

10:06 a.m.

Wednesday, May 1, 1991

[Chairman: Mrs. Black]

MADAM CHAIRMAN: Good morning, committee members. Welcome again to our second day of petitions. Today we are going to be hearing Bill Pr. 1, the Alberta Home Builders Graduate Institute Act. We have with us Mr. Robert Thomas, the chairman of the board; Mr. Larry Kelly, the president of the company; and Bill Johnson, legal counsel for the Alberta home builders.

Counsel, you have just sworn in the petitioners, and before we start, I'd like you to give us a brief background and comments as to the petition before us today.

MR. RITTER: Thank you, Madam Chairman. We have Bill Pr. 1, the Alberta Home Builders Graduate Institute Act. At our preliminary meeting I had rated this particular Bill as complex in nature not so much because of the objects - because it merely asks for the incorporation of a nonprofit institute to disseminate information and to act as a liaison with the home building industry and the various trades which are a part of it.

Rather than give an oral report, I have distributed to all members, Madam Chairman, pursuant to Standing Orders, a report on Pr. 1. It more or less sums up the various requirements under Standing Orders such as is there a model Bill in existence and that type of thing.

This is a rather unique structure. It has no share capital, and for reasons that we've encountered before with other incorporated entities, Madam Chairman, it seeks incorporation by a private Act simply because there is no public legislation available that would really duplicate the terms and provisions that these particular petitioners are trying to incorporate.

MADAM CHAIRMAN: Could we read into the record that there are no model Bills which relate to this subject, and secondly, that the advertisement requirements and other matters relating to the Standing Orders have been complied with?

MR. RITTER: Yes, Madam Chairman, that is correct.

MADAM CHAIRMAN: Thank you very much.

Welcome gentlemen. As the Private Bills Committee we hear petitions from various groups where there isn't legislation that fits their particular needs. As a committee we are made up of all three political parties from the Legislature, and we were selected by the Legislature to function in this capacity.

Our normal procedures are that we hear petitions through the session and then at the end of hearing the petitions we have a process of deliberations, at which point the committee will make a recommendation to the Legislature as to whether to proceed or not to proceed with a particular Bill. The Bill will go through the normal process within the Legislature - second reading, committee, and third reading, et cetera - but that deliberation will take place at the end of our hearing process.

I'd like to welcome you here today, and I would ask Mr. Thomas if he would like to make a few opening comments to the committee before we start.

MR. THOMAS: Thank you very much, Madam Chairman and committee members. I would like to bring you a short history of the development of the institute, if I may, which I think may shed some light in regards to the specific objectives and then the technical aspects. I'm sure many of your questions can be

handled by Mr. Kelly and Mr. Johnson. I'm a builder in Calgary.

The basic objective, as I'm sure you've seen from the Bill, is to provide graduate designation by a legislative authority. This process actually started in August 1986 when a strategic planning committee was formed from the Calgary Home Builders' Association to specifically look at the objectives of their association at that point in time. There was recognition that there was a significant number of builder failures in the building community, obviously of grave concern to the entire industry. In November New Home Warranty was invited to participate on the committee to provide some input and information regarding specifically some of the rationale or reasons why we've been seeing a number of builder failures.

In essence our objective at that time was simply stated: to promote builder professionalism. Obviously, as I'm sure you have heard over time, one of the problems of the home building industry has been the recognition of the builder in his professional abilities. A builders' certification and accreditation committee was formed in November of 1986, and that committee began to conduct an evaluation of what kind of educational programs would be available to builders to upgrade their skill levels. We looked at programs from CMHC, Brown College in Ontario, SAIT and NAIT within our province, the University of Calgary, the University of Alberta, and we also looked at a program that was offered from the National Home Builders' Association out of Washington, U.S.A.

In December New Home Warranty provided our specific committee with outlines of a study they had completed which showed the strengths and weaknesses of builders specifically. If I could just quote some of that. They conducted an extensive study between 1981 and 1985 which showed clearly that the major reasons for the insolvencies of builders were because they lacked skills in specific areas. Those areas were construction management, finance and banking, sales and marketing, construction contract and law, and estimating. That study also provided the startling statistic that over the period studied nine out of 10 builders were not in business three years after they'd started their businesses. The institute believed the need for a formal, structured curriculum was obvious.

We continued to review the program specifically from the National Home Builders' Association in the U.S.A. because there were some strong parallels between course content and the objectives we had laid out. Then we defined specific courses, and they were business management, finance and budget, estimating, project management, computer applications, land development and planning, zoning, energy efficiency, building codes, sales and marketing, scheduling, construction technology, and building technology.

In February of the following year, 1987, we began to hold meetings. We met with the structures department of SAIT and Bill Taylor from the department of advanced education of the University of Calgary. We made a presentation at New Home Warranty's annual meeting, at which we had 65 builders in attendance, and we received resounding support from the building community at that point in time that we were on track to provide an educational service.

We secured the full course materials from NHBA at that point in time and began to look at rewriting those courses. In April of the same year we went further in regards to the definition of a builder, specifically some detailed development of his skill levels and what would be required. We then sent a committee to Nebraska to attend courses that were put on by NHBA to begin to evaluate the program that was offered to us, and at that

time we finally received some interim funding from the New Home Warranty Program, who gave us a \$10,000 grant for initial research.

We conducted meetings in June with Canada Mortgage and Housing, with Employment and Immigration, and with Municipal Affairs, as we were beginning to look for funding for course development and the formation of the institute. We developed a strategy for implementation of the courses in the program, and we prepared our incorporation documents in August of '87. We applied for registration as a nonprofit company in September. We had a meeting with the Department of Municipal Affairs in September of 1987, resulting, in a period of time later, in grants to the institute of \$200,000 plus an additional \$50,000 from the Department of Advanced Education which allowed us to proceed to complete course development.

We were incorporated in October of '87, and we offered our first course, on business management, in the same month at SAIT in Calgary. We sent out our registration. The maximum number of students per course that we could handle was in the range of 25. We had 78 applications for our first course, which gave us an indication, we thought, of the potential success of the program. A week later we had an additional 150 responses to actually register in the courses. By November we'd completed several courses. Estimating, marketing, construction law and contracts, and business management were all completed, and we also began to offer the courses in Edmonton. We continued with meetings with all parties who had contributed at that point in time, including CMHC and Canada Manpower, and the balance of the members of the Alberta Home Builders' Association through Red Deer and Lethbridge and Grande Prairie and Edmonton and Calgary.

10:16

As the institute has developed, over the last year in particular, we've now completed the entire number of courses that I've outlined to you. We have over 600 students registered in the program, and we will have our first graduates this spring, approximately six, who have completed three years of work and taking courses.

In order to obtain a master builder designation, the builder student will have to complete 12 courses that I've previously outlined, six of which are mandatory. Those are the core courses or the essence of the skills required to give a builder a professional designation. Those mandatory courses are business management, finance and banking, construction contracts and law, sales and marketing, building codes and standards, and estimating. We have optional courses that are also available to them, and we've also started an executive seminar program specifically geared to senior management. I should add that all of the courses are open not only to senior management of builders but to all people who are involved in the building industry. If there's anything that we can do, it's not only to raise the level of professionalism of the builder but to train some of the young builders for tomorrow and specifically offer them career opportunities.

We will continue to conduct courses twice a year under our executive management series specifically geared, as I said before, to senior management, for presidents and for team building. That was the other seminar.

Upon completion of the 12 specific courses, in order to receive his designation, the builder must apply to the institute. He must also demonstrate a minimum of five years' experience in the residential construction industry as either an owner or in a senior management position; i.e., a decision-making position as

in financial or construction management. That designation will remain the property of the institute and subject to a yearly review and renewal but actually can be taken away at the board of directors' discretion if one is not in fact adhering to the code of ethics and standards that are set by the institute of the building industry. A company, on the other hand, can only advertise itself as a master builder if it has in its employ a certified master builder and holds membership in the New Home Warranty Program in our local Home Builders' Association.

That's a brief history of the program in regards to our development. We thank you for the opportunity to be here today and welcome answering any of your questions.

Thank you.

MADAM CHAIRMAN: Thank you very much, Mr. Thomas.

Committee members, now we will go into the part where we have questions. Does anyone have any questions for the petitioners? Mr. Musgrove.

MR. MUSGROVE: Well, the question is: if a person, then, is going to be in the home builders' business, is he going to be required to have a master's in home building?

MR. KELLY: No. It is strictly a voluntary program which is put together for the enhancement of the qualifications within the industry. There is no requirement for any builder in Alberta or any subtrade or supplier to take the program. What it does for the individual who takes the program is give him the opportunity to show to the public and to his peers and others with whom he does business that he has gone through the institute's program and upgraded his qualifications as an individual and an owner of a company, but it's strictly voluntary; there is no requirement.

MR. MUSGROVE: Well, I think it is commendable that they have this type of training for home builders, but why does it take legislation, then, to form your home builders' program?

MR. JOHNSON: Perhaps I can answer that. The existing incorporation, sir, is under part 9 of the old Companies Act, which I'm sure all of the committee members are well aware suffers from severe problems, since part 9 was the only surviving part of the old Companies Act when the new Business Corporations Act was passed. You'll undoubtedly also recall that the volunteer incorporation Act is still somewhere in limbo and has not yet come before this House. So there are some business difficulties in trying to operate under part 9 which are becoming more and more apparent to companies incorporated under that particular section, which was the old way of incorporating an association rather than the Societies Act.

In addition, the designation of master builder was important to the industry in recognition of carrying out this program that's been described to the committee. We believe that a privately incorporated company under the old part 9 would not really have the power to give that designation with any force and effect in the public sense. While we, of course, recognize that one cannot rise to the university baccalaureate level - we're strictly speaking about a diploma or a certificate - nevertheless, if a designation of master builder is supported by legislation, in our opinion it then means something of significance, and it is exclusive, of course, then to this educational program.

So the reason is twofold. The operation under the private Bill as an incorporated company becomes much more viable from a business sense in terms of being able to deal with banks and

others. In addition, that this does give the master builder designation some force and effect is the underlying reason.

MR. MUSGROVE: Thank you.

MADAM CHAIRMAN: Mrs. Gagnon.

MRS. GAGNON: Yes. I understand that this has actually been in effect now for some four or five years, so it's not that anything new is coming into being. The programs already exist and are very popular or seem to be very popular with the building industry; a lot of individuals want to take the courses and so on. I guess what I'm concerned about, though, is what is the effect on the consuming public? Who pays the costs of this program, the individual who takes the program, the company that employs that individual, the home buyer in the long term, or are there user fees for people taking the courses? What is the impact on the purchasing public?

MR. KELLY: The programs are subsidized by the residential construction industry itself in the sense that the total costs of actually putting on the programs are paid for in part by the industry. A builder or an employee of a building company or a subtrader or supplier pays approximately \$195 per course to take the program. Of course, that fee is at least 50 percent deductible under the Income Tax Act, and he may deduct that from his earnings. The costs for a purchaser of a home are practically nonexistent from the point of view that it is something that is to the benefit of the company and is a cost of doing business for the ongoing operations of the company. So there are not any other assessments with regard to the course.

As Mr. Thomas pointed out in his brief summary, we have worked very closely with Municipal Affairs housing, and the Municipal Affairs department has contributed about \$200,000 for course development so that we're able to keep all of our fees at a minimum. As well, the Department of Advanced Education has provided a \$50,000 administration grant so that the costs for the ongoing operations of the institute are small. In addition to that, the New Home Warranty Program has given about half a million dollars in both dollars and time. It includes the basic operations and administration in conjunction with the institute, so that the costs of doing the administrative and operational parts of the graduate builders institute are industry funded and not funded at all by the consumer or anyone who purchases a new home.

MRS. GAGNON: Just to follow up quickly, please. Have you worked with the Alberta Association of Architects, for instance? Are there other groups that you are in consultation with as to the appropriateness of the courses and that kind of thing?

10:26

MR. KELLY: We are working extremely co-operatively and closely with the northern and southern institutes of technology, who are providing all the facilities and all of the instructors in co-operation with the industry for the courses, as well as Red Deer College and Lethbridge and Grande Prairie colleges. So there is a tremendous amount of co-operation between the technical institutes in the province. In fact, in developing courses for the institute, we have relied greatly on SAIT and NAIT and the other junior colleges. In addition to providing a training/education program for existing builders, we are also working very closely with SAIT and NAIT to develop a program that would be beyond the apprenticeship training program, which

would be funded totally by the industry, whereby a young graduate of high school who has a desire to become a builder or subtrader or supplier within the industry can take a program which is endorsed by the institute and provided in co-operation with SAIT and NAIT and the other junior colleges around the province. He can take a two-year program and graduate with a master builder designation in conjunction with working with a current builder or subtrader or supplier.

So it's an enhancement of the industry from the grass roots of high school graduates right through to builders who are in their 60s, who have been in the industry for, in some cases, 35 and 40 years, and who are now going back three or four times a year, taking training and education courses to be a better builder. It's something right from the grass roots through to the builders who started in business in the '40s and '50s.

MRS. GAGNON: Thank you.

MADAM CHAIRMAN: Mr. Gesell.

MR. GESELL: Thank you, Madam Chairman. First of all, I seek some clarification from you. I appreciate that we're talking about the principles of Bill Pr. 1, but I also seek some clarification about certain sections within the actual Bill, and I hope that is in order as well.

The first question I have really is: who does this apply to? If I understand the structure of the building industry correctly, we have developers out there who actually try to create the environment that people actually will end up living in. We've got some builders that construct some of the homes in those areas, and we've got a number of subtrades that actually do some of the work in order to create that environment. Now, some of them might do all of these functions. Some of them are specialized. Who is it intended for?

MR. THOMAS: When the program was initially developed, it was specifically applying to management of builders. That's specifically where the initial problems lay; builder failure was a result of lack of management experience. We have to recognize that many builders only build four to five homes a year. We have many small builders within the province, so you may have an individual with strong technical skills, but he may lack skills in finance and banking or business management.

We focused initially specifically on the small builder and providing him with those management skills. What has evolved is that we have offered more courses. It's now in essence a career opportunity, because we welcome and are receiving students from other parts of the industry, from land developers, from electrical firms, from other components of the industry. There's an opportunity for them to develop skills as well. It's wide within the industry.

MR. GESELL: I appreciate your earlier comments as well, where you indicated that the majority of failures between '81 and '85, I think you specified, was due to a general lack of business practice. It's really a situation of running a business effectively. My follow-up would then be that that to me is more in line with, if I may call it, project management, scheduling of activities and materials in order to get a project completed. It's a general business sense as apart from some of the more detailed things you were talking about with respect to land use and perhaps planning, surveying, and engineering, which most of the builders or subtrades use some professionals for.

Now, could that general business practice that needs to occur within either developers or builders or both or subtrades not be obtained from our existing – and you listed the organizations you've talked to – CMHC, SAIT, NAIT, U of A, U of C, and even the National Home Builders' Association? Is that general business sense, that education, not available right now in those institutions?

MR. THOMAS: Some courses in terms of general business sense are certainly available from any technical institute, from any university. Many of the individuals who choose a building career do not have the prerequisite qualifications to enter technical institutes and universities, first. Secondly, many of the courses that are offered are more theoretical in nature; that is, business management is referred to be business management. What the institute is specifically offering is very specific courses. In essence, the courses are reviewed, and in many cases our guest instructors are builders who are actually operating within the community. It's builders working with builders or industry people working with industry people. It's not just business management skills. There are other aspects. Failure just doesn't come from business management. You might have a successful businessman and well financed, but he may not have the technical skills to work as a builder as well. A successful small volume builder is truly a professional who should stand up with pride because he's a person of many talents, and that goes way beyond just business skills. That's construction and technical skills as well.

MR. GESELL: Madam Chairman, I've got your note. I'll be brief. Instead of engaging in dialogue, I'll raise a number of issues, and you might respond at the end. It might cover some of the other questions, and I'll do it in a very rapid fashion here, if I may.

I have some questions – and we're getting into some of the details now – about the structure of this particular board that we're talking about. Initially, under (2), seven members are designated specifically in part of the legislation, and then when I look at section 7, we have certain appointments. I'm not quite sure how the two relate. What actually happens to the first seven members that are named in the legislation and how are they actually then replaced? Then under 7 those seven members select the other members up to a maximum of 15 in total. The question I have for you is: how are the public interests represented there? As you know, our professional and occupational legislation calls for a balancing of the trades occupations and public input so that both are served effectively.

In section 3 there's some reference in (d) and (e) and then later on as we go through it, to a company. "Company" is not defined; I'm not quite sure what that means. Is it the institute we're talking about, or is there a separate organization being contemplated?

In item 4(3) I seek some clarification of what other functions a director may carry forward that he might be paid for that might not be in accordance with the objects of this particular institute.

The question I have in 6 relates to membership. If I may correlate that to section 8, the board of directors basically – and when we talk about "members of the Board," that's the board of directors, if I read the definition correctly – makes all of the decisions. Who are the members, and what is their function? I don't get an appreciation of that in this proposed legislation.

There's some concern that I have with 10, which appears to me to set up a separate educational institute structure to

educate. I've questioned whether there was a gap; is it really essential to have that?

I would ask some clarification for 15 and 16, because it seems to indicate that this institute would not be subject to other laws within the province.

The consequential and commencement sections, 18 and 19, I believe would be related to the incorporation that you've had since 1987 and a carry forward of that, if I understand that correctly.

On 17, though, I would ask some questions why this institute would be separate from other nonprofit organizations that would have some responsibilities to the corporate registry and the Department of Consumer and Corporate Affairs.

Thank you.

MADAM CHAIRMAN: Thank you.

Mr. Johnson.

10:36

MR. JOHNSON: I'll try and remember all those points more or less in order. Perhaps following the order of the Bill would be useful.

Perhaps the first thing would be a general statement so the committee can understand about the overall structure of this particular group and why that took place. That the structure really was intended to take the form of a board of trustees is a relatively good concept to keep in mind. The idea was that the industry basically, through two appointments from the Edmonton Home Builders' Association, two from the Calgary Home Builders', two from the New Home Warranty, and one from the Alberta Home Builders' Association, would comprise what you might call the seven original members. The board of trustees concept was that the members and the directors are one and the same. In other words, the directors are the only members. It is different in that sense from many other situations where the persons taking the courses become members of an institute or become members of something.

The idea was that the management or administration of the institute was placed in the hands of a group of trustees, in effect, who are basically appointed by those four organizations. They in turn can then expand the board up to 15 in other areas of expertise, not necessarily members of those four organizations. A case in point is that I am a member of the board, and I am also a general counsel to the New Home Warranty Program as it happens. In addition, I'm not a builder, but I happen to have written the law and contracts course for this institute, and I've also taught it. I would like to come back to that in a minute on your earlier question as to who that applies to.

Basically, answering the first question, the members and the directors are one and the same. That is intended to keep that number small, less than 50 in fact, for a secondary reason, and that of course puts this into the ambit of a private company insofar as the corporate registry is concerned. The corporate registry itself I'll come back to in a moment. Basically, then, the institute at present I believe has come up to 13 or 15 . . . We're up to 15 now of the board of directors and/or members who are one and the same. That group of 15 is comprised of somewhat of a cross section, including persons like myself. That is designed to conduct the affairs of the institute, run the business of the institute, and open the courses to everyone in the general public of Alberta. Anyone in Alberta can take the courses. You don't have to join something to do it. It's offered to the public at these reasonable fees that Mr. Kelly alluded to earlier. I hope that perhaps explains the basic structure behind it.

You've also noted that it doesn't have share capital. The idea to it, of course, was similar to an association of a nonprofit type. I happen to have done this in many areas in the past with such things as Canadian Mental Health and other organizations of that kind. Generally, the procedure there is to stick to something that looks more like an association. Therefore, in most of those, membership is open to anyone, and they do not get a share per se, but they get one vote at any meeting of the company. This one is different. The students do not get to be members or vote on anything. Only the members and directors can vote. That, of course, has to do with the preparation of the courses, the delivery of the courses, obtaining the personnel to lecture, and so on.

Regarding number six, those three clauses, 6(a), (b), and (c), were purposely inserted for three reasons so as to get into the area of dealing with the corporate registry down the road. There is apparently a rather difficult legislative gap with the corporate registry in terms of a privately incorporated incorporation under a private Bill. Apparently, unless you are very specific in a private Bill, the corporate registry feels they don't have any other Act under which they can deal with a company. We wanted to ensure that future filings with the corporate registry were those which we felt were simple and inexpensive for this organization, since it doesn't have money for great expenses and auditors and so on. Furthermore, we wanted to be sure that the company would, however, have a status with the corporate registry into the future, primarily in case it dealt with other provinces or if it was to go into something down the road such as construction of a building, in which case, as you well know, you need a status certificate if you want to get a mortgage. So we felt we had to have a status with the corporate registry.

The three clauses in number 6 in effect make the membership of this group of 15 that we're talking about. First, they're limited to members of the Alberta Home Builders' or the New Home Warranty, and any invitation to the public to be on the board of trustees is prohibited. What that really means is that memberships are not transferable. That is an essential to a public company designation.

The number of members being limited to 50 or less is the second one, and that comes straight out of the old Companies Act, which a lot of you will recall limits private companies to 50 or less, which just happens to be there. It does apply to this, of course, because we felt this board of trustees at 15 would work well within that. But of course if we had 1,000 graduates, that's one of the reasons you can't let the graduates become members in that sense, because you're getting into a public company domain. Really, public company rules are there to protect the public against securities transactions. It's not really appropriate for an association of this kind.

Finally, the (c) one is the prohibition of the membership transfer. The memberships are not open to the public, which in a sense is trading in securities, if you want to call it that, and the number is limited to 50. The memberships, once obtained, are not transferable. That's the effect of section 6.

Under Board of Directors, clause 7, that is the standard wording for the operation of the business of the company and any company incorporated under any Act. It gives the board of directors all the powers to operate the company according to the direction of the board of directors.

The terms of office and so on are all set out in clauses 7 and 8. Then they do all their internal business things. Of course, those are simply business reasons that are there so that the company can do business in the normal sense.

The affairs of the company being managed by the board contains - the main clause there under 10 is (b), which is the clause which refers to this master builder designation. You'll notice that refers only to diplomas or certificates, so we're not encroaching on any area of the Universities Act or other Act. In addition, the designation of master builder can be the name or some "other similar," and the word "similar" was one that was purposely put in there so that we can't run off and call somebody an MBA or something. It has to be something like master builder.

The bylaws which would be made under that particular clause would be more or less the standard bylaws of any company, which have to do with how you call meetings and those kinds of things, so we have that particular to come yet. We wouldn't include that normally in the Act because the bylaws, as many of you know, is about a 30-pager in some instances if you get lawyers that are pretty wordy, which I tend to do. I guess you've already noticed.

As far as clause 15 is concerned, the application of other laws, you've astutely pointed out a typo I didn't notice since I received this Bill from the Queen's Printer. First of all, I'd like to point out that in clause 16 the word "not" appearing in the second line is "now." So this would then read:

The powers herein granted shall be subject to the general laws now or hereafter in force in . . . Alberta which I think will be helpful, rather than the word "not."

But I would like to explain the first half of 15, where we do say:

The Labour Relations Act and the Employment Standards Act do not apply to . . . professors, associate professors, assistant professors, lecturers, instructors, teachers and any other academic members.

Now, certainly those laws will apply to any employees of the institute, clearly. The method of selecting lecturers is ad hoc. For example, I was asked to teach the law and contracts course in both Calgary and Edmonton on the first go-around, since I wrote the course. That is done for the reason that it's more or less a consulting type of thing, where we go out and try and find the best qualified person to deliver that lecture from whatever part of the community we can. What we've learned to date is that if you try, for example, to lay a technical law course on a bunch of subtrades or kids coming out of high school, it's a waste of time. They're not going to understand it any better than a lot of first-year law students do. What I tried to do was write that course in laymen's language. Since my particular practice has in a large part been related to the warranty program and to construction law, I also tried to write the course so that I felt it would be easily understandable, if given by the right lecturer, to anyone with a grade 12 education or perhaps even a grade 9 if they're bright. This was the objective I had.

10-46

I did find the reception to that course extremely good in that everybody seemed to understand what is normally a very dry law course. There's nothing worse than contracts. Law is bad enough, but contracts put everybody to sleep instantly unless you can relate it to their day-to-day experience. I tried to write the course so that I could go through what happens to a builder over a span of building a house. The course is set up that way: what happens before you start the house, what happens contractually during the commencement of construction, during construction, and after construction, which of course is warranties, follow-ups, and various kinds of legal disputes that can arise. So that in general is the reason the Labour Relations Code and the Employment Standards Code, for example, would

not apply anyway to a consultant coming in and hired for what I might add is a very nominal fee so that you're practically sort of a volunteer, to that kind of individual. This of course clarifies that to ensure that the company is not going to be forced into the extra administrative problem and not only that but scare away a lot of lecturers anyway if they think they're getting involved in things like UIC and things of that type. So that's the reason for that.

As far as clause 17 is concerned, I went down and met with the registrar of companies about this. This was an add-on after I'd done the first draft. What took place there was that the corporate registry did advise me that there are many companies incorporated under private Bills which don't deal with the subject of the corporate registry and the filings on the status of the company. They apparently take the position that if that's the case, they won't accept any filings. The problem with that is that it doesn't necessarily affect the legal status of the company, but it certainly affects your right to get a status certificate from them, which I felt is highly important for the future of any company that wants to do business in any form in Alberta, or out of Alberta for that matter. For that reason, these clauses would require what the company has to file with the corporate registry each year, which is exactly the same as a private company; it's their registered office and the names and addresses of the directors and officers.

It would also carry on the transference from the old company to the new. Clause 18 does that, under which all of the assets of the pre-existing company, which you've astutely pointed out has been going for about four years, go into this company providing you agree to incorporate it under this Act. It includes mainly copyright, because those courses do belong to the present company.

At the suggestion of the corporate registry, under clause 19 the old company would be deemed inactive. Now, they gave us a choice of saying they would strike it off or they would make it inactive. My feeling was that if it has the same name and it was struck off, our luck would be such that the first time we asked for a check on that company, the parties that were checking would get an answer back on a type-out from the corporate registry saying it was struck off. What a disaster. So I thought it would be better in the long run to have it inactive; then at least we could get a chance to explain to them that there's a private Bill they didn't notice and that it is active. So that was the general reasoning to all of that.

I think there was one other point you raised, sir, I've kind of forgotten what it was. If I've forgotten something, I'd be glad to address it.

MADAM CHAIRMAN: Thank you very much, Mr. Johnson. Mr. Severtson.

MR. SEVERTSON: Yes, Madam Chairman. The previous member asked most of the questions I was going to ask. But just for clarification of 6(b), "The number of the members of the Institute is limited to 50," is it because of the present Companies Act that the limit has to be there?

MR. JOHNSON: Yes, Madam Chairman, that is directly out of the present wording of the old Companies Act, which is of course what now exists for part 9 companies, since we haven't passed the new volunteers incorporation Act as yet. So that number of 50 was one of the three tests as to whether a company was public or not. The significance of being a public

company can be pretty - what would you say? - frightening in some ways due largely to expense. Public company rules are generally there to protect the public against securities frauds and things of that kind. It also involves a series of strict requirements for audits of various kinds. Now, this particular organization does, of course, have review statements done, but the cost of an audit is pretty prohibitive. The money coming into this company, as you've already noticed, is all pretty much donations, voluntary, or grants. Quite often if a department of government gives a grant, they themselves attach to that a requirement, perhaps, of a government audit, which is certainly acceptable to this institute. But that 50 is simply a fictional number that comes out of the old Companies Act.

MADAM CHAIRMAN: Any further questions?

MR. SEVERTSON: No, that's fine, thank you.

MADAM CHAIRMAN: Mrs. Hewes.

MRS. HEWES: Thank you, Madam Chairman. If I understand it, this is an institute without an institution. That is, you are running an institute, a training operation, there's a freestanding board, but there's no freestanding institution at this time. Is that correct?

Madam Chairman, to any one of the gentlemen: what was the purpose of creating a separate institute? Were there any negotiations with existing institutions such as NAIT or SAIT to offer a diploma of this kind within their institution and to work with them as opposed to setting it up as a separate . . .

MR. KELLY: There were, Madam Chairman, ongoing negotiations in the early stages with SAIT and NAIT and Red Deer College and Lethbridge college. Because there were no specific courses available through SAIT or NAIT, those institutions recommended to us that they would provide us with certificates of attendance or certificates of completion. But actually to have a designation provided by the industry, it was agreed with SAIT and NAIT and all the other institutions and with the Department of Advanced Education that the institute would be better off providing its own designation as an industry. This is why we proceeded in this route. The courses that are available through the industry and the institute are designed specifically for the residential construction industry, where courses at NAIT, say in management or in construction law, deal with the broad spectrum and do not get specific.

MRS. HEWES: I understand that, Madam Chairman, but it seems to me that at this point in time with the experience you have, have you gone back to them and now discussed the potential of a diploma from the institution itself?

MR. KELLY: The diploma that they would provide us with would not have the recognition among the industry that this designation would have. For example, a certificate of graduation from SAIT is already held by many builders. A lot of builders have taken the technical program through SAIT as sort of their entrance into the residential construction industry before they even incorporated their own companies. What this designation attempts to do and will do is provide recognition from the industry to an individual who has taken the time and given freely of his time to take the programs and the courses and actually be recognized by his peers.

MRS. HEWES: Mr. Kelly, what I can't quite clear up in my own mind is whether this is enhancing or controlling, and it's between those two things that I'm wrestling.

Madam Chairman, I have two or three specifics. In 6(c) what would be the interest of a member? Membership cannot be transferred, but what about the interest of a member being transferred? What are we talking about there?

MR. JOHNSON: The members, of course, in effect own the assets of the institute, which consists at this time largely of a very vast volume of copyright material. Each member obtains one vote, so it's like a shareholder position except it doesn't have shares. It's actually the original incorporation that limited the company to a guarantee rather than a share, and the guarantee was \$1. That's a traditional way of incorporating besides a share structure, as a company limited by guarantee.

10:56

This is similar. The best parallel probably is a society member. What does a society member own? In most societies, say the Red Cross or someone, you have one vote when you go to the annual meeting, and also technically that group owns the assets of the body. So for a person to say, "I have a membership which entitles me to one vote," and in this case one-fifteenth, "in how the assets are administered," we don't want that ever to be allowed to be transferred by the individual member to another member. That also, incidentally, falls into the securities type of problem, where you get a private company - that comes actually directly out of the old private company definition as well, that you cannot transfer an interest in a private company except through the company itself, directly across. Because if you do that, you're getting into something that's very similar to a trade in securities. So down the road if we let members sell their membership to someone, if this institute became reasonably wealthy, which would amaze me, but if it did, it's conceivable that a membership could have a value. It might even have a value someday, hopefully, of prestige alone. For a person to say, "I am a member of the Alberta Home Builders Graduate Institute," we hope will mean something. But we don't want a trade developing. We don't want a trading relationship to develop among our memberships, and that's the reason for it.

MRS. HEWES: Madam Chairman, it seems to me that it could also relate to, as you say, the ownership of copyrights and other materials. I have some concerns about that.

Madam Chairman, I am not comfortable at all with section 15. What would be the impact on this particular Bill if this section were simply deleted? I feel it gives very wide-sweeping powers to the institute, powers that would not ordinarily be given under any circumstances. It is almost in not quite conflict but is almost incompatible with 16, with the following one. What would be the effect of taking it out? The institute certainly can enter into contracts with consultants on their own.

MR. JOHNSON: Yes. To be honest with you, Madam Chairman, to the member, that's word for word out of every other private Bill that's ever been passed in Alberta that runs anything educational. I reviewed them all, and I took it word for word out of every private Bill that's gone through this Legislature before. I thought it was a good idea because that in fact is what's going to happen. But when you say it has never been granted before, that is inaccurate; it has been granted in every case. It seemed to me pretty logical, because when you think about it, when we're talking the Labour Standards Code

only and the Employment Standards Code only, we're only talking in that very clause about the educational or academic staff, who are practising lawyers, practising accountants, bankers. People of that type that are giving those courses are the only people we're talking about. Every other employee is subject to those laws including - I think at the present time there's a staff of two. They are, of course, bound by those. That clause itself defines who we're talking about.

MRS. HEWES: I understand, Madam Chairman.

MADAM CHAIRMAN: Parliamentary Counsel, could you make a comment as to how the other institutions within the province deal with the labour relations?

MR. RITTER: Well, there are a number of educational institutions, as all committee members are aware of - we're presently reviewing two more, being Alberta College and Camrose Lutheran College, this particular session, and they do not have clauses like that. There are a number of educational institutions which have been incorporated by a private Act which don't have that. I'm sure Mr. Johnson would give the names of some of the other institutions which do.

MR. JOHNSON: If I could add one more, Madam Chairman. The answer to Mrs. Hewe's comment - I wouldn't have a problem directly with taking it out. I quite agree with you; it can be done by contract. I was simply trying to say that I fell into this thing perhaps because I was looking at other Acts, and I thought, "Oh, that's a great idea; I'll put it in." Seriously, you're quite right; it certainly can be done by contract too.

MRS. HEWES: Thanks, Madam Chairman. Just one other question and then a comment. Section 19: would this jeopardize or put at risk any claims outstanding against the old company?

MR. JOHNSON: No. Becoming inactive is another reason I thought was a good idea, and you've touched on it directly. Of course, if the company is struck off, it would, because then anyone wanting to sue the old company would have to restore it to the register and then sue it. An inactive status allows anything like that. It's kind of like an inactive member of the Law Society. You're still a member of the club legally, but you're inactive.

MRS. HEWES: My last question then, Mr. Chairman. You've been in business for four years going on five. Has it made a difference? Are there fewer house-building companies going out of business? Is there less litigation? Is it easier to get start-up financing? Can you give me some idea if it's working?

MR. KELLY: We have liaised very closely with the financial community. We've liaised very closely, as I said, with the various educational institutes. There are ongoing discussions with all elements of the residential construction industry, including subtrades, suppliers, builders, and their staff. There has been a significant improvement in the quality, for example, of the financial information which builders are now bringing to their financial institutions. The banks are really impressed with the quality in the enhancements which have been made by builders in their day-to-day operations. Builders are finding it much easier now to go in and sit down and discuss financing things with their banker because they understand the financial com-

munity better and what's necessary for a banker to approve and review an operating loan for a builder.

There has been a significant decline in the number of insolvencies in our industry. For example, from 1985 to 1987 in the Edmonton area alone we had 12 insolvencies, which caused some very major problems for home buyers. We have had two insolvencies since the institute commenced.

One of the important things the institute is doing through its programs and its ongoing counseling services is that if a builder or a subtrade or a supplier is encountering difficulties, he can call the institute. The institute will send someone out to help them with regard to preparing a cash flow statement, preparing a marketing plan, talking to a land developer or someone who requires specific things. The institute is not just a training/education program. It is also a free consulting vehicle available to builders, subtrades, and suppliers throughout the province.

MRS. HEWES: Madam Chairman, I'm sorry. I do have another one then. That wasn't clear to me before. Do you mean that if I'm in the business, am not a member, have never taken any one of your courses, or have no connection with the institute whatsoever, I can phone up and say, "Look, I'm having difficulty; I'm getting hassled by my bank," and you'll come out and help me?

MR. KELLY: If you are a member of the Alberta Home Builders' Association or a member of the New Home Warranty Program and are actively involved as a builder or a subtrade or a supplier in Alberta, these services are available to you free of charge.

MRS. HEWES: What if I'm a consumer?

MR. KELLY: If you're a consumer, you come to either the Alberta Home Builders' Association or one of its locals in Calgary, Edmonton, or Red Deer, or if it's an item dealing with a contract with a builder, you then would go to New Home Warranty for that advice. On the consumer side you have either the Home Builders' Association or New Home Warranty. If it's on the builder side, it's through the institute. Everyone's interests are there and recognized by the industry.

MRS. HEWES: Thank you, Madam Chairman.

DR. ELLIOTT: Madam Chairman, if my questions are repetitious, just say so and I'll withdraw them and read *Hansard*.

What's the relationship between the program, as we call it, and what I understand is the Alberta apprenticeship program now?

MR. KELLY: There is no direct relationship at all at this time. One of the items which is currently under consideration by the institute's board is a co-operative effort. Once a young person graduates from high school or an apprenticeship training program, if they want to enhance their qualifications any further and become more attractive as an employee for a builder or subtrade or supplier, they could go to SAIT or NAIT through the institute and take the master builder program.

What the industry will probably be doing in the near future is that actually builders would sponsor candidates whom they feel are qualified to take the program, and they will have a guaranteed position within a company as they graduate through the institute's program. It's an enhancement. What we're finding

is that it's very difficult for our industry to attract young people. The residential construction industry in Alberta is a wonderful way to earn a living and do business, and we want to continually bring more and more young people into the industry, and we want to enhance the quality of the individuals that are currently in it. This is why we want to liaise very closely with all parties in education and training in Alberta, so that young people who have a desire and want to be builders will have the proper vehicles available to them in an education program that will be specific to the residential construction industry.

11-06

DR. ELLIOTT: Thank you.

Madam Chairman, I understand the goals and objectives of the program, but how does the public gain direct access to the advantages of the program, other than the questions that Mrs. Hewes asked?

MR. KELLY: All of our programs are advertised through the catalogue of courses available. For example, as you know, NAIT in Edmonton publishes a list of courses which are available by semester. The agreement we have with the institution is that the institute and the residential construction industry have so many days to fill the course, and then if the course is not filled following that, they are open to the public.

DR. ELLIOTT: If I want to build a house, do I go to the yellow pages and look for a master builder?

MR. KELLY: Excuse me?

DR. ELLIOTT: Say I want to build a house; I'm a consumer. How do I take advantage of these wonderful things that are going to happen? Do I go to the yellow pages?

MR. KELLY: No. In fact, there is a program which is currently being developed between the home builders' associations and various institutions where if individuals do wish to proceed to build their own house, there will be some supplementary information available to those individuals so they will not make serious mistakes. There is a co-operative effort currently, for example, between the Edmonton Home Builders' Association and one of the community colleges - I think it's Grant MacEwan - whereby the industry is participating to help people who are looking to build their own home.

MADAM CHAIRMAN: Mr. Ewasiuk.

MR. EWASIUK: Thank you, Madam Chairman. First of all, I want to start my comments by saying that in principle I support the concept of association, and in this case for the purpose of increasing your proficiency as home builders. I support that in terms of professionals and individuals and industry as well.

Speaking of proficiency, I looked at your presentation and the courses you're prepared to offer, the mandatory courses relative to the optional courses. I would think the mandatory courses being suggested here are something that a builder, or any business for that matter, would take the initiative to enhance his own abilities in before he got into the building process. Looking at the optional courses from a consumer's point of view, I would like my builder to be able to have those qualifications. I'm looking at the building technology, energy efficiency, construction, and so on. That would suggest to me that I'd like to have

my builder have those, perhaps more so than the mandatory courses you're suggesting. Maybe you want to comment on that.

MR. KELLY: You've brought something to my attention which is now an error. This executive summary had been prepared a few months ago, and at a recent meeting of the board of directors, all the courses are now required to receive the designation. I guess, Madam Chairman, for the information of the committee members, we could strike out the words "optional courses" because now all the courses are mandatory.

There are also other courses as well that are available through the executive management program for owners, such as a management course for presidents and others. We are also in the process of continually developing courses; for example, now in co-operation with Municipal Affairs and the local home builders' associations, we're putting together a course that deals specifically with sales. As you see, there is a sales and marketing course here, but that particular course is primarily geared towards marketing and putting together a marketing plan. We're developing a course now for more sales-orientated people. We're also putting together, sir, a course for construction superintendents. These are the individuals who co-ordinate the construction of the home on-site or at a number of homes on a particular land development area.

The institute is continually looking within itself and at recommendations from the industry in developing more courses. One course that's just been completed that's not here as well is one on customer service, so that the owners and subtrades and suppliers of companies will know the importance of service and also how to deal with the problems that exist between a consumer and a builder or a consumer and a trade.

The program is continually developing programs, and your point with regard to that: yes, sir, those 12 courses are required. Now there are other courses which are being developed which will not be required and would probably be a combination of any 12 courses which are available.

MR. EWASIUK: Well, thank you for that.

Just a couple more, Madam Chairman. Again just going through your brief, perhaps I need clarification on this as well. You did say the survival rate of nine out of 10 contractors is about three years. This is where I need clarification. To qualify for the master builder's degree, one of course completes the courses but then also requires five years of experience. That seems sort of contradictory to me because you usually get the experience before the three-year period because you're losing them before the three-year period is up. Why the five-year requirement? What's the rationale for that?

MR. THOMAS: One of the difficulties, Madam Chairman, in respect of builders' survival at that point in time, which was in the mid-80s, was again the lack of skills. So the statement was that nine out of 10 builders didn't survive past year three. One of the requirements for builder designation is to have five years' experience. The only way a builder can develop experience, we feel obviously, is to raise his level of professionalism, and that's in essence what the institute is all about. First, the builder will take the courses. That's going to take him approximately two to two and a half years to get through the program unto itself. So really they're one and the same is what's going to happen. We feel that five years is not an unreasonable period of time. We expect to welcome students to the program. We wish to develop opportunities for the young people to enter the industry so they can actually take the courses for their two and a half or three

years, be gainfully employed, and in five years, in a responsible decision-making capacity, receive their designation as master builder.

MR. EWASIUK: Just one final question, Madam Chairman. For most professions when they issue designations and degrees, there's some follow-up and monitoring, and I guess there's some policing as well. What are your plans in that respect?

MR. THOMAS: That particular item is currently under extensive review as we've just developed a code of ethics for the institute. There is certainly an annual review that is intact. A meeting that is Friday of this week will confirm a designation of a point award on a regular basis to maintain your graduate builder designation. That will be earned by a continued participation in courses, by taking courses, contribution to courses in the form of instruction, and other contributions that may be beneficial to the industry as well. So there will be a point accumulation required over a two-year period or a one-year period to maintain your designation.

MADAM CHAIRMAN: Mrs. Gagnon.

MRS. GAGNON: Yes. I have a number of follow-up questions. Looking at 18, all of the assets in business will be transferred from the old company to the new company, and the old company will cease to exist or will become inactive. Within that term "business," are there any debts, and would the creditors, if there are any of the old company, be left hanging? Is this a possible scenario?

11:16

MR. JOHNSON: First of all, the good news is that there are no debts. This is forced of course, by government grants in particular, to operate on strictly a nondebt-, noncredit-incurring institution. My experience with the builders in terms of how they get people to lecture and the type of fees they pay and so on I'm sure will stay intact. Having experience and having taught one of the courses, I can assure you that I was working for about \$5 an hour.

In any event, the legal aspect of it is that it's similar to a corporate merger in the eyes of company law. If the Legislative Assembly allows this transfer of assets to occur per this, with the old company becoming inactive but not struck off, the registrar of companies transfer affects installing the file for the new company. There is an undertaking they will require to use the name, of course, and also to take over or be responsible for any debts.

I have more in mind there, something like negligence coming up, something like a negligence action. It would be more likely in that sphere than it would be in debt, because it would be, of course, a requirement that there be no debt. In fact, you could certainly make that a condition of any Bill, that when the asset transfer occurs there is no debt, period, except perhaps the current month's operating, whatever that is. Apart from that, the negligence side, it becomes a successor company in law, and a successor company is liable for any claims arising out of its pre-existence if it's the identical, same body, which it is. I can't imagine what sort of negligence action could occur, but I suppose if someone suffered some damage because of a bad bit of instruction; for example, that wasn't technically accurate - negligence, as we all know, can come from almost any direction and can come 20, 30 years later.

That would be another feature of saying it should be inactive, in my view, rather than struck off, as a little bit of protection there for the public as well.

MRS. GAGNON: I don't understand, though, why the old company can't just be dissolved. Why isn't it struck off entirely?

MR. JOHNSON: That's an option. That is an option. The registrar is actually the one who recommended this inactive status. As I say, I did think that was a good idea for the reasons I just mentioned. It leaves a body there that still exists. The technical thing is if a company is struck off and a person comes along 10 years later and wants to sue that company, you first have to restore the company to the register at the corporate registry, which incidentally involves a Court of Queen's Bench order to do, which is not cheap. The claimant is now forced into restoring the company to the register before there's anything legal to sue. The inactive status leaves it there. It's always available, let's say, to the litigating public to shoot at if it wants to. My own personal, solicitor's reason was the other one. On a search at the corporate registry, I had hoped that they wouldn't come back with a name search, because the name is identical, and say to some lender that it's struck off, because that would be very embarrassing if you were trying to get a mortgage.

MRS. GAGNON: I don't understand entirely how the law goes as regards transfer, but couldn't all of this be looked after by a simple fee of \$1 or whatever? The new company would pay the old company a fee to take over its entire business, and then everything would be clear.

MR. JOHNSON: It's possible. We're really talking about the status of the corporate registry. This arises out of my discussion with the registrar of companies, who seems to have a bit of a problem, I gather, with some private Bills that don't deal with any of this subject matter. They simply take the position that as far as their Act is concerned, the private Bills don't apply to them, which causes, in my view, undoubtedly endless problems if you're trying to do anything. The registrar felt that we had to deal with the old company for his registration purposes only, nothing to do with the ongoing litigation angle or anything else. What might be a good idea, for example, as well as this - I think the registrar's suggestion that it be inactive was a good one mainly for the name search thing.

As far as the assets transfer is concerned, I would very likely recommend to the institute, should the Bill be approved by the Legislature and passed, that we then enter into something like the Bulk Sales Act declaration, in which the old company will say, "There are no debts," under oath, and will actually do a transfer for a dollar under the Bulk Sales Act, and then they are creditor-protected thereafter. As I say, that would be one possibility. All that does is let those assets be creditor-protected. It doesn't necessarily mean, you know, that this negligence thing might become a problem, but it does allow the assets to be transferred in such a way that no current creditor is being done out of their money by a ploy of changing horses in mid-stream.

MRS. GAGNON: Just quickly. I know your fees are extremely low, but is it entirely nonprofit? Can anybody make any money out of this because this builders' graduate institute exists? Is there a profit motive at all?

MR. KELLY: No. The bylaws of the institute are very clear. There can be no dividends. For example, even for directors and

committee members who attend meetings, there's no per diem for that at all. It's all voluntary. Any capital which the institute does generate is all going back into enhancing existing programs, adding new courses, and things of that nature. In fact, coming up on the airplane this morning, Bob Thomas, the chairman, and I were talking about going to the industry and asking for some additional voluntary moneys for the institute so that we can continue to develop and enhance the various programs that we now have and want to add later. There is absolutely no potential at all for anybody to make anything from it.

MRS. GAGNON: The reason I'm asking is that as Advanced Education critic, I know a lot of our institutes - for instance, like SAIT and NAIT - are now in the business of selling courses. I know they're not making any profit; they're break-even. I just wondered what the situation was here.

My last question would deal with the optional aspect as regards the industry. Do you think that down the road it would become mandatory for anyone who wants to get into the home building industry to make sure that their employees are graduates of this institute? Is there a potential for control of the entire industry 10 years from now, let's say?

MR. THOMAS: Madam Chairman, speaking as a builder and recalling the period of time when the institute began and the difficulties that were prevalent in our industry, in my opinion if a select group of builders wished to have control of the industry, there was never a better time. The tack that could have been taken was to remove all competition at that point in time. In my mind, I welcome good competition as a private enterpriser functioning in this industry in the province, and I would rather compete with an individual who's well qualified than one who is not. There are many of us who took it upon ourselves to get involved, to educate our peers, and truly benefit the consumer and ourselves, of course. I guess it's a fine line between enhancement and control, if that's what's you call it. I don't ever perceive it as control. I truly perceive it as enhancement. Everybody wins. The builders win; the consumer wins. It's the best of all scenarios.

MRS. GAGNON: Thank you very much, Madam Chairman.

MADAM CHAIRMAN: Mr. McEachern.

MR. McEACHERN: Yes. I would like to say that I'm in favour of the thrust of this legislation. I think that education always helps. I've been a teacher most of my life and understand and, I think, appreciate the direction you're going here. I did want you to elaborate a little bit, however, on the changes taking place in the industry over the last little while and the changes anticipated by the direction you're going.

It isn't very many years ago that we had a lot of bankruptcies in the subcontractors because contractors weren't paying them, and there were some rather strange rules. Particularly, people that decided to build their own home often found themselves with half a home and somebody gone bankrupt and no dollars to finish, yet they'd paid a fair amount of money to the contractor, the contractor had subcontracted it, and so on.

MR. LUND: How is that relevant?

11:26

MR. McEACHERN: Well, what I'm wondering is: to what extent has the industry been able to deal with those problems,

and how will this help to deal with those problems? That's how it's relevant.

MR. KELLY: One of the things that the industry just introduced on February 1 was a comprehensive completion guarantee for the protection of new home buyers. This has been done in co-operation with the Alberta Home Builders' Association, the New Home Warranty Program, and through the training and education programs provided by the institute. In that new protection that is offered by the industry, in the event that a consumer does pay a builder or anyone else, a subtrade or a supplier, moneys which are not put back into the home, the industry guarantees that to \$25,000. As well, if because of insolvency of a builder it costs a consumer more to build a home, the New Home Warranty pays those additional costs for that consumer, again to a maximum of \$25,000. In addition to that, another element of protection is for the payment of subtrades and suppliers, whereby if a builder doesn't pay the trades and suppliers, there's also a \$25,000 fund for trades and suppliers to draw on as a result of their not being paid.

So the industry is really not only looking at the training and education programs; it's also looking at all the things that have in the past tarnished the image of the industry. Through actuarial analysis, through negotiations with government and legislators at all levels, and through dealing with municipalities on development of codes and standards to enhance the quality of homes, we're really attempting to professionalize the industry. I believe that if this Bill does proceed and is approved by the Legislature, it will go a long way to prove in the eyes of the public and everybody that this industry is extremely professional, is endeavouring to continue to improve itself and its qualifications.

MADAM CHAIRMAN: Mr. McEachern.

MR. McEACHERN: One other question, if I might? Or a point, I guess, really.

I, too, am bothered considerably by section 15 and would feel much better – it may be that some other colleges presently have that arrangement in their charters, but perhaps they should be changed rather than followed. I think the time has come to leave the relations between the employer and the employees in this kind of an institute under the provincial Employment Standards Code and would hope that you would move to remove 15 from the Bill.

MR. KELLY: Madam Chairman, as the president of the institute, I will instruct our solicitor to deal with Parliamentary Counsel and strike it out, if it's in the best interests of the Bill, and any other directions that you may have.

MADAM CHAIRMAN: Okay. Committee members, can we really focus our questions to the Bill itself.

Mr. Gesell.

MR. GESELL: I'm sorry, Madam Chairman. I want to apologize to the members. I took advantage in my earlier part there and asked a whole pile of questions. I'll ask one and a supplementary, and I'll wait my turn.

My questions deal with the board of directors. If I understand the situation correctly, the terms "member" and "board" are synonymous in this particular piece of legislation. Now, I seek some clarification, and it relates to sections 2 and 7 with some subsections. I draw a distinction here between the members of

the institute that are constituted by this piece of legislation were it to pass in the Assembly: seven initial members under section 2, and then under section 7 we discuss the appointment of directors and how those directors then elect other directors to the board. In subsections (3), (4), (5) we talk about rotation basically.

If I understand this correctly – and this is where I seek some clarification in the intent of what is being proposed here – subsections (3), (4), and (5) of section 7 do not apply to the initial seven members that constitute this particular board. Now, I know you have 13 right now already, but is it intended that those initial seven be life members? That's how I read this.

Not later than April 1st in each year one half of the Directors appointed under subsection (2) (a), (b), (c), (d), and (e) shall retire and be replaced, but that doesn't apply to the first seven members that are constituted by this piece of legislation. Could I have some clarification of that?

MR. JOHNSON: Madam Chairman, perhaps I could discuss that. The original group in clause (2) is the same group that originally incorporated the institute back in '87 or '86, whenever it was. That is tantamount to the incorporators of a company who sign the original application and are automatically the first provisional board. They're also the first members. We are perceiving that this Act newly incorporates the institute as a new baby, in effect, and that is the same group, simply for historical purposes, I felt, getting sort of the credit of being the original seven members.

Additions to membership or removals from membership is a subject normally dealt with in the bylaws of the company. To answer the question: once a member is named in clause (2), because it's an Act, is that person forever a member? That simply is a body, because you need some names in order to have an entity to incorporate in the first place. That's the group we see the Legislature making the original seven members under this particular Bill. Under the bylaws, which we have yet to pass – that would, of course, depend on the Bill passing – we would then include this 30-page document we propose. There is one now in the present company; it would simply move over to the new company. It contains all of those things in it: what happens if somebody dies; how you get rid of a member; how you reappoint directors in cases of certain conflicts of interest. We have a very good conflict of interest clause, incidentally, in that as well, which evolved in the New Home Warranty Program documentation. It's really just a matter of launching this thing off the ground with the seven names. Incidentally, these gentlemen consider it to be quite an honour to be named in this Bill. From there on they will then add the other five, presumably, which they now have, and then we still have the limit of 50 in there overall. But basically the bylaws attend to those kinds of problems.

MR. GESELL: Well, if I understand your answer correctly, it's to recognize those founding members, which I appreciate. That's fine. But if I understand your answer correctly, it's not intended that they be directors for life. This is the way I read this right now . . .

MR. KELLY: In fact, Madam Chairman, if I may just comment briefly, under the bylaws and constitution of the institute, a director can only serve two terms. He can only serve a subsequent term to those if he's on the executive board and going to

be the chairman. The bylaws restrict the number of years which a director may serve on the board.

MR. JOHNSON: That doesn't answer the question. Madam Chairman, if I might intercede. Think of it like a shareholder. That's how I like to think of it. Actually, if a person once is a member, they could be a member forever just like they own one share in something forever. If you don't want to sell your share, any more than you want to sell your car, you don't have to part with it unless you're removed as a member under the bylaws. Now, the removal of members under the bylaws, the ending of that designation, can arise through a number of different routes. One of them is that a majority vote of the board, for example, can remove a member. The terms Mr. Kelly's talking about are the directors' terms, but I think your question was directed more to the shareholder or the member. Now, in effect, if the board didn't take any action or that person never became involved in some form of conflict of interest or did something to discredit the industry - that's one of the tests of membership - then conceivably it would last till the person died. Then, of course, it would end because it's not transferrable.

MR. GESELL: Supplementary, Madam Chairman. It still deals with the board of directors and particularly section 7(5), which indicates that those directors that are elected would serve for no more than two consecutive two-year terms. If I read this correctly, the only directors that would actually be elected, the additional up to eight members, are the ones that the initial seven or subsequently appointed seven were to elect. Again, I just seek clarification. This section would not apply to those initial seven or those that would be appointed? I draw a distinction between appointed and elected here.

11:36

MR. JOHNSON: That is correct; up to 15.

MADAM CHAIRMAN: All right. Thank you very much. Are there any other questions?

Mr. Thomas, do you have any closing comments to make?

MR. THOMAS: Madam Chairman, very briefly, we thank you for the opportunity this morning. We hope we've answered your questions and concerns with respect to the objectives of the institute and specifically some of the technical questions in regards to changes that may be required. We hope to successfully move this Bill through.

Just in closing, I must again state that education in this industry is truly beneficial to the consumer and the builders, and it's not unique to Alberta. I happen to sit as the chairman of national education and training for the Canadian Home Builders' Association as well. There are programs that are modeled after what has happened in Alberta and several other provinces throughout the country, and there's a national movement afoot to upgrade and raise the level of professionalism of the entire industry across the country.

Thank you very much.

MADAM CHAIRMAN: Thank you very much.

Parliamentary Counsel, do you have any clarification statements you could make as to the questions that have arisen? I'm thinking in particular of the Companies Act, part 9, et cetera, that seems to have come up.

MR. RITTER: Yes, Madam Chairman. If I may, I'd like to bring some things out in the committee, just on a strictly legal basis, and perhaps our petitioners could answer. We've dealt with section 15. Section 17 I certainly understand, and indeed I had discussions with Mr. Johnson about making provision for registration in the corporate registry. Section 17 starts off with the words, "Upon Proclamation." I'm wondering if it was the intent of the petitioners to stick with the word "proclamation," or perhaps they meant "assent." Proclamation, of course, will require a minister to petition His Honour to proclaim the Act even after it receives assent. Is there in fact an arrangement made with a member of cabinet?

MR. JOHNSON: There's no answer to that except our ignorance of the term and the mechanics of the Legislature. We're certainly more than happy to take counsel's recommendation for that wording.

MR. RITTER: So I take, then, that we just replace the word with "assent." In other words, when His Honour gives his assent, then you'd like the legislation in effect. That clears up that question, Madam Chairman.

Then, very quickly, sections 18 and 19. The Companies Act provides for dissolution or for a number of corporate reorganization procedures to take place under an already present corporation. If the old company were to become inactive, would you be comfortable with achieving that outside the scope of this legislation; in other words, within the Companies Act under which it was incorporated?

MR. JOHNSON: Yes, we certainly could. I'd see it as similar to those undertakings that you give in a corporate name change to transfer from one to the other. Certainly we wouldn't have any difficulty with that as well. In fact, I'm sure that would be my recommendation to the board if it doesn't take place here.

MR. RITTER: The only reason I ask that is because I know that there are procedures to become inactive under the existing legislation in which the old company had been incorporated. It is generally the policy of the Legislature not to enact anything independently of something if there is existing public legislation. As far as the name conflict that counsel worried about, Madam Chairman, I know that the registrar of corporations usually recommends that the old company just revert to a numbered company name, and then the new company assumes the former name. So that should not be a problem.

Again, for the transfer of assets in business, would counsel be comfortable with doing that independent of the scope of this legislation?

MR. JOHNSON: Yes. In fact, having had the discussion with some of the committee members, it now actually appeals to me more than this route, to be honest with you, because we can use that bulk sales approach, which would probably work very well as well.

MR. RITTER: One final question, Madam Chairman. Thank you. The last section I just wanted to clarify is section 10(b). The legislation proposed says: designate "Master Builder" or any other similar designation." Is it the intent of the institute to, for example, grant the title "intermediate builder" or "journeyman builder" or something like that? I think it's essential for the committee members to know if we're just really

referring only to master builder or if it is anticipated that other titles would be bestowed.

MR. KELLY: Madam Chairman, master builder is the only term that we intend to use.

MADAM CHAIRMAN: Then would that be deleted?

MR. RITTER: It might be a recommendation, Madam Chairman. I'll see what it is the institute wishes to do.

MADAM CHAIRMAN: I understand further that it is the institute's wish to delete section 15 entirely. Is that correct?

MR. KELLY: Yes.

MADAM CHAIRMAN: All right. Thank you very much. Well, I'm delighted that you were here today. I know we went on for a little longer than usual with a lot of questions. I appreciate the time that you've taken out to come before the committee and discuss the Bill. As I said earlier, we will be going through a deliberation process a few weeks down the road, and then we will be reporting to the Legislature as to our recommendations and findings. So I want to thank you very much for appearing today, and I guess we will continue on.

Members, you've probably noticed that we have a new member of our group at the table with us. His name is Scott Ritter, and he is a STEP student working with counsel for the summer. We welcome you, Scott, to our Private Bills Committee.

We have a problem with the scheduling of some of our petitioners, and I would ask that we entertain a motion to go in camera.

MRS. HEWES: So moved.

[The committee met in camera from 11:44 a.m. to 11:48 a.m.]

MADAM CHAIRMAN: Mr. Clegg.

MR. CLEGG: Yes. I would like to bring forward the motion:

That you work with all the petitioners to see that it's satisfactory to all concerned and that you make arrangements to have the people appear when they can to satisfy the petitioner that cannot appear on May 15.

We leave it to the Chair and Mr. Ritter senior to make those adjustments.

MADAM CHAIRMAN: In particular we're dealing with Bill Pr. 6.

MR. CLEGG: Right.

MADAM CHAIRMAN: Is that in the form of a motion?

MR. CLEGG: Yes.

MADAM CHAIRMAN: Is there any discussion? All in favour? Motion carried.

We will entertain to make sure that new schedules are sent out to all committee members as soon as the arrangements have been made.

Is there anything further to come before the committee? Can I have a motion for adjournment?

MR. GESELL: Oh sure.

MADAM CHAIRMAN: Mr. Gesell? Thank you very much.

[The committee adjourned at 11:49 a.m.]

