Mr. Chairman, that the address of a corporation, the location of the head office, whether it be on an Indian reserve or whether it be in Regina, would not affect the situation that the member poses. If immigrant investors, to pick up on his example, were to incorporate a company in Regina to become involved in a gambling operation on an Indian reserve, they would run into the same security difficulties, the same commercial difficulties as mentioned by the member.

Mr. Swenson: — Mr. Minister, once again, I appreciate the problem you have. And it doesn't necessarily have to be a gambling casino. You could incorporate something to make widgets. The fact is that as we go through this process, you may find a different taxation regime, so I'm told, that that is not outside the realm of possibility, that we may have a different set of taxation rules applying that may make these jurisdictions more amenable to people to incorporate companies there.

And I'm really wondering . . . Perhaps you could tell the Assembly where the drive was coming from. Which area of the business community was sort of beating on the doorsteps of the Minister of Justice to change this, considering that we have this very large change occurring in our province with our native community, and where the push was coming from?

You must have a list of companies or individuals or someone who is beating on your doorstep to bring this forward, given the fact that you know you're going to have to make changes as this other process unfolds. Maybe you could give us that, and we would understand your need to do this at this time.

Hon. Mr. Mitchell: — Mr. Chairman, I'm sorry I'm not able to answer the member's question precisely. This amendment, as is the case with many other of these housekeeping amendments, were part of a group that arose over the years, usually from the legal community writing to the department, drawing to the department some problem or deficiency in the Act, and many of these amendments — and I believe this is one of them — that arose in order to clarify what was seen to be a defect in the Act.

We could find . . . You know, we could go back and check out our files to see who actually brought it to our attention. It was certainly not the result of any clamour from the Saskatchewan Chamber, for example, or anything like that. None of these changes that I can think of arose in that fashion; but rather arose because of experience under the Act and deficiencies or problem areas that lawyers and accountants identified as they worked with their clients under this legislation.

Mr. Swenson: — I find it a little strange, Mr. Minister, that the legal profession would be recommending a change such as we see in 3(b) as sort of a housekeeping thing, given attention that TLE has achieved across the piece. And we're talking major change here and we're talking . . . well, the realm of possibility is very large.

And I would think that before one got into that area you would want to have sort of a game plan laid out of where corporate law was going to go before we start granting the ability to launch off without any redress or back-up. And I'm just wondering at the wisdom perhaps of bringing forth that area without some further sections of a Bill to address some of those concerns.

I realize that some of this other stuff is indeed probably housekeeping, that legal areas need cleaning up, but we're . . . I believe, Mr. Minister, you're opening a can of worms here that you might not be able to get the lid back on. And I just think maybe it's time to take a sober second look at what you're doing before we bring a supposedly housekeeping Bill forward that's going to do that.

Hon. Mr. Mitchell: — Mr. Chairman, with respect, it is not correct to characterize this as a major change. I have described it as a housekeeping change and I suggest to the member that that's exactly what it is. Keep in mind we're dealing with the idea, with the definition of municipality. And I will cite to the member a couple of sections in which that term is used which are relevant to the discussion that we're having here. In section 6 of the Act, it is provided as follows:

> 6. — (1) Articles of incorporation shall follow the prescribed form and shall set out, in respect of the proposed corporation:
>
> (a) the name of the corporation;
>
> (b) the municipality within Saskatchewan where the registered office is to be situated;

There's an example of where the term municipality is used, and all we seek to do by this amendment is to clarify that the registered office of the corporation can be on an Indian reserve, and the problem is that the present definition of municipality does not include Indian reserves. So it opens the question for controversy as to whether a registered office can be given as a reserve.

Also in section 19 of The Business Corporations Act, it is provided as follows in subsection (1):

> (1) A corporation shall at all times have a registered office in the municipality within Saskatchewan specified in its articles.

Well again, all we're seeking to do is to make it clear that a registered office can be located on an Indian reserve. And by that change, we will then have made it possible for a registered office to be set up anywhere in the province and not merely in the places now included in the definition of municipality. So I take issue with the member in characterizing this as a major amendment of any substance.

It has been the law, and certainly the law under this Act, that Indian people have the same rights as anybody else, including the right to incorporate companies. And we want to make it clear here that if they do that they are entitled to use their own homes or their own offices on Indian reserves as their registered office.

(1000)

Mr. Swenson: — Well my only . . . my final comment, Mr. Minister. There's no one taking issue with that and that right. I'm just saying to you that the world is changing and there are going to be circumstances arise that I don't think perhaps you might . . . or maybe you do — but others might not fully appreciate; that you are going to need something, I suggest, in a law, that is going to protect the rights of everyone, given the substantive difference in jurisdictional authority and power that resides with aboriginal people on an Indian reservation. And that authority has already been tested in other parts of Canada vis-a-vis our taxation and legal procedures. And I would suggest to you that when we do these changes, that we are also going to have to look at the future and what's going to happen now.

You seem quite confident about launching off into the future here with this change, with no worries that they will facilitate other things. So I guess all we can do, Mr. Minister, is leave it at that and watch very closely. But I don't want to be standing in this legislature two years from now saying, I told you so, after somebody gets burnt potentially.

Hon. Mr. Mitchell: — I respect the member's knowledge of this policy area. And I want to tell him, Mr. Chairman, that I recognize the complexities that we are faced with, made all the more interesting by the fact of the treaty land entitlement settlement which is coming down upon us, and infinitely more so by the self-government agreements which will flow from the constitutional changes that we all hope will take place.

These will set up a third order of government in this country. That government, as I've said in this House earlier, will take different forms and different shapes in different parts of the country. But certainly one of the root questions that has to be addressed is the one raised, or the group of issues raised by the member in his interventions this morning — access to credit, being able to secure credit, having the same commercial abilities as are enjoyed by the population at large.

These are matters that must be addressed and in the long run must be addressed by this House as well as the federal government, because there will be many situations in which there will be a shared jurisdiction. And it won't be available for us any longer I think to simply stand and say, Indians and Indian lands are a matter of federal jurisdiction and therefore we in this House can't do anything.

I've said that twice today already. But my ability to say that in a couple of years, considering self-government negotiations which are likely to take place, may be . . . the situation may be dramatically changed. And we will have to take a fresh look at some of these ideas.

But for now our objective is a very limited one. The scope of the amendment is very limited and quite technical. And I feel confident in telling the House that the problems raised by the member, while they are serious problems, ought not to concern us in connection with this particular amendment of this particular Act.

Clause 3 agreed to.

Clauses 4 to 6 inclusive agreed to.

Clause 7

Mr. Martens: — Would the minister mind giving us an explanation of when this provision would come into place and how it would work?

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, there is no change of policy with respect to section 14(1). Let me begin my answer by referring to the section 14(1) as it now is in the Act. It provides that:

> . . . a person who enters into a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits thereof.

Now that seems clear enough and you wouldn't think that there would be any problem with it. But there has been. A court decision has dealt with section 14 and has weakened the idea there . . . has cast doubt, I think is the correct terminology — has cast doubt on what section 14(1) is trying to achieve.

And so we have recast it in the terms in section 7 of the Bill to make it clear that:

> (a) a person who enters into, (a written contract) or purports to enter into, a written contract in the name of or on behalf of a corporation before the corporation comes into existence:
>
> (i) is personally bound by the contract; and
>
> (ii) is entitled to the benefits of the contract; and
>
> (b) the contract has effect as a contract entered into by the person mentioned in clause (a)"

So it's an attempt to make perfectly clear the point of

policy that has previously been expressed in section 14, subsection (1). So that in the future, the court, faced with this kind of a situation, will continue to hold the way that the Act has always intended them to hold.

Mr. Martens: — Would this also include a Crown corporation in a contract in a similar fashion?

Hon. Mr. Mitchell: — The answer is no, Mr. Chairman, for the reason that Crown corporations are not business corporations within the meaning of this Act, and are not covered by the provisions of this Act.

Mr. Martens: — I find it a little interesting, Mr. Chairman, and Mr. Minister, that this item would come into existence today, because we have just witnessed a breach of a contract, in my view, with 50,000 farmers with a Crown corporation. And here we enhance the opportunity for a corporation that isn't in existence and define for it an example of if it happened to do business as a process of incorporation . . . even took place, that they would be responsible for the contract that they had entered into.

And I just find it somewhat amusing, ironic, that the Minister of Justice would bring forward an amendment to solidify the opportunity for a corporation to get its articles incorporated. And as it's done some business, perhaps just before that, that that would be included in its responsibility. And they would have to live up to the agreement of the corporation. And we have in this Assembly, just talked about a Bill that makes void all of the contracts that are entered into by 50,000 farmers.

And I find that somewhat strange and amusing. And I'd like to have the minister comment on that, if you may.

Hon. Mr. Mitchell: — Well it's my understanding, Mr. Chairman, from what I have seen and heard, that we are going to have a very adequate opportunity, in this legislature, to debate the point that the hon. member raises, the situation that he refers to.

I just want to say, in response to his question, that this has been the law with respect to business corporations and the promoters and organizers of business corporations for a long time. This is a provision that is common to legislation of this sort right across the country. And what we're seeking to do here is to clarify what we in this House would say the law has always intended, what the policy has always been behind the Act, so that the courts will interpret the section in accordance with the wishes of this Assembly.

Mr. Martens: — Mr. Chairman, and Mr. Minister, I agree with this section; I don't disagree with it. I just disagree with the content of other pieces of legislation coming in. And the intent of the law and the motivation of the law, I agree with it. I just would wish that the government would abide by its own philosophy in relation to the contracts entered into. Even if they were already a corporation and had made the contracts, whether they would . . . or I feel that they should honour them and do what was . . . as a part of their responsibility.

I agree with this section and just wonder if the government would continue in its other areas and you, sir, as the Minister of Justice would support those contracts that the farmers in the province of Saskatchewan have with the Crop Insurance Corporation.

Hon. Mr. Mitchell: — Well, Mr. Chairman, as I said to my friend, we are going to have an opportunity, as I understand him and his colleagues, to debate that question at some length in the near future. And I think that I'll find an opportunity during that debate to make my views known to the member.

Mr. D'Autremont: — Thank you, Mr. Chairman. To the minister: as I interpret this clause, you're saying that it's important that a corporation honour its contracts. Do you agree that it's important that contracts be honoured? And what implications is there if those contracts are indeed not honoured?

Hon. Mr. Mitchell: — Well, Mr. Chairman, the premise is a bit off the mark. What is being addressed in section 14, which is being amended in part by section 7 of the Bill, is not a corporation's liability with respect to contracts but rather the position of a person — that is an individual — who acts before a corporation comes into existence. That may be a promoter or it may be a principal who is getting the company organized.

It very, very often happens that that person enters into contractual arrangements before the corporation comes into existence. For example, a law firm is retained, a firm of accountants is retained. It may be that some arrangements are made with respect to a patent or a franchise or a licence which will form the substance of the business that the corporation will carry on.

And prior to the enactment of section 14, it was an open question as to whether or not that person was liable on the contract. That person could always say, and indeed frequently did say — I remember handling a case where that was the precise point raised — that this person was not acting in his own right; that this person was acting rather as an agent for a corporation that was to come into existence, and that the other party to the contract knew, knew that this was the case, knew that this individual was not undertaking personal liability but was seeking to bind a corporation which wouldn't come into existence for several weeks. And that used to be a good defence.

Now section 14, as it was enacted in uniform legislation across the country really, grabbed a hold of that problem and said: no, no, promoters who do that can't hide behind the fact that they intended to incorporate the company later on. They enter into these contracts, they are bound by them, so that the other party that was an innocent party to the arrangement doesn't suffer any loss or damage.

And section 14 said: not only are you bound by these contracts, but you're entitled to the benefit of them as well. You know, the coin has two sides. If you're going to absorb the consequences or the down sides, you're also entitled to the benefits, the up sides.

And so we're not . . . this is not concerned with the

liability of the corporation, but rather the liability of promoters or other people who will be principals in the corporation which is to be incorporated later. It's quite a limited idea.

Clause 7 agreed to.

(1015)

Clause 8

Mr. Martens: — Mr. Minister, if you give me an explanation of section 42, along with section 8, we could maybe talk about the two together, because they relate; and how it deals with pulling together loans made to individuals for personal profit in a corporation. And how that handles itself within itself there.

Hon. Mr. Mitchell: — Mr. Chairman, the member asks a complex question in the sense that it is complicated to answer. But let me take a crack at it.

By section 42, a corporation is prohibited from giving a loan to a director or officer. It's actually cast wider than that. It's a shareholder, director, officer or employee.

And then section 18 provides that a corporation may not assert against a person dealing with the corporation a number of matters including the financial assistance referred to in section 42. Do you follow that? A corporation may not assert against a person dealing with the corporation, the financial assistance referred to in section 42.

So along comes the amendment that we're proposing to section 18, which deletes from clause (f), the words "the financial assistance referred to in section 42" and goes on to add a clause (g) which adds the words:

> the disclosure of financial assistance required pursuant to section 42 was not given.

And that leaves us in a situation where a company may provide a loan and a guarantee to its directors, employees, and shareholders provided that full disclosure of that financial assistance is made. And as I said to the member when I started my answer, it's complicated in the interplay between the two sections. But the net result of it is that corporations will have this additional flexibility.

It is in a closely held corporation, say, where you and your wife are the shareholders in a corporation, it is absurd that the corporation cannot loan you money or guarantee a loan of money. And obviously in some circumstances that's appropriate, like the example I've just given, and it ought to be allowed.

At the same time, in more widely held corporations where the shareholders would not be aware of the day-to-day business of the corporation, a loan to directors is on a somewhat different footing. And so we require the full disclosure to the shareholders to ensure that the fact of the loan is made.

But the last example is less obvious, and the one that I cite with you and your wife as the officers and directors of a corporation, is an obvious one. The shareholders of a large corporation . . . or the directors of a large corporation are on a somewhat different footing. The case is not so obvious for them. But if the proper disclosure is made, then why not? And so we offer this amendment in that spirit.

Mr. Martens: — Are there requirements under (g) that — and I understand the difference very . . . there is significant difference between a small four or five people in a corporation and, let's say, hundreds. Is there a method that you're going to suggest be used as a part of the disclosure of financial assistance?

And let's just take the new Potash Corporation of Saskatchewan as an example which is widely held. And the board of directors may have a significant different relationship to the shareholders than they would in a small farming corporation or something like that, where it would be defined. What kind of process do you need to give the notice of assistance on? Or should we wait till 42 to talk about that?

Hon. Mr. Mitchell: — I think that we ought to wait till section 42 to discuss that; 18 is just simply . . . 18 provides . . .

The Chair: — Order. I'll ask members to allow the minister to provide his answers in an uninterrupted manner.

Hon. Mr. Mitchell: — Section 18 says when a corporation can erect the shield; when it can say, you know, I didn't comply with the Act or the Act was not complied with. So you're right, the discussion is best held under section 42.

Clause 8 agreed to.

Clauses 9 to 11 inclusive agreed to.

Clause 12

Hon. Mr. Mitchell: — Yes, Mr. Chairman, the amendment is to section 12 of the printed Bill, as you have observed. And it will read as follows:

> Amend section 25.1 of the Act, as being enacted by section 12 of the printed Bill:
>
> (a) by renumbering it as subsection (1); and
>
> (b) by adding the following subsection after subsection (1):
>
> "(2) Section 170 applies, with any necessary modification, to a special resolution mentioned in subsection (1) as if the special resolution was a proposal to amend the articles."

I so move, Mr. Chairman.

Mr. Martens: — That amendment was on section 12? Could you give me an explanation of how the corporation

and its directors could change a class of shares. Would they have to have notice of that in writing to their shareholders? Would you give me an explanation of how they can change those classes of shares and how it would be done.

Hon. Mr. Mitchell: — Mr. Chairman, the purpose of the House amendment is to make clear the situation that the member's question is addressed to. And it brings section 170 into operation with respect to the changing of shares or any class or series of shares into a different number of shares. And 170 has very extensive provisions that apply to these situations, including notice requirements and limitations with respect to the right to make changes with respect to the share structure of a company.

Mr. Swenson: — Just so I have this straight, Mr. Minister, you're saying . . . And I'll use my own company as an example, where we have preferred A shares — my mother has so many, my father has so many, I have so many — and then we have B shares which both my father and I hold because of the transfer of machinery and other assets into the corporation at the time, and there was a value assigned to them that over time the company has paid back . . . or paid out to the shareholders.

Are you saying now that you could switch those, for instance those A and B shares, without having to go through a redrafting of the articles of incorporation, say from preferred B to preferred A now without . . . and you just attach an addendum at the time of your annual meeting rather than redoing your articles?

(1030)

Hon. Mr. Mitchell: — I may have misled the member by an earlier answer I gave. The change here is within a class, so that you can change the number of shares within a class. Say you have 100 class A shares and you want to increase the number of those class A shares to 200. You could proceed by special resolution under the amendment, provided of course that you've complied with the requirements of section 170.

You couldn't change from class A to class B or change the class in some other fashion, relying upon this clause. There are of course ways to do that under the Act, but not under 25.1.

Amendment agreed to.

Clause 12 as amended agreed to.

Clause 13

Mr. Swenson: — Mr. Minister, would you explain for us, I believe it is 13(2)(c), these provisions under the Income Tax Act. Once again in a corporation you will have different tax rules with different types of shares. I want to understand clearly what you're getting at here.

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, currently subsection . . . section 26, subsection (1.2) allows a person who does not deal with the corporation at arm's length to transfer property to the corporation on a roll-over basis — on what's been described to me as a roll-over basis under the federal Income Tax Act.

The person transferring the property takes back shares in the corporation, and the amount that is added to the stated value of those shares can be less than the fair market value of the property transferred into the corporation. That's allowed.

The addition of this clause (c) in the Bill that we're considering this morning, will allow the same procedure to be followed where the shareholders are not related. To protect the other shareholders, their consent, and the consent of the corporation, is required before this procedure can be used. But that is the purpose of the amendment.

Mr. Swenson: — So what you're saying now, Mr. Minister, is that in a family situation on, say, a transfer of assets that the roll-over provision was in place. In other words you could take the value of premises, property, that maybe had a market value of 150,000, but because of the roll-over provision you could do it within at 100,000 with some type of a preferred C share attached to it for the future that was never collected upon.

Now what you're saying, is that another individual has also that same ability with property or assets and that . . . See what I envision here, Mr. Minister, is that you could draw a number of people into your company with that roll-over provision that . . . Well it certainly might enhance the company, but I'm not sure what it would do on the tax side. Because at some point, capital gains and recapture depreciation occur in here.

And I understand clearly why it was the roll-over provision was there, for instance, in a family farming corporation or most small businesses. But I don't quite understand where you're trying to get to with the at-arm's-length individuals.

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, sorry to take a while, but the member understands very well how complex it is. And I don't purport to be an expert on these matters and so I'm not entirely comfortable tossing out some of these symbols.

There is, as the House knows, an obligation on directors to act prudently and fairly and in the best interests of the corporation. The question of roll-overs, which the member has described better than I did, are permitted in non-arm's-length situations for valid reasons, I think, and allows the directors to accept less than full value.

What this provision does . . . By the way, the Income Tax Act, section 86, deals with those situations in a sympathetic way. I think I can summarize it by so describing it. This provision, which was requested by the Canadian Bar Association, where the situation is not at arm's length, allows the directors to accept less than value where there may be other business reasons to do that, and is set up in such a way as to prevent abuse but still permit them to do that and avoid conflict as a result of their so doing.

How that will square with the income tax situation depends on the circumstances. It obviously won't enjoy

the same kind of protections as the arm's length . . . the non-arm's-length transactions, but it will be a matter for the taxpayer and the income tax people to sort out. But this proposal permits the transaction, as I've indicated.

Mr. Swenson: — Mr. Minister, is this provision then bringing Saskatchewan in line with other jurisdictions in Canada? Is that why the bar association was hot on it, if those type of corporations lived under that different set of rules elsewhere?

Hon. Mr. Mitchell: — It's a relatively new idea and it's being proposed, as I said, by the Canadian Bar Association. It is permitted under The Income Tax Act and as far as we know, we're the first jurisdiction to move it into actual legislation.

Mr. Swenson: — So what you're saying, Mr. Minister, is my accountant now has another excuse to up my bill. I wonder, Mr. Minister, if you could just give us a brief explanation of how your officials would see this consensual thing occurring. How would the directors of the corporation grant consent to a person that was at arm's length?

Hon. Mr. Mitchell: — Mr. Chairman, we would see this consent as being given in the way that consents are given, in writing. Depending on the circumstances, it may require a resolution. In the case of individuals, it will require a document that will be signed and dated. And good practice would require them to be witnessed in an appropriate way, but nothing special.

Mr. Martens: — Mr. Chairman, would this also be allowed where a company was taking some of its shares and moving it into another company, a subsidiary of the main company? Would it be allowed to do the same thing and set it up under a shareholder's loan so that that could be dealt with as a subsidiary of the main company? Is that a possibility under this section too? — a section also, I mean.

(1045)

Hon. Mr. Mitchell: — The specific example given by the hon. member would not be at arm's length because it would be a subsidiary company, and that is one aspect to the problem. This is largely an accountant's tool, as I think you can appreciate. It allows in effect less than the full value to be put into the capital account, while other portions of the value are put somewhere else, like retained earnings or that sort of thing.

Mr. Swenson: — Thank you, Mr. Chairman. Just out of curiosity, Mr. Minister, in your many responsibilities, the question that was just posed by the member from Morse in fact is what we have seen in some parts of the construction industry with spin-off companies. And you have a very stated opinion about that sort of thing.

And I'm glad to see that Saskatchewan is launching off into new worlds here ahead of everyone else. But I'm wondering, Mr. Minister, if that isn't why some people in the province find your government sort of one of mixed signals, because that in fact is what occurs in that area — sometimes at arm's length, sometimes not.

And in fact you may be encouraging people to do that very thing because you're right, it is a mechanism where you can keep retained earnings, perhaps better than you would under another structure. And I'm wondering if it should not give you hesitation in some other areas with the enactment of this.

Hon. Mr. Mitchell: — That's a very interesting question, Mr. Chairman. I have — in putting on my other hat for a moment — I have absolutely no objection, legal or policy or otherwise, to people organizing their affairs through the use of subsidiary corporations or whatever it is.

What I say, wearing my other hat, is that that can't be used in order to defeat the right to bargain collectively and to enjoy the fruits of freedom of association. And so long as the integrity of the labour relations law is properly cared for, then I think that corporate mazes may be as complex as one wishes and I have no objection to that at all.

Clause 13 agreed to.

Clause 14

Mr. Martens: — Mr. Chairman, Mr. Minister, this is the section that deals with loans given to individuals. I guess one of the questions that I have is why is it done after the fact? I believe that what you should be doing here is involving the consent of individuals to have . . . require this disclosure before the event occurs. You have to do it, as I read it in here, after . . . or in each case the following year you have to give notice of it.

I was wondering why — and maybe I missed it — but why you have it only after the fact and not as a part of the fact and during the movement of a loan or a guarantee to a person that is in the corporation. Can you give me an explanation for that?

Hon. Mr. Mitchell: — The question, Mr. Chairman, is again a good question. And I don't mean to patronize the member; I mean it is a valid point.

The position of directors of a corporation under this kind of legislation has always been a serious position, a very important position, and one of trust, carrying with it fiduciary responsibilities for the director to act prudently and in the best interests of the corporation.

And the extent of that obligation has grown very significantly over the last few years. I think the member knows that. But I can say from my own experience that the potential liability of directors as it has developed under the common law and under legislation has grown remarkably.

It used to be considered that there really wasn't much that one could do by way of a claim against directors of a corporation in practically any circumstances short of outright fraud. And that was the state of the common law a mere 15 years ago.

And that situation has changed dramatically now so that directors have all sorts of responsibilities that they must discharge, failing which they can face very significant

liabilities, very significant claims. And I think that's a healthy development of the law.

So the Act is set up in such a way that it is assumed that the directors will act prudently and in the best interests of the corporation. That's why they were elected as directors. They are the sorts of people who can be expected to act prudently and in the best interests of the corporation.

And the Act throughout allows the directors to make the decisions that directors make without prior approval from the shareholders. They account to the shareholders in general meetings that are required by the Act, and they are subject to replacement and removal and other remedies that are described in the Act. But they're sort of like we are, you know. They're elected and then we act in this legislature. We do what we do, and you do what you do. And at the end of our term, we go back and report, and it's either accepted or not.

Now we go back every four to five years, three to five years, something like that. The directors have to go back more regularly and report under the Act. But the whole structure of the Act, the scheme of the Act, is that the directors are elected to act, and act without having to obtain prior approval from the shareholders.

So in connection with section (1)14, the structure again is that, as the member observed, it's not a prior approval, but it is a matter of full disclosure of the acts of the directors reporting to the shareholders on what they have done generally and what they have done specifically with respect to section 42.

Mr. Martens: — Section (6) under section 14:

> A contract made by a corporation in contravention of this section may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

Does that mean that the contravention doesn't have to be reported to the shareholders, or is that a different kind of a notice?

Hon. Mr. Mitchell: — Mr. Chairman, subsection (6) is intended to deal primarily with guarantees. It's not easy to envisage a circumstance in which you would deal with loans. And what it means is that so far as the lender is concerned who is on the receiving end of the guarantee, they are entitled to enforce their contract for repayment. Even if section 42 hasn't been complied with, even if the disclosures haven't been made, the lender is still entitled to take action on the contract to enforce repayment of the loan. And so long as the lender doesn't have notice that the Act hasn't been complied with, the lender is on safe and solid ground.

Mr. Swenson: — Thank you, Mr. Chairman. In other words, a shareholder or a group of shareholders in contravening the Act, enter into a contract with a bank or someone else — I suppose a bank would be the most onerous under 178 — that the other folks in the corporation are then stuck with coming back on that director or group of directors in a liability action. And meanwhile the bank is totally free to do whatever to that corporation. Is that basically what you're telling me?

(1100)

Hon. Mr. Mitchell: — The shareholders are of course protected in other sections — section 113 and 117 — in the sense that they will be able to claim against the directors. The loan that we're talking about is . . . and the examples we've been using at least, have been loans to directors. And they will be liable to the bank anyway.

But the bank will be able to proceed against the corporation even if the corporation hasn't complied with the requirements of section 42. Provided that the bank didn't have any notice. Provided that the bank is acting in good faith and didn't know that section 42 had not been complied with.

Mr. Swenson: — Mr. Minister, in earlier sections here, I mean, it talks about the ability of the company to go from one financial statement to the other pursuant to clause 149(1)(a) about disclosure.

In other words, you could go almost an entire calendar year with either a shareholder's loan or a guarantee being given by the company to one of its shareholders who then enters into a subsequent agreement with somebody else. The rest of the folks don't know about it. Something happens. The bank comes back on that particular shareholder or a group of shareholders for redress. You're right — the other shareholders can come back against that individual or group of individuals.

But I would suggest, under the bankruptcy proceedings, that it isn't all that difficult for that obligation to be negated in almost its entirety. And quite rightly, the person then goes through his trustee and has a period of — it's getting shorter every year — penance time and then we're back on our feet again.

I just find this 6 a little bit wild and wonderful. Is this the same in other jurisdictions? I mean, are we copying anybody? Or is this, once again, the bar association asking us to sort of be the front-end?

Hon. Mr. Mitchell: — I make two comments, two points in response. The first is that this specific section or subsection, subsection (6) is carrying forward the old subsection (3). So it in itself is not a new idea. And that provision is in the legislation of I think all of the other jurisdictions, speaking specifically and only to subsection (6).

Now the context is different, as the member says, and that's my second point. And we are moving at the head of the line rather than somewhere later down the line.

I might also mention for the member, Mr. Chairman, that the Alberta law reform commission — I don't think they call it a commission — but their law reform agency has recommended the proposed section 42 to their government, to the Government of Alberta. And it is our information that Alberta plans to move in the same direction that we are.

Clause 14 agreed to.

Clauses 15 and 16 agreed to.

Clause 17

Mr. Swenson: — Mr. Minister, as I read this, this would be the section entitled, the make work for Saskatchewan lawyers section. Have I read that correctly? That's different than it was before.

Hon. Mr. Mitchell: — That's not the purpose, Mr. Chairman. The requirement of having a director resident in Saskatchewan is seen to be an artificial requirement and is often, in certain situations, an awkward requirement that is not easily capable of sensible resolution.

And so you have a lawyer acting as a director without really having any stake in the company or really owning any share in the company, or a member of the chartered accountant firm similarly acting as a director when that person does not have any substantial reason for being a director and at the end of the day is not in reality a director. The affairs of the company are directed by the people who will have an interest in the company and not by this person who is named only to comply with the requirement that one director must reside in Saskatchewan.

So we're proposing to take that out and leave it to the people in these corporations to determine who will be their directors. And we do require, as I think I said earlier, that the corporation have a presence in Saskatchewan, that they have a presence here so that people can serve notices or processes upon the corporation by serving it or delivering it to the office of the representative who may be a lawyer but who doesn't have to be a lawyer — can be, again, an accountant or can . . . will probably be the same people who are now serving as directors under the requirement that we have in the existing subsection (3) of section 100.

Mr. Swenson: — Mr. Minister, it clearly says the corporation shall appoint an attorney pursuant to section 268 and comply with section 268. And that tells me that even though we don't have to have a director any more, you're going to have a Saskatchewan lawyer. And there's no sense . . . You did a great dance, but just call a spade a spade and say that's exactly what we're doing.

Hon. Mr. Mitchell: — Well my answer is the same. The term "attorney" as used in this legislation is not the American idea of an attorney being a lawyer, but is rather a person named under a power of attorney as attorney for the company. So it wouldn't have to be a lawyer — might be, but wouldn't have to be.

Clause 17 agreed to.

Clauses 18 to 33 inclusive agreed to.

Clause 34

Mr. D'Autremont: — Thank you, Mr. Chairman. Mr. Minister, I'm not exactly sure where my question will fit in — it's either in 34, 35, or 36 — dealing with name changes. And I'm wondering in the Act what priority is set out as to who is entitled to use a corporate name?

Hon. Mr. Mitchell: — Section 34 deals with a situation where a corporation from outside Saskatchewan seeking to be registered in Saskatchewan, as what we call an extra-provincial corporation, runs into the problem that its name is the same as or similar to the name of a Saskatchewan corporation.

In those circumstances the Saskatchewan corporation takes precedence. The extra-provincial company registering into Saskatchewan has to accept the situation in Saskatchewan as it finds it. And if there is in fact a Saskatchewan corporation that has the same or a similar name, then the extra-provincial company has to give way.

What we are seeking to do for them, in order to smooth their way and not make . . . you know, not tie them up with unnecessary red tape is to permit them to register under an alternate name, retaining their same corporate structure outside of Saskatchewan but operating in Saskatchewan under an alternate name. And then we deal with that alternate name in the way that the member sees under section 294.1 which gives them the same situation as they would have if they had been able to register their name without any difficulty.

So that the specific answer to the member's question is that Saskatchewan corporations have precedence and the extra-provincial companies have to give way to the names that are already on the books in Saskatchewan.

(1115)

Mr. D'Autremont: — Mr. Minister, therefore we would not run into the situation that occurred in Manitoba where a family business known as the Brick's Fine Furniture ran into complications with The BRICK corporation which also sell furniture, which was an out-of-province corporation moving into the city of Winnipeg. That will not happen in this province then?

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, I'm advised that The BRICK was successful in using its name in Manitoba in spite of a conflict because it was a registered trade mark. And its rights as a trade mark, with that trade mark, overwhelmed or overtopped the right of the Manitoba company with respect to the name. So that The BRICK can operate in Manitoba using The BRICK, but they can't use that corporate name.

They can call their store The BRICK by virtue of their trade mark, but the returns that they file with the Manitoba government and the name they legally use in registering and in keeping registered and satisfying the requirements of the Manitoba business corporations Act as the different . . . it's got to be a different name, as it would in Saskatchewan. The same situation would pertain here. They could operate as The BRICK by virtue of their federal registration as a trade mark but they would have to use an alternate name as the corporate name in Saskatchewan.

Now I'm also advised that there are negotiations at the officials' level between Ottawa and Manitoba and The

BRICK in order to try and sort that situation out in a more accommodating way. But that situation at the moment could happen in Saskatchewan.

Mr. D'Autremont: — Well since The BRICK corporation could continue to use the name The BRICK as a trade mark, what happens to the other company, say in Saskatchewan that was also using Brick in its name as a furniture company? Would they then be disallowed from continuing the use of that name?

Hon. Mr. Mitchell: — Mr. Chairman, the situation was a real mess in Manitoba. The court's judgement resolved some questions but didn't resolve it all. It's still a mess. And we have no way of sorting it out because we have not the jurisdiction with respect to trade marks. And the courts have found, at least appear to have found, as a matter of constitutional law that The BRICK can use its trade mark.

So the situation in Manitoba is that The BRICK and Mr. Brick operate both with those names. The corporate situation is as we have it in this Bill, but so far as the public is concerned there is great confusion. And it is that confusion that is apparently being addressed in these discussions and negotiations that I referred to earlier.

Mr. D'Autremont: — So, Mr. Minister, at the present time that kind of confusion could actually take place in Saskatchewan. In the Manitoba case Mr. Brick and his fine furniture store is receiving phone calls with people aiming at The BRICK, either for service or with complaints, and yet he has to field all these phone calls with no return. So the circumstances could actually occur in Saskatchewan in a similar manner.

Hon. Mr. Mitchell: — Yes they could, Mr. Chairman.

Mr. D'Autremont: — Well, Mr. Minister, I think while you're going through a Bill like this, which includes name changes and the problems, I think it would be advisable to take a serious look at finding a manner in which to solve that problem. And perhaps the discussions that are taking place currently will do that. But I think it should be done expeditiously if possible.

Hon. Mr. Mitchell: — We have taken a very aggressive position with respect to this question, and have aligned ourself with the Manitoba government, which are aligned with Mr. Brick. And the Alberta government is part of the group also. And we're doing what we can to try and assert a primacy in this area.

And there's a good argument for doing it of course. These are the corporations . . . this is the legislation which gives life to corporations, which takes incorporating documents and registers it as a corporation, and thereby gives life to a new person — really a new person in law, which is the new corporation — and gives it its name, and then goes to some lengths to protect its name as you see in the Act, including the provisions that we're talking about this morning.

And then to have a federal law extending a trade mark come in over the top of the provincial law and create the situation that you described in Manitoba, is not good at all. It's just a terrible mess, and a potential mess. And we're trying to fight our way through to a solution.

We can't pass anything in this House that would affect the constitutional result in the Manitoba case. There is just no law that we could devise that would clarify it. We've protected the names to the extent that we can, but we can't change the trade-mark law nor the constitutional primacy which that law apparently has under the Manitoba decision. But we're in there fighting about it and being as aggressive as we can.

Clause 34 agreed to.

Clauses 35 to 37 inclusive agreed to.

The committee agreed to report the Bill as amended.

Bill No. 67 — An Act to amend The Queen's Bench Act, repeal The Surrogate Court Act and make Consequential Amendments to Certain Other Acts resulting from the Amalgamation of the Surrogate Court and the Court of Queen's Bench

The Chair: — If the minister has any other officials to introduce, I'd ask that he do that now.

Hon. Mr. Mitchell: — Before I do that, Mr. Chairman, can I thank the officials that were here on the consideration of The Business Corporations Act for attending this morning and for assisting us in our deliberations?

The Chair: — You certainly may. And the Chair joins you in thanking the officials. And, Mr. Minister, if you'd like to now introduce the new official that has joined you.

Hon. Mr. Mitchell: — I think, Mr. Chairman, that everyone was introduced. Doug Moen, who is the co-ordinator of legislative services in the Department of Justice. And Ms. Mary Ellen Wellsch, who is the Public Trustee, and has assisted me on a number of Bills. And I'm glad that she's here this morning.

The Chair: — Thank you, Minister.

Clause 1

Mr. Toth: — Thank you, Mr. Chairman. And first of all, Mr. Deputy Chairman, I'd like to extend my thanks on behalf of the opposition to the members who were assisting the minister just a few moments ago. And certainly appreciate the staff that we do have working in the legislature regarding Bills and being able to be here to answer the questions we have.

I was just thinking a moment ago, as we were going through the former debate, that when you get into some of the technical matters and the legal jargon that a lot of the Bills have that come before the Assembly, and as you enter into the debate, the immediate debate, sometimes I wonder if the opposition wouldn't be . . . it'd be a little handier if the opposition was able to have a person with a legal background helping them as well, getting into some of the discussion. Because a fair bit of the questions and answers sometimes draw up, raise other questions, and it's difficult when a person doesn't have a very intensive

background in legal matters, to have someone there.

But I appreciate the fact that we do have people here to respond to the questions that . . . and I'm sure that even as we discuss the Bill No. 67 that's before us at the present time, Mr. Speaker, regarding The Queen's Bench Act.

I believe the significant importance of this Bill is to tie in or, I believe, sets down, or closes out The Surrogate Court Act, and then puts all the responsibilities or places all the responsibilities of The Surrogate Court Act under The Queen's Bench Act. And I'd like the minister to comment on that.

Hon. Mr. Mitchell: — Well, Mr. Chairman, the member is exactly right. The Act will amalgamate the Surrogate Court with the Court of Queen's Bench. And it repeals The Surrogate Court Act. That latter Act, Mr. Chairman, contained quite a number of substantive provisions with respect to wills and estates, and those provisions are being transferred into The Queen's Bench Act so that they're not lost. And I believe that all of the changes, or all of the provisions of this Bill, are directed to that one purpose.

Mr. Toth: — For the sake of the House, Mr. Deputy Chairman, I'm just wondering, why would the government make a decision at this time to amalgamate the two Acts under one Act? Would the minister give the reasons for the amalgamation of the Acts.

(1130)

Hon. Mr. Mitchell: — Mr. Chairman, it is a streamlining provision. The district court and the Queen's Bench court were amalgamated by legislation in this House in 1978 or 1979 — I've forgotten which — and the Surrogate Court was left off to the side. And there has not proven to be any valid reason for that. It is a court without a specific judiciary of its own. The duties of the Surrogate Court are carried out by judges of the Court of Queen's Bench. In effect, it is an unnecessary complication of the system. It has more historical significance than it has modern day significance.

If you were named as the executor in a will of a person who has died and you wish to prove up that will and obtain letters probate confirming your appointment as executor, and administer the estate and pass your accounts, in other words, to do your duties as an executor, you would go to the Court of Queen's Bench. You would actually . . . you or your lawyer would go to the office of the registrar of the Court of Queen's Bench, you would make the application with the registrar of the Court of Queen's Bench, and your application would be reviewed by a judge of the Court of Queen's Bench and that judge would sign letters probate, but sign over the words: a judge of the Surrogate Court.

Then your applications that you may have to make to the court in connection with that estate would come up in Queen's Bench chambers and your final passing of accounts, if indeed you had to do that, would also be done before a Queen's Bench judge in Queen's Bench chambers.

The idea of preserving a distinction between those courts has turned out to be an idea that had no purpose, no merit. And in this day and age when I think all governments are trying to make legislation more readable and make the instruments of government more accessible to ordinary people, more understandable, it makes sense to meld these courts together and simply make all these functions, functions which are performed by the Court of Queen's Bench.

Mr. Toth: — So what you're saying, Mr. Minister, is that even though there was a specific Act to cover probation of wills, that technically, through the process, people still ended up . . . they had to approach the Queen's Bench court to in fact follow through with the purposes of the Act. Is that true?

Hon. Mr. Mitchell: — That's exactly right. And in effect what we were just preserving — fiction, that there was another court there, the Surrogate Court. Because all of it, every step, was actually being made and cared for and administered by Court of Queen's Bench personnel, including judges.

Mr. Toth: — When you're talking of efficiencies in the system, then I would gather that by amalgamating the two Acts, that we will have a . . . Firstly, will this speed up the process of probation of wills? Does this speed this up at all — the fact that you just go, can go directly to the Queen's Bench versus following through on The Surrogate Court Act as well?

Hon. Mr. Mitchell: — Mr. Chairman, it's not likely to make any difference at all. It simplifies the forms. And it is a simpler concept, removes the complexities and the obscurities of an historical court which has always had jurisdiction . . . well not always — but for hundreds of years literally has had jurisdiction over these matters and brings a large dose of reality to the situation because it is in fact the Court of Queen's Bench who is performing these functions.

Mr. Toth: — Mr. Minister, does the amalgamation of the two Acts create any monetary gain or have any monetary value on the government and the Consolidated Fund?

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, there are two budgetary aspects to what we're doing here. One is indirect and one is direct. The direct move . . . The direct change that is being made has to do with the official administrator, the official administrator at the various judicial centres. In the past, that has been a function carried out usually by a trust company that's appointed as the official administrator for a particular judicial centre.

It is proposed under this Bill that the Public Trustee for Saskatchewan will be the official administrator at each judicial centre.

Now the official administrator comes into action, comes into play, when there is a will that doesn't name an executor, or where there's no executor prepared to act, or where there is no will. And that happens reasonably often. And that is a change of significance, of course, to the trust companies who had been acting as official administrators.

The indirect budget consideration is the following. Members of the Court of Queen's Bench and the Court of Appeal have received an honorarium of $3,000 per year, paid by the province, for acting as judges of the Surrogate Court. This is in addition to the regular salary that they receive from the federal government as a result of being federally appointed judges. We have notified the judges of the Court of Queen's Bench and the Court of Appeal that this amount will no longer be paid. And that is part of the budgetary adjustments that were announced by my colleague, the Minister of Finance, or flowed from his announcements in the budget speech. So there are those two budgetary implications.

There is another one that is less obvious, less capable of quantification, and that is the money that will be saved because we don't have to print a separate set of forms headed: in the Surrogate Court for Saskatchewan, any more. Those forms will be redundant, and we will be proceeding with Queen's Bench forms.

Now that's not much of a factor, and there's not a lot of overlap because many of the documents used in the Surrogate Court were particular to the Surrogate Court. But to the extent that there was overlap in the documents used by the court, there will be a very small saving there. But I think I should say to the hon. member that that amount would be insignificant. It would cover things like subpoenas for witnesses and those sorts of forms that would be in use.

Mr. Toth: — Well, Mr. Minister, you mentioned a figure, I believe, that was available of 3,000 per annum for duties performed. When we're talking about that 3,000 per annum, is that per individual? And secondly, we're talking of . . . you've mentioned the Public Trustee then becomes the official administrator throughout the province. I take it then what you're . . . In placing the responsibility of the administrator in the hands of the Public Trustee, the Public Trustee will be doing with the same remuneration he or she presently receives. Is that correct?

Hon. Mr. Mitchell: — Mr. Chairman, I want to confirm that the $3,000 per year was paid to each judge, and there were, I think, 44 of them. So the amount involved is 132,000 per year.

With respect to the second question, the Public Trustee will not be receiving any salary increase in respect of having taking on these additional functions.

Mr. Toth: — Thank you, Mr. Minister. And that's what I was indicating, that by having the Public Trustee involved, the Public Trustee, that would become another one of the additional duties without extra remuneration for that.

Mr. Minister, I'm just wondering what, if any, the consultative process was taken between judges or what kind of response the government or the department had had from the judicial community regarding the elimination of this per annum, $3,000 per annum, that they were receiving — the refund for duties that they were performing?

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, I notified the chief justices of the two courts, Queen's Bench and the Court of Appeal, before the matter became public. I met with the Queen's Bench judges at their annual meeting in North Battleford in June, I think it was, and I confirmed that this would happen.

And I can tell the member that there were no negative comments with respect to this matter from the chief justices or from the judges. Some of them actually said that they felt everybody had to make a contribution in these circumstances, and they, that is the people who were speaking, were more than happy to do this as their contribution.

Mr. Toth: — So, Mr. Minister, what you're saying is that you did have the time to communicate and speak to the . . . You're talking about the Queen's Bench judges. And then they would have . . . and you were then asking or asking them to relate the changes that would be taking place to the rest of the court. I'm not sure how many Queen's Bench judges there are in the province of Saskatchewan, but through your office you did take the time to at least inform people of the fact that this monetary change was taking place.

And I look at the total amount of $132,000, and I guess if we look at it on the basis of an individual person or a small company, 132,000 might mean a significant amount of money. Certainly when we look at it in respect to the provincial budget, it's a very minuscule amount. And I'm sure the Minister of Finance would be needing to find more amounts such as this, in fact an enormous amount to have any significance in his budget.

But I think the process we need — and I think a lot of people around Saskatchewan realize that we all are going to have to work a little harder and realize that the services we're demanding must be paid for and that we may have to pull our belts just a little tighter, and as long as I think people are given the ability to have at least some input, be made aware of the changes, so that changes coming that affect people are not related to them after the fact.

I also, I believe I was looking through the Bill here, and I mentioned a little earlier the fact that the Bill before us is amalgamating the two services. I noticed that after clause no. 9, we do have a substantial — from clause 9 to I believe it's clause no. 10 — there's a substantial number of clauses added in there. Are those specific clauses related to the Surrogate Court and that's just adding the responsibilities of that Surrogate Court now to under the Queen's Bench Act? Is that the purpose for that, Mr. Minister?

Hon. Mr. Mitchell: — That's right. The Queen's Bench Act as it now reads goes up to . . . or at least after section 99 will include the sections beginning on page 4, new section 100, and from there on. Those are provisions that are now included in The Surrogate Court Act. They are not new.

They don't all read exactly the same because we've taken advantage of this opportunity to tidy up some of the language and to simplify some of the language. But in

substance there have been no change, with the exception of section 132 dealing with the official administrator, and I have already explained that situation to the hon. member.

Mr. Toth: — I also notice there was . . . I believe when we're talking of, in the Act . . . and I'm just . . . find it right off hand, but we're talking of an increase . . . I guess section 103 where it talks of increasing from 5,000 to 10,000 the value of the estate.

Am I taking from that, Mr. Minister, that the Surrogate Court prior to the amalgamation of the Act didn't really get involved in estates that were above $5,000, and now you've increased that to 10, the Queen's Bench court will not really be involved, that there are other channels available? Is that the purpose for the increase in that monetary fund?

(1145)

Hon. Mr. Mitchell: — It is rather the reverse, Mr. Chairman. And the member is correct — the $10,000 figure is a change from 5.

And what it means is this: if you are the executor of an estate where less than $10,000 is involved — the value of the estate is less than 10,000 — you can actually go in yourself to the registrar's office and the registrar will help you prepare the necessary forms.

And they used to do that up to a limit of $5,000 and they are now going to do it up to the limit of $10,000. So anything above $10,000 has to go through the more formal application which is filled out by you or your solicitor and which is presented to the registrar, which then goes before a judge and is dealt with in a formal way. But this other procedure is the less formal and much less expensive.

Mr. Toth: — So I take it then that this should allow for a speedier processing of, especially, smaller claims that would come before the court. And at least, what it does then is eliminates the necessity for those small estates to even proceed to the court.

Hon. Mr. Mitchell: — Yes, it certainly simplifies the process. I was just asking my officials if we had any idea how many such cases there are that are handled each year and they don't know. We just don't keep track of how many go that way as opposed to the lawyer, the law firm route.

The chief advantage of the provision is that it's much cheaper because it can be done without the intervention of a law firm.

Clause 1 agreed to.

Clauses 2 to 25 inclusive agreed to.

Clause 26

The Chair: — An amendment, House amendment on clause 26. If the minister would like to move the amendment.

Hon. Mr. Mitchell: — Mr. Chairman, the amendment is a technical one. With respect to section 26 of the printed Bill, amended:

(a) by renumbering subsections (4) and (5) as subsections (5) and (6); and

(b) by adding the following subsection after subsection (3):

(4) clause 172(1)(a) is amended by striking out "Surrogate Court" and substituting "Court of Queen's Bench".

I so move, Mr. Chairman.

Amendment agreed to.

Clause 26 as amended agreed to.

Clauses 27 to 30 inclusive agreed to.

Clause 31

Mr. Swenson: — Mr. Minister, what is The Survival of Actions Act? How does that fit into . . .

Hon. Mr. Mitchell: — Mr. Chairman, and to the member, The Survival of Actions Act deals with the question of what actions survive the death of a plaintiff or claimant. Some causes of actions die with the claimant; others survive. Example, a libel or slander action would die with the claimant. On the other hand, a claim under a contract would survive. This Act that is referred to here deals with that and provides what survives and what doesn't survive.

Clause 31 agreed to.

Clauses 32 to 34 inclusive agreed to.

The committee agreed to report the Bill as amended.

Hon. Mr. Mitchell: — Yes, Mr. Chairman, I'd like to thank the officials for coming here today and assisting us in the committee's consideration of this Bill.

Mr. Toth: — Thank you, Mr. Deputy Chairman. I wish to also extend on behalf of the opposition our appreciation and thanks to the minister and his officials for spending this time with us this morning and answering our questions. Thank you.

The Chair: — The Chair joins the members in thanking the officials.

Hon. Mr. Tchorzewski: — Being that it's pretty well 12 o'clock, I would suggest that we rise and report progress and come back again in the afternoon.

The committee reported progress.

THIRD READINGS

Bill No. 45 — An Act to amend The Business Corporations Act

Hon. Mr. Mitchell: — Mr. Speaker, I move that the amendments be now read a first and second time.

Motion agreed to.

Hon. Mr. Mitchell: — Mr. Speaker, by leave of the House I move that Bill No. 45 be now read the third time and passed under its title.

Motion agreed to, the Bill read a third time and passed under its title.

Bill No. 67 — An Act to amend The Queen's Bench Act, repeal The Surrogate Court Act and make Consequential Amendments to Certain Other Acts resulting from the Amalgamation of the Surrogate Court and the Court of Queen's Bench

Hon. Mr. Mitchell: — Mr. Speaker, I move that the amendments be now read the first and second time.

Motion agreed to.

Hon. Mr. Mitchell: — Mr. Speaker, by leave of the Assembly, I move that Bill No. 67 be now read the third time and passed under its title.

Motion agreed to, the Bill read a third time and passed under its title.

The Assembly recessed until 2 p.m.