

## Standing Committee on Private Bills

10:04 a.m.

[Chairman: Mrs. Black]

MADAM CHAIRMAN: Good morning, committee members and ladies and gentlemen. Again welcome to Private Bills. This is a select committee of the Legislature that is made up of members from all three political parties. Our responsibility and mandate is to receive petitions for private Bills and have petitioners come before us. We then collectively as a committee deliberate over the presentations at a later date and make a recommendation as to whether the Bill should proceed or not to the Assembly. It is the Assembly as a whole that will make the final determination as to the outcome of the Bill.

Committee members, I think you've all received an agenda. Today we will be receiving Bill Pr. 9, the United Farmers of Alberta Co-operative Limited Amendment Act, 1992, and Bill Pr. 14, the Carolyn Debra Peacock Adoption Act.

Might I have a motion to the agenda? Mrs. Hewes.

MRS. HEWES: Madam Chairman, I'll move that we deal with Bill Pr. 14, the Carolyn Debra Peacock Adoption Act, as the first item on the agenda.

MADAM CHAIRMAN: All right. All in favour? Thank you very much. Then it's settled; we'll deal with Bill Pr. 14 first and then Bill Pr. 9.

[Mr. Holmes, Mr. Hope, Mrs. Hope, and Mrs. Peacock were sworn in]

MADAM CHAIRMAN: Committee members, we have with us Christopher Holmes, Carolyn Peacock, Harry Hope, and Mary Hope, who are the petitioners for Bill Pr. 14, the Carolyn Debra Peacock Adoption Act. We'd like to welcome you to our committee this morning and hope you enjoy the deliberations. Normally what we do is ask you to make some brief opening comments as to what prompted you to generate the Bill, and then we ask our committee members if they have any questions pertaining to the Bill itself.

Parliamentary Counsel, have the petitioners been sworn in?

MR. RITTER: They have been, Madam Chairman.

MADAM CHAIRMAN: Have they met the Standing Orders?

MR. RITTER: All Standing Orders have been complied with.

MADAM CHAIRMAN: All right. Are there any model Bills?

MR. RITTER: There are no model Bills as such, but this is identical in the wording to other adoption Bills which have been passed by the Assembly.

MADAM CHAIRMAN: Okay. Thank you very much.  
Mr. Holmes, you're the attorney, are you?

MR. HOLMES: Yes, I am.

MADAM CHAIRMAN: Would you like to make some opening comments?

MR. HOLMES: Thank you, Madam Chairman. This is an important day for the Hopes and for the Peacocks, and indeed sitting in the gallery is Mrs. Peacock's husband, Clark Peacock, and their two sons and two daughters.

Mrs. Peacock came to me more than a year ago to discuss this matter. It's not one that most lawyers run across with any kind of frequency, and certainly it was apparent from the discussions I had with Mrs. Peacock that this was a very important matter to be dealt with. Mrs. Peacock has been the child -- and I use that in quotation marks -- of the Hopes most certainly since she was about 10 years of age when they were appointed as her guardians, but even prior to that time she played a role in the Hope's family.

The Hopes do not have any children of their own other than their relationship with Carolyn, and that relationship has continued on right through the years to the present day and will continue on in the future. Indeed, the Hopes portray themselves and see themselves as the grandparents of the children and play a very strong role in the life of the Peacock family.

MADAM CHAIRMAN: Would any of the other petitioners like to make opening comments?

I'd also like to welcome the MLA for Stony Plain, Mr. Woloshyn, who is the sponsor of the Bill.

MR. HYLAND: I think the hon. Member for Stony Plain has been attempting to get on the front bench of their party for quite a while. He finally made it.

MADAM CHAIRMAN: A little levity does exist within our committee.

Might we go to the committee now for questions. Mr. Lund.

MR. LUND: Thank you, Madam Chairman. Good morning, ladies and gentlemen. I'm curious to have a little more information from Carolyn. Are your natural folks still alive? What is your relationship with them? What has been your relationship?

MRS. PEACOCK: Both my biological parents are alive. My biological mother is alive. There is no mother/daughter relationship there. I was never raised by her, nor was there ever any bonding there. My biological father: I'm aware of what his name is although I don't believe he recognizes me as his daughter, so there's never been a relationship there.

MR. LUND: Are they aware of this proposed adoption?

MRS. PEACOCK: I'm not sure about my biological father, but my biological mother has had phone contact with me, and there were no objections.

MADAM CHAIRMAN: Are there any other questions?  
Mrs. Mirosh.

MRS. MIROSH: I'm confused as to why there wasn't an adoption taking place prior to an adult age. Why would you at this time in your life want to be adopted or your adopting parents want to adopt at this stage?

MRS. PEACOCK: Approximately a year ago we were discussing prior memories, and they asked me if I had any regrets with my time growing up with them. I said that I had always wanted to be adopted and I was regretting that we had never pursued that when I was a child. It was from that point on that we decided to pursue this, because it was something we had always wanted. From a very

young child I had always seen them as my parents and had wanted that in my heart. They expressed that they had wanted the same.

MADAM CHAIRMAN: Are there any other questions?  
Mr. Tannas?

MR. TANNAS: Yes. To Carolyn: what do your children think? Do they support you?

MRS. PEACOCK: Totally. We've always been very involved as a family, and they call them Grandma and Grandpa.

MR. TANNAS: Thank you.

MRS. HOPE: Could I just say something?

MADAM CHAIRMAN: Yes, by all means, Mrs. Hope.

MRS. HOPE: I have the same feelings as Carolyn. We always wanted to adopt her. The reason we didn't do that when we were younger and she was younger is because we were always told we had to have our own home, own our own home before we could adopt, and we didn't. So when I found out that we could still adopt her, well, I was really eager to go ahead and try to do this. As she said, she was in total agreement, the same as we are.

MADAM CHAIRMAN: Mr. Woloshyn.

MR. WOLOSHYN: I sponsored this Bill primarily because I'm the MLA, but the biggest reason was that I've known the Peacocks for well over 15 years and had, I guess, all of their children in school. I have sat on this committee on adoptions before, and I put my full personal support behind the petition as well as sponsoring it as the MLA for the area. So it's not a group that I know just a little bit about; I've had very close dealings with them for a great number of years. I'd like to say that I personally endorse it as well as the political side of it too.

MADAM CHAIRMAN: Thank you very much.  
Are there any other questions from the committee?

Mr. Holmes, would you like to make some closing comments at all?

MR. HOLMES: I think that the comments made by the Hopes and Mrs. Peacock are certainly heartfelt. I think here is a wonderful opportunity to not only deal with the legal side of things, because we know what the legal effect of this is going to be in terms of the natural mother and father and in terms of the relationship between the Hopes and Mrs. Peacock, but indeed it does more than that. It satisfies an emotional need, and that is a need to feel that one is a part of something, part of a family. That's what we are offering the Hopes and the Peacocks today.

Thank you.

MADAM CHAIRMAN: Thank you very much. We as a committee wish you all the very best. We understand you even have an aspiring hockey player in the family, and we wish him all the very best. You have a wonderful-looking family up there. All the best to you, too, from our committee.

Thank you very much for coming before us. As I say, we will be deliberating at a later date and then making a report to the Assembly as a whole.

Thank you very much.

10:14

[Mr. Carleton and Mr. Metz were sworn in]

MADAM CHAIRMAN: Committee members, might we draw your attention now to Bill Pr. 9, the United Farmers of Alberta Co-operative Limited Amendment Act, 1992. Today we have with us Mr. John Carleton, the attorney for UFA, and Mr. Gerry Metz, who's a director with UFA. We welcome you to our Private Bills Committee.

Parliamentary Counsel, have the petitioners been sworn in?

MR. RITTER: They have been, Madam Chairman.

MADAM CHAIRMAN: And have the Standing Orders been followed?

MR. RITTER: They've been complied with in all respects.

MADAM CHAIRMAN: Are there any model Bills concerning . . .

MR. RITTER: No, there are no model Bills on this particular petition.

MADAM CHAIRMAN: As in the earlier petition, Mr. Carleton, we'd ask if you'd like to make some opening comments with regard to the Bill.

MR. CARLETON: Thank you, Madam Chairman. This petition has been presented as a result of some difficulties recently encountered by United Farmers of Alberta in connection with its banking activities, both borrowing and bank instrument investment. The UFA recently -- and I say "recently"; within the last year or so -- attempted to access bankers' acceptances and had discussions about currency swaps and other fairly common commercial kinds of bank investments, and as a result of that was presented by the bank with the bank's position and legal opinion that the United Farmers had no legal capacity to make use of those banking instruments.

As well, the UFA was involved in a borrowing, and in connection with that borrowing again the bankers raised some issues in relation to not specifically the capacity to borrow but the manner in which the board of directors and the officers of UFA could in an appropriate manner sign instruments and exercise authority in relation to the common features associated with a general borrowing activity. The banks have taken the position that the current form of the UFA statute, containing as it does an historical list of objects and enumerated powers, does not go so far as to enable the UFA to take advantage of more modern and current forms of banking instruments. It was those situations that prompted this petition.

The statute of the UFA was originally passed in 1918. As such, it has, for that period of time, a fairly broad list of powers and objects and has served well in the past. Indeed there have been no difficulties until recently, but obviously we are confronted with that situation now. Being a statute created at a time in the early part of this century, its interpretation is subject to a judge-created doctrine called *ultra vires*, and that doctrine says in essence that if a company is created by statute, as this one is, and has an enumerated list of objects and powers, it has no capacity to do anything which might be outside that list of powers and objects. That's the very essence of the problem that confronted us when trying to make use of some bankers' acceptances and currency swaps and the like.

As I mentioned, also in connection with its borrowing activities there were questions raised about the interplay of the legislation and the bylaws of the UFA as regards how officers are appointed, how

the board's authority is delegated to them to sign instruments in relation to borrowing activities and the like. On examination it appears that there is indeed a need to clarify that the board of the UFA can in fact appoint officers and delegate certain authority to them.

The essence of the proposed amendments deals with those issues. The petition expresses the request to amend the statute to provide UFA with the capacity of a natural person, which is the modern expression of the entitlement of a body corporate to enter into transactions and bind itself to do things and equally to bind others to it to do things, and in fact the form of the proposed amendment is modeled on the same kind of statement that the Law Reform Institute came up with for the Business Corporations Act of Alberta.

MADAM CHAIRMAN: Okay. Thank you very much.

We'll go to committee members. Mr. Bruseker.

MR. BRUSEKER: Thank you, Madam Chairman. Good morning and welcome to our committee. I have a question regarding section 4(1) in particular, and the word that always jumps off the page is "notwithstanding." As I read section 4(1), my interpretation of it is that it says basically that despite the fact that we've got a set of rules, this section allows us to ignore those rules. I'm wondering why that's necessary.

MR. CARLETON: The issue is not one of ignoring the rules. For example, the UFA statute currently has a stated objective, which is to promote the "welfare of farmers and ranchers in Alberta." That is something that has governed the conduct of that organization since its inception. It remains in the statute and might indeed be, as you describe, perhaps its primary rule. That remains in the statute, and that will govern the manner in which, for example, the board of directors of UFA must discharge their respective duties for that organization, the manner in which the management must discharge their duties for that organization.

So having the expression in section 4(1) does not eliminate the obligations to act in accordance with the rules, nor indeed the possible liability of individuals who don't act in accordance with the rules. What it does is address very specifically whether or not from the UFA's point of view it might find itself unable to legally enforce an arrangement that it has in good faith and fairly entered into with someone on the basis that there is an argument that the existing enumerated powers and the like in the statute don't quite cover that and also to obviate the very practical concern they have, and that is that they will not know from moment to moment the opportunities they're entitled to access like other bodies corporate in Alberta because of the invocation of this doctrine.

The proposed amendment does not relieve individuals, specifically the board of directors of UFA, of their responsibility to satisfy the objects of that statute and to be mindful of those in carrying out their responsibilities. What it does do is simply say that if someone enters into a contract in good faith with UFA, and UFA does with it, that is enforceable notwithstanding the action may be somewhat outside the objects that are expressed.

10:24

MR. BRUSEKER: As you outline the objectives, can those concerns not be addressed without having this very broad . . .

MR. CARLETON: Omnibus provision.

MR. BRUSEKER: Omnibus provision; yeah. Good term.

MR. CARLETON: I don't think I can answer yes to that, and the reason I say a provision like that is absent, UFA is continually presented with a situation where there is potential for something it has done to be outside an enumerated list, if I can express it in that fashion. Indeed, we originally approached the bankers in response to this with some proposed amendments which were not omnibus in nature like this one, that we thought would address the concerns they had expressed. We thought we had addressed everything we could conceive of that might be an issue for those bankers and would enable us to access those kinds of favourable instruments, and the response we got back was: "Well, thanks very much. It addresses this, that, and the other thing, but we don't think it addresses these things." So we found ourselves twirling, so to speak, ever around this concept and principle which has an historical relevance and an historical origin but is proving very problematic in today's world. In fact, just generally on the issue of ultra vires, the most recent pronouncement of the Supreme Court on that, which is a now reported decision of last fall -- after all, as I mentioned, this is a judicially created doctrine; it's not a legislated doctrine. The Supreme Court, the whole bench has acknowledged that the doctrine has, shall we say, outlived its usefulness. It has turned into, as they describe it, a trap for the unwary.

MADAM CHAIRMAN: On that point, Mr. Evans wanted to get in.

MR. EVANS: Thank you, Madam Chairman. Mr. Carleton I certainly appreciate what you're getting at in terms of referring to the doctrine of ultra vires and concern that you could be doing things that you felt you were empowered to do by the general terms of a very old statute. I have no difficulty whatsoever with that. Trying to grant to the UFA the powers of a natural person makes abundant good sense.

Where I have problems, however, is at the end of section 4(1) where you're talking about something that would be "invalid by reason only that the act is contrary to its by-laws or this Act." Now, being contrary to the Act and to the bylaws is an altogether different concept than ultra vires in my understanding of the term, because "ultra vires" means that you don't have the capacity to do something. What you're referring to in section 4(1) is something that you've done which is in point of fact contrary to what you are authorized to do either by the Act or the bylaws that are passed pursuant to the Act. They're two different concepts. Again, while I understand you're trying to create the powers of a natural person for United Farmers so that United Farmers can contract as broadly as any natural person can, if you are going that one step further and saying, "We're going to take these natural powers and regardless of what we already have entrenched in the Act or in the bylaws, we want to be able to overcome that by this omnibus provision that says that we're not bound in any way, shape, or form," that gives me a great deal of concern. Could you comment on that, please?

MR. CARLETON: Certainly. The Act which incorporates the UFA is a piece of legislation not like the general public legislation that governs the people of Alberta. It is in fact much like the articles of incorporation for a Business Corporations Act corporation or a memorandum of association under the old Companies Act. It is the instrument that creates this particular body corporate. It is the nature of that instrument that gives rise to the issue of ultra vires. The ultra vires issue, of course, was one relevant to companies that had their memorandum creating their legal character and nature or their articles of incorporation that created the legal nature of whatever particular corporation it was. This statute, unlike a piece of public legislation, is very much like those kinds of instruments. For the same reasons that the doctrine of ultra vires applies to the

interpretation of corporations created under those other kinds of instruments, it applies to this one, and equally for the same reason that the doctrine of ultra vires has turned out to be such a problem for those other instrument-created bodies corporate, likewise it does the same thing here.

My point I guess fundamentally is that unlike public legislation where, you know, it might rightly be said, "Why should a citizen be able to act contrary to the law and have that be valid?" this is a particular and peculiar piece of legislation in that its sole purpose is the creation of a body corporate. It's not a public purpose piece of legislation.

MADAM CHAIRMAN: May I ask a question? You're getting into legal terms here. For clarification for the layman, may I ask a simple question? This goes back to Mr. Bruseker's question. Are you suggesting, sir, that it would give the UFA far-reaching powers that would go beyond its own bylaws and its own Act?

MR. CARLETON: The organization would still be bound by its own bylaws, would still be bound by its own statute. The issue is not that inasmuch as whether or not . . . If it did enter into some arrangement that was beyond the scope of those, is that nonetheless a legally enforceable arrangement? I'll use the example of a bank, because that's the one that gave rise to all of this. The reason the bank was concerned was because if it lent money to the UFA in good faith, it had a concern that it would never be able to recover that money because it was perceived that that particular kind of financial arrangement was beyond the scope of the entitlement, the capacity of UFA. That's really fundamentally the issue from both sides of the coin: are third parties entitled to deal in good faith with the UFA without a concern that their dealings are going to be invalid? Equally, are the UFA going to be able to deal with third parties without being confronted at some point by somebody saying, "That was beyond your capacity; you can't enforce that against me"? That's really fundamentally the issue.

MADAM CHAIRMAN: Mr. Evans.

MR. EVANS: I'm sorry, Mr. Carleton. It just seems to me that 4(1) is trying to deal with two concepts really: the capacity issue and then those things that are done within the capacity of the United Farmers of Alberta and reflected in either the incorporating Act or any amendments to the Act or the bylaws that are created. What 4(1) says to me is that even if the UFA has done something within its jurisdiction, within its authority, then it can do something else because it has the capacity of a natural person; even if that other Act is contrary to a bylaw that has been approved and authorized, it has the capacity to do that, which means that it can act in a realm of no rules, in essence. That's where I have a problem with the wording. I don't disagree with your philosophy, but I think that the wording here goes beyond what you're trying to accomplish.

10:34

MR. CARLETON: Fundamentally, I believe it really does come back to an issue of capacity and enforceability. In fact, sir, as I'm sure you're aware, the provisions that are proposed are very much modeled on the Business Corporations Act. The Business Corporations Act, after some pretty exhaustive review by the institute, resulting in its proposal and ultimate passage by this body, determined that in fact that was an appropriate way for business to be carried on. The Business Corporations Act of course states, as does this, that no Act of a corporation incorporated under that statute is invalid by reason only that it's against its bylaws or that statute. I would submit that that's a far more public piece of legislation than

this particular instrument, which is very much an incorporating instrument.

MADAM CHAIRMAN: Mr. McEachern.

MR. McEACHERN: Yes. Perhaps I can take up the same question in layman's language, since I'm not a lawyer. I understood the conversation, but I think I'd like to try to reword the same question, so to speak.

It seems to me that the need to have a legal status that would allow banks to make a contract with the UFA is a reasonable thing to try to achieve. But like Mr. Evans, I'm concerned that what you're saying here is that if the bank, for instance, misinterpreted some of your bylaws but the directors and the bank went ahead and made a contract anyway, even if that was contrary to the bylaws of the association, the association would have no comeback or no way of getting out of it or, I suppose, no way of getting at the director or directors that made that contract. When you use the words, "is invalid by reason only that the act is contrary to its by-laws or this Act," you're really saying that the association has no control over the directors, period, are you not?

MR. CARLETON: The directors have a duty to act for the benefit of and in the best interests of the UFA and, equally, have a duty to accord with the law. The UFA, after all, is simply a corporate embodiment of all the members throughout Alberta, who are entitled to pursue their directors in the event their directors don't pay heed to their own bylaws. Indeed, if that was arising, where the directors were about to do something contrary to their own bylaws, I'm confident you could get a judge to issue an injunction to prevent it. On the other side, if it's already happened, I'm confident you'd get a judge to give you a remedy for that.

MR. McEACHERN: I want to, of course, say that . . .

MR. HYLAND: Madam Chairman, on a point of order. There are at least four of us here, I know, that have shares in UFA. Parliamentary Counsel, does that cause us . . . We were able to vote on the Alberta Wheat Pool Bill because it wasn't a direct interest. Some of us are getting a little nervous.

MADAM CHAIRMAN: Parliamentary Counsel has advised me that all of you that do have shares have to declare the interest, and you cannot participate in the vote.

MR. HYLAND: Well, then, I should start. I have shares. I don't know how old they are, but I have shares in UFA.

MR. LUND: So do I.

MR. THURBER: I too. They're old, but I do have shares in the UFA.

MADAM CHAIRMAN: You don't have to leave; you can listen. The only thing you cannot do is participate in the vote, but you can certainly sit and listen and ask questions.

MR. THURBER: We can stay and ask questions?

MADAM CHAIRMAN: You can stay and ask questions. You just cannot participate in the vote.

I'm sorry. Mr. McEachern, please proceed.

MR. McEACHERN: That's fine. In fact, I'm not a member of the UFA, but I've been a strong supporter and come from a family that have been supporters for many years, and I'm certainly sympathetic to the objectives and aims of the UFA.

I do want to follow this up just a little bit further. I guess what you're telling us is the reason you use the word "contrary" here rather than trying point by point to add to the bylaws so you could do business with the bank is that you're giving yourself basically a blank cheque that says you can do business with the bank. The bank will never have to worry about, say, giving a loan to the UFA and then not being able to collect in a legal way. I can understand that; otherwise, you won't be able to do business with banks or Treasury Branches or whoever else you might choose to do business with. I guess what you're saying -- and perhaps this answers my concern, if that's correct -- is that if the directors, then, and the banks went ahead and did a deal and it turned out to be contrary to some particular bylaw, nonetheless legally the bank could still collect its money, so to speak, if it were a loan situation. Then I guess the director would be dealt with internally within the UFA for doing something that broke the bylaws. Is that basically . . .

MR. CARLETON: And externally, I would suggest, probably in the courts. Perhaps an example would be if the bylaws prohibited the directors from borrowing over \$5 million without the approval of the members, and the directors went to the bank. The bank may know nothing about this bylaw, and even if they did know about the bylaw, may not know that there had been no member approval, for example, of that. But the directors go to the bank, and the bank, in good faith, lends \$6 million to the UFA. There would be under the proposed amendments no concern for the bank in recovering its \$6 million. The directors, on the other hand, have a different problem.

MR. McEACHERN: Could I just follow up with one more question then. That sort of gets into 4(2) there, where it says, "It is not necessary for a by-law to be passed in order to confer any particular power on the Association or its directors." Does that not mean that the directors could make a bylaw and say, "This is now going to be one of our bylaws, even though we might not get to pass it until our annual meeting three months down the road," and then act accordingly, as if that were a bylaw?

MR. CARLETON: Yes, they could.

MR. McEACHERN: Could you explain why that is necessary?

MR. CARLETON: The starting point, I guess, is that that has always been the case for UFA. The primary entitlement of a body to make bylaws in the legislation for UFA has always been with the directors, and they get it sanctioned or ratified at the next annual meeting. It has always been so. The addition of 4(2) is simply to clarify that for the UFA. For example, to borrow money from a lending institution, there does not have to be a specific bylaw passed in order for the UFA to be empowered in that fashion. In terms of who makes the bylaws and when they make them and all that, in fact it's just always been the case that the bylaw making has been by the board of directors, subject to ratification by members at the next annual meeting.

What has been absent and what is also addressed in this proposed amendment is -- and this is a bit of a housecleaning thing -- the ability to amend or repeal bylaws. You can have a bylaw on the books under the UFA's existing legislation which is perhaps contrary to something that both the membership and the board would like to achieve. There's no mechanical process to repeal that bylaw now. There is an amendment here that would put that in place.

MR. EVANS: Mr. Carleton, I'm looking at section 9 of your incorporating Act, and it does provide that there is an opportunity "to repeal, alter and amend [bylaws] from time to time." Have you gotten a legal opinion that that section is not enforceable?

MR. CARLETON: Section 9?

MR. EVANS: Section 9 of your 1918 incorporating Act.

10:44

MR. CARLETON: I'm sorry, sir. I thought section 9 of the statute was withdrawal from membership.

MR. EVANS: I'm looking at something that was passed to me by Parliamentary Counsel. It shows Chapter 56, An Act to Incorporate the United Farmers of Alberta.

MR. BRUSEKER: Brian, that was repealed in 1966.

MR. EVANS: What have we got then, Parliamentary Counsel, as a result of that amendment?

MADAM CHAIRMAN: Parliamentary Counsel, for clarification.

MR. RITTER: Yes, Madam Chairman. The previous Acts from 1918 were all eventually replaced by a continuance Act in 1966. In fact, the 1966 legislation is basically everything that is current, and that's why the amendments are only to the 1966 legislation. All the previous Acts were provided to the members just for information purposes, to give a history, but all the previous Acts were replaced by the one omnibus 1966 legislation.

MR. EVANS: Then, Mr. Carleton, the provision in 1966, I take it, does not give you the authority to amend or appeal those bylaws.

MR. CARLETON: That is the interpretation of that; that's correct.

MR. EVANS: Sorry about that. I was only looking at part of the history.

MADAM CHAIRMAN: Well, on that same point, Mr. Bruseker.

MR. BRUSEKER: On that point, Mr. Carleton, the section 4(2) that we're looking at says, "It is not necessary for a by-law to be passed," yet the 1966 Act says that the board of directors can pass bylaws subject, you said, to ratification at the annual general meeting. I'm a little concerned that under the proposed 4(2) someone could go out and do something without having really discussed it with the other directors on the board. I understand you're saying that there are terms of reference, shall we say, or guidelines that bind the directors, but again this seems to be a glaring loophole that would allow somebody to go ahead and do something without necessarily discussing it with somebody else. If you have, shall we say, a wild card director, I can see that this has the potential to create enormous difficulty for the United Farmers.

MR. CARLETON: The bylaw making power is one that's intended to set out internally the rules of the game for the members of UFA and for the board of directors of UFA. The proposed amendment that says that it's not necessary for a bylaw to be passed in order for the UFA to have a "particular power" is not intended to address what the rules of the game might be as determined by the members of the UFA but simply to go back to that basic issue, which was: what capacity and power does the UFA fundamentally have? Is it a body

that may have no legal power to borrow money? I hate using that example, but it was just the one that caused all this. That's simply why that is in there, to identify that there doesn't have to be a bylaw that's been passed by the directors and ratified by the membership in order for it to have the capacity to borrow money, for example.

MR. BRUSEKER: Just a follow-up to that then. I would imagine that your board of directors meets on a fairly regular basis. As I read the 1966 Act which gives the board of directors the capacity to pass a bylaw, I don't see why this would be necessary. If your directors are meeting on a regular basis, they could have a meeting amongst however many individuals make up your board of directors, pass a bylaw, and then proceed with an activity. That really precludes the necessity of this, so I'm still not clear why that's necessary.

MR. CARLETON: Simply to clarify that there is no need to have a formal internal process completed before the capacity that we think UFA should have is there and effective.

I do understand the nature of the questions, and if I can express it in my own words: a concern about whether or not a rogue director or board of directors as a result of all this might be in a position, quite apart from the wishes of the members, to take UFA off in a direction or bring it into a situation which the membership might not want. Do I at least somehow encapsulate the concern?

MR. BRUSEKER: I understand what you're saying. I guess what I'm saying is that I'm not sure that having a way of getting around a formal internal procedure is the right way to go, which is what this is intended to do. That's my point.

MR. CARLETON: Whenever there is a retained notion that some formal procedure involving individuals must be gone through before the UFA as its own separate body is enabled to do something, you've retained the whole notion that there is potential invalidity of its transactions. In a case where we're talking about bylaws, if we turned it around and said that there must be a bylaw passed before the UFA has a power to do something, if we turned that expression around completely, it's not possible to express every single word necessary to capture every related transaction. You always run the risk that somebody at some point says, well, yes, you passed a bylaw dealing with lending money to a member for whatever appropriate business reason, but the interpretation of that bylaw is that it does not extend so far as to include the kind of transaction you entered into, and accordingly you can't recover the money from the member. The point is that whenever you try and list completely or empower somebody else to list completely the powers and capacity you have, you just must live with the whole notion that there are one or more circumstances that you haven't been able to capture by the expression of your words and which will result in an invalidity or the very kind of practical problems that we've dealt with with our banks today.

MADAM CHAIRMAN: Mr. McEachern, you still actually have the floor.

MR. McEACHERN: I'm happy to relinquish the floor. I just wanted to follow up the line you started in reply to Mr. Bruseker's last question, about the ability of one director to possibly go off and write a bylaw and convince somebody with that written bylaw that only he has authored; that sort of thing. Is that possible? Because I do think the thing says "the directors," plural, not "a director," and he would be acting totally illegally, would he not, if I understood the direction you were heading? Is that right?

MR. CARLETON: Yes. The board of directors is a body in and of itself.

MR. McEACHERN: With its own rules and quorum, that sort of thing.

MR. CARLETON: Yes. There are all the usual rules of order and the like that apply to that body, and that body, constituted in accordance with its quorum requirements, as set out in its bylaw, has the authority to make decisions, as all boards of directors do, for this particular organization. A rogue director -- there would really be no difference between the existing state of affairs. If anybody is entitled to believe that someone has authority, if UFA has held them out in some fashion as having authority to enter into an arrangement of some kind, then today the UFA will be subject to that arrangement, even if technically they don't. So the issue will remain the same both before and after, but the long and the short of it from a legislative point of view is that it is that body, which is the board of directors in quorum making decisions for the UFA, which is intended to be the subject of that legislation.

MR. McEACHERN: Thank you for that explanation.

10:54

MADAM CHAIRMAN: I'd like to break for a moment and welcome our guests in the gallery. You're listening to and watching the activities of the all-party Standing Committee on Private Bills. We do welcome you here today. We're presently in the deliberations of hearing the petitioners from the United Farmers of Alberta Co-operative Limited group. It's a private Bill called Bill Pr. 1. We hope you'll enjoy some of the deliberations as they proceed. Welcome.

Mr. Tannas.

MR. TANNAS: Thank you, Madam Chairman. I have a question. I slipped out for a few minutes, so perhaps it's already been asked, but if not, bear with me. I'm wondering why you don't incorporate under the public laws of Alberta, the Business Corporations Act or the Act which incorporates and gives legal status to co-operatives, and then be governed by the public laws of the province.

There are a couple more questions.

MR. CARLETON: I can't tell you honestly that we've ever addressed that notion. There is indeed a corporate history to the UFA that arises out of its own statute. I wasn't privy to it, and I can't tell you honestly that I know why this body was incorporated under a special Act in 1918. I don't know that. I do know that incorporating under public statute, as you call it, is problematic, because the nature of this organization is unlike standard business corporations where someone can acquire ever accruing share ownership, voting rights, and the like: classic business corporation stuff. This organization is one member, one vote irrespective of the number of shares you have. It's quite a question, but it occurs to me that if you brought an end to the legal existence of the UFA for a moment in time under its current legislation and then breathed life into it again under another piece of legislation, I wouldn't want to think of the tax implications of that and that sort of thing. So that notion has just never been entertained.

MR. TANNAS: Okay. Madam Chairman, it seems to me -- and perhaps it's my naiveté -- that the directors have a tremendous amount of power in here to do just about anything they may wish to do; for instance, 4(2): "It is not necessary for a by-law to be passed in order to confer any particular power on the Association or its

directors.” Then you get under section 6: “The directors may . . . make, amend, or repeal,” and do a whole bunch of things, “qualifications for and terms of membership,” “qualifications for and election of delegates,” and so on. The concern I have is that you have an institution that gets going and after a while it really feeds itself, as opposed to its membership. That’s my concern. It’s not unknown among human institutions for them after a while to lose sight of what it is they were originally formed for, and they go on and it’s really the staff and the directors and so on that have the life and not the membership. That’s what I have some concerns about in a whole bunch of these provisions, but I don’t have the legal background to question it.

MR. CARLETON: Regrettably, I must concur with your initial statements. But addressing the specific point you had, which was what about the entitlements of the directors under this legislation -- you referenced, for example, their entitlement to make bylaws relating to membership, districts, delegates, and the like -- those provisions are virtually identical to the ones that are in the statute now and have been for a long, long time.

MR. TANNAS: The question is then: if that is so, why are you amending? What’s the gain?

MR. CARLETON: There is currently no technical mechanism to amend or repeal a bylaw once it’s made, and that’s the long and the short of it. Currently, the directors have the authority to make bylaws generally governing and regulating the affairs of the UFA. They’ve got that now; they’ve had it for eons. I guess history speaks to how they have exercised that authority they have always had. There is, however, an absence from that legislation of a technical, mechanical means by which they might amend or repeal a bylaw. So they might pass a bylaw at one moment in time that they think quite properly and adequately addresses an issue and then come to the realization that, oops, it really ought to have been slightly different.

The technical problem they have is that if they then pass a bylaw a moment later addressing that little concern they saw, they have two apparently conflicting bylaws subsisting, the existence of which don’t make any sense. In fact, what they should be able to do is to repeal the first one and reimplement the second one in an appropriate fashion. That technical ability is not currently there.

MADAM CHAIRMAN: I might ask Parliamentary Counsel: is there not the ability to amend a bylaw through the Interpretation Act that would apply in this case?

MR. RITTER: Yes, Madam Chairman. We’ve come across this before in this committee. The Interpretation Act vests in all bodies corporate incorporated in Alberta the power to do a number of things whether or not it’s stated in their constitution, and one of those is the power to make, amend, and repeal bylaws.

MADAM CHAIRMAN: Would that apply to . . .

MR. RITTER: . . . to all bodies corporate in the province.

MADAM CHAIRMAN: Thank you very much.

MR. TANNAS: I guess that being the case, then we really didn’t need this section.

MR. CARLETON: As I said, sir, the intent of that particular section was merely to solve the technical problem of amending and

repealing bylaws. It’s just always been there. It’s always been a part of the nature and essence of the UFA.

MADAM CHAIRMAN: Mr. Evans, on this point.

MR. EVANS: Thanks, Madam Chairman. Mr. Carleton, in looking at section 6 of the 1966 Act, it breaks down bylaws into essentially administrative bylaws and borrowing bylaws. My reading of subsection 2 is that all of those administrative bylaws do cease to exist at the end of the year unless they are confirmed. So it would seem to me that other than your borrowing bylaws, which are more specific to a fact situation -- when the corporation needs money -- in point of fact you do have the ability here to deal with all those other administrative matters, because they do come to an end at the end of the year unless the annual meeting has a general phrase that says: all of the bylaws that were created or are in force during the past year are hereby confirmed and ratified. Is that consistent with your understanding of what this provision states or not?

MR. CARLETON: Yes, it is indeed consistent as far as it goes. Of course, there’s the issue of what happens the day after the annual meeting and the 364 before the next annual meeting when in fact you have a bylaw passed and, by way of the example I gave, it requires some amendment or fine-tuning. The absence of a technical mechanism to deal with that creates a problem when the bank says to you: “Oh, you’ve got two subsisting bylaws. You tell me which one governs, and I’ll tell you whether I’m going to lend you the money.” I don’t know how to respond to that in the absence of a technical fix.

MADAM CHAIRMAN: Are you still on this point, Mr. Evans?

MR. EVANS: No. I’ll get in line.

MADAM CHAIRMAN: Are you on this point, Mrs. Hewes?

MRS. HEWES: No, I’m not.

MADAM CHAIRMAN: Okay. Can we go to Mr. Chivers, please.

MR. CHIVERS: Thank you, Madam Chairman. I don’t envy you your difficulty. I’m not sure whether I’m glad not to have shares in UFA or otherwise. There are a lot of dimensions to this problem. They’re obviously inextricably interrelated in terms of the bylaws and the financial transactions. But doesn’t it boil down to a fairly simple proposition? You want to deal, firstly, with the future, your capacity to engage in financial transactions in the future on the basis of the capacities of an actual person, which is now the standard in corporate activity, so to speak, and it wasn’t historically. The second thing is to regularize what’s happened in the past. It seems to me that in that context it would make sense to break it down. Perhaps we need to go back to the drawing board, because I share the concerns of other members of the committee here. I think what we’ve done in this Bill as it’s presently proposed is try to deal with both of those objectives in the same section. If we separated them and dealt with, first, your capacity for the future, and then, secondly, dealt with regularizing the conduct of the past to the extent that it’s necessary, and only to the extent that it’s necessary, would that make sense to you?

11:04

MR. CARLETON: The intention of all of the amendments was to be future looking. We recognize that we have an historical statute which has this problem associated with it that does not accord with

the current standard and which we'd like to fix for the future. We also recognize that we have a statute that has some uncertainties in it as regards the manner in which that organization carries on its business, makes its decisions, delegates its authority to its officers for them to make certain decisions. Likewise, we're trying to clarify that, and that is a future looking thing.

I hadn't perceived any of the proposed amendments as attempting to rectify something that has happened in the past. In fact, I guess we have dealt with those in the sense that we've not been able to use the bank services we would like to be able to use, so in that sense they've been dealt with. We're simply trying to deal with the future, to regularize conceptually the manner in which this organization carries on its business and has the capacity to do so, to make it accord with . . .

MR. CHIVERS: I wonder if I could interrupt you on that.

MR. CARLETON: Certainly.

MR. CHIVERS: That's certainly not what section 4(1) does. It says that "the Association has," speaking of the present, "and shall be deemed to have always had." So you are mixing the two objectives here, and indeed you do have a retroactive dimension to it. Now, I sympathize with the need to do that, but it seems to me that we need to separate the two objectives and to make it clear in the Act what's dealing with regularizing what has happened in the past and what's looking to what will happen in the future.

Now, the other concern that I have is in terms of membership. I think of this organization as a democratic organization, as all co-operatives are and should be. It seems to me that when we're speaking of regularizing things that have happened in the past, the best way of doing that is having the proposed regularization approved and ratified by the membership. My question is: has this proposed legislation been reviewed with your membership and discussed at annual general meetings, and do we have resolutions with respect to their positions in terms of these objectives?

MR. CARLETON: The answer to that is yes. There is no formal mechanism currently in the legislation or indeed in the bylaws that provides for a formal, official resolution vote on a proposed amendment to the UFA legislation. Notwithstanding that, obviously the board considered it appropriate to take this to the membership, and all these changes were brought to the membership at the annual meeting in March. There was a considerable period of time spent discussing them. I was at that meeting, and I addressed them on many of the questions and issues that they had. Although there was no formal resolution because there's no mechanism for a formal resolution, Mr. Metz tells me that indeed there was a vote taken the next day, and in fact it passed unanimously, with one exception.

All of the delegates then were provided with a summary of these changes, and it was requested that they go back and discuss this institution as advisory councils at the local level. They were asked to go back and discuss all of these with their respective advisory councils and members in their district. As far as we're aware, that has happened, and there has been no question come out of that process.

MR. CHIVERS: My third and last point . . .

MADAM CHAIRMAN: Just a clarification. Was that at the annual general meeting or at a district meeting?

MR. CARLETON: That was at the annual general meeting in March of this year.

MR. CHIVERS: My third and last point has to do with the bylaws. I share some of the concerns with respect to the formulation in the amendment Act as to how you deal with the bylaws. My concern is this: it has an antidemocratic flavour to it. What happens here, of course, is that you have bylaws that are in existence right after an annual general meeting. You can have a board of directors that can amend those bylaws, and those amendments stay in force until the next annual general meeting. They cease to have effect if they're not confirmed at that meeting, but the very next day they could be reintroduced by the board of directors and continue to have force and effect. It seems to me -- and I understand that you're trapped by history -- that now is the time to deal with that. Let's get untrapped from history and deal with this on the basis of putting the cart before the horse in having the amendments flow, as they usually would, from the membership to the board of directors and not take effect until approval of the membership.

MADAM CHAIRMAN: Mr. Bruseker.

MR. BRUSEKER: No, my question's on the other issue. Thank you.

MADAM CHAIRMAN: Mrs. Hewes.

MRS. HEWES: Thank you, Madam Chairman. Mr. Chivers has touched on the same subject that concerns me. This is a co-operative, and I'm glad to hear that in fact these amendments were discussed openly and so on at your annual general meeting. I'd just like to go back. I take it, then, they went back to their various councils, and they were invited to do what?

MR. CARLETON: They were provided with a summary of the historical difficulty that gave rise to the requirement, a copy of the proposed amendments, a summary of those amendments, and a description of the process, I think, that was necessary to achieve the change. After having discussed it with the delegates at the annual meeting and with the request that those delegates go back to their respective advisory councils and provide them with this and disseminate this information to them and invite any questions or concerns from those councils or members in their respective districts, they phoned in to, in fact, Mr. Metz at the head office of UFA. I don't believe you received any phone calls as a result of that; did you?

MR. METZ: None.

MRS. HEWES: Mr. Carleton, had there been any response from those people, what process was known to be in place to deal with that?

MR. CARLETON: That issue would have been dealt with at the board level. The obvious first answer is that if someone had expressed a concern, perhaps it was simply an issue of understanding and it might have been dealt with there. If it was not an issue of understanding, if it was a substantive issue, then that would have to have been dealt with at the board level, and it could have, if it was significant to one or more members of the UFA, resulted in the board determining to withdraw the petition.

MRS. HEWES: Madam Chairman, Mr. Carleton, section 6 and the subsequent subs in my mind tend to fly in the face of the notion of co-operative -- one person, one vote -- and that the membership is always in control. I understand why you feel the need to do this, but I am concerned that the membership really understands the

consequences as they have been outlined of that kind of amendment, what in fact that could mean in procedures, that they could at an AGM vote for a certain bylaw that could be changed the next day.

MR. CARLETON: As Mr. Metz is pointing out to me, we did have a specific discussion about that at the meeting, and that was one of the issues one or two members raised. We pointed out to the membership at the annual meeting, as we've attempted to do this morning, that the existing state of affairs for this organization is that the board has the authority to do exactly that and has had for a long time.

MRS. HEWES: I understand that. I appreciate that it must have worked reasonably well. It seems to me that perhaps now is the time for some changes along more democratic lines, but that remains to be seen. I am concerned that no one raised this as they came back to you. I take it there was no response whatsoever to your invitation.

MR. CARLETON: Not at the elected member level. It was certainly discussed at the delegate level.

*11:14*

MRS. HEWES: Thanks, Madam Chairman. That's all.

MADAM CHAIRMAN: Might I ask a question of Mr. Metz? Mr. Metz, for clarification on Mrs. Hewes' line of questioning, you sent out, I understand, a summary of the changes to your membership. Was it in the form of a survey?

MR. METZ: No. We provided all the delegates at the annual meeting with a copy of the amendments, a copy of the existing bylaws, and a document of several pages describing what had happened and what was being done, what we were trying to.

MADAM CHAIRMAN: Maybe just for clarification. I'm sure you have copies of that. Could you provide the committee with a copy of what you gave them? That might help as to what the membership saw. Would that help, Mrs. Hewes?

MRS. HEWES: Yes, it would. Thank you. I'm glad you asked that. But your question was: did it go to all members? And the answer was no. Would amendments not ordinarily be circulated to every member?

MR. METZ: No, they would not. The delegates have the members' authority to vote on all these issues.

MADAM CHAIRMAN: Mr. Evans.

MR. EVANS: Thanks, Madam Chairman. Mr. Chivers has correctly pointed out that the two issues trying to be addressed here, Mr. Carleton -- number one, giving all those powers of a natural person seems to make sense in a forward-thinking way. Mr. Chivers and I agree with that. Also, a general bylaw-making and -revoking provision as you have in section 6 seems to make sense as well.

Maybe I'm just gleaning something from the conversation, but it seems to me that there must have been some borrowing at some time in the past that's creating a very serious problem for the United Farmers. Normally when you borrow, a lender won't advance money unless that lender has a certified copy of a borrowing resolution, of the bylaw. The lender's solicitor will give a legal opinion indicating that the corporation and specifically empowered individuals had the authority to sign on behalf of the corporation. Generally speaking, the solicitor representing the UFA would

provide reams of paper which would confirm that authority. Without breaching client confidentiality, is it possible for you to give us some detail, if in fact I'm correct, that there was a problem in financing in the past that you're trying to correct by this legislative amendment?

MR. CARLETON: Yes. To answer your question, I guess the reason this arose was because two fairly unusual things happened concurrently in the life of the UFA, one of which was a move to what the bankers call jumbo BAs, which are just bankers' acceptances in fairly large denominations that the UFA wanted to access because of their favourable terms. As a matter of the banking practice, I gather when an institution such as the UFA moves into this larger or bigger category of investment, they then refer it to legal counsel. It was as a result of the referral to legal counsel, in connection with the UFA attempting to access this financial instrument, that the issue arose in one situation.

The other situation was a recent capital borrowing by UFA. UFA operates on lines of credit and the like, like most businesses do. We think the last capital borrowing by UFA was in 1976, when they built a new head office and borrowed money and put a mortgage on for that. Certainly in my history with UFA I'm not aware that issues about opinions concerning its capacity and the like came up in connection with that last capital borrowing, whenever it was, 16 years ago.

So there were two unusual events in the UFA life over the course of this last year that caused this to arise. In connection with those events, precisely the kinds of things that you mentioned occurred: the lenders and their capital borrowing wanted legal opinions about the officers entitled to sign the documents, the usual battery of opinions that you might think of which gave rise to these questions. Then in the jumbo BA context, this whole issue of capacity arose. Does that answer your question?

MR. EVANS: Yes; thank you.

MADAM CHAIRMAN: Mr. McEachern.

MR. McEACHERN: I find myself in a rather odd position in a way. This is a membership-driven organization that has decided they should make some changes, yet I find these changes sort of antidemocratic to some extent. I accept the necessity for some of it so the directors can be more efficient and proficient and held legally responsible by other institutions such as banks, so I understand the thrust of it. But I can't help wondering -- if you look at page 2 of the proposed changes, 6(1), where it says

The directors may:

(a) by resolution, make, amend or repeal any by-laws to govern and regulate the affairs of the Association, including without limitation, by-laws governing and regulating:

(i) the qualifications for and terms of membership.

Good heavens. If I were on the board of directors and I could get my fellow directors to agree, we could decide we were the only membership. We could say that you have to be a director to be a member. I mean, that is extraordinary power to take on any board. Generally speaking, if you're going to have a democratic organization, you'd like to see it as democratic as possible. If I thought the directors needed that power, I would have no trouble with this Bill. I think you've convinced me on most of the points. But the qualifications for and the election of delegates and directors -- the directors could set the terms of who shall be delegates to the next annual general meeting for every local in the organization, right down to the point, I suppose, of naming the person you wanted to come, if this is without limit.

So I don't understand why this section gives such all-encompassing power to the directors on fairly mundane things like who shall be a member of this organization. It seems to me that as long as you qualify, as long as you have a farm and want to belong, that should be about enough. That's sort of my view on membership in most organizations of this sort that are fairly broadly based. I wonder if you can explain 6(1) a little bit, why the terms are so extraordinarily powerful for the board of directors. Are they necessary to fulfill these other problems you have raised?

MR. CARLETON: The amendment in the form of 6(1) is, in essence, a restatement of the existing state of affairs. The current UFA legislation expresses those items exactly as you've stated them to me and has so forever.

MR. McEACHERN: So it's not an amendment?

MR. CARLETON: No. Perhaps that needs clarifying. Section 6(1) of this proposed amendment is not new stuff. It is not a restatement of old stuff excepting only to this extent. The current legislation says that the directors have the power to make bylaws about these gazillion things, including the ones you just described. There's currently no technical mechanism for an amendment or appeal to that once they do the deed. So there's some additional language that says that they can amend or repeal them, and likewise, the amendment and repeal is good until they confirm it at the next annual general meeting. But that's it. Beyond that, section 6(1) has been there, I guess, since the dawn of time.

MR. McEACHERN: Okay. Thank you.

MADAM CHAIRMAN: Do you want in on this point?

MR. BRUSEKER: Yes, if I could ask a question on section 6(1). As I understand what you're saying, the amendment is in 6(1)(a). Is that correct?

11:24

MR. CARLETON: The current legislation reads basically:

For the purpose of managing the affairs of the Association the board of directors has the following powers, namely:

- (a) to pass by-laws governing and regulating the affairs of the Association [including but not without restricting] the generality of the foregoing . . . governing and regulating
  - (i) the qualifications for and terms of membership,
  - (ii) the qualifications of and election of directors,

and so on. The proposed amendment is a consolidation. It doesn't say "for the purpose of managing the affairs of the Association." It says that "the directors may (a) by resolution, make, amend or repeal any by-laws."

The essence of that proposed amendment was simply to catch the notion that is not currently part of the legislation, which is that they can amend and repeal them as well, again subject to confirmation by the annual general meeting. This is not a new section introducing new concepts and powers for the board of directors. They've always had this.

MR. BRUSEKER: So as I understand it then, the only change that has really occurred is in 6(1)(a) in what we see before us, and (i), (ii), et cetera, down the rest of the page is as it is in the legislation now.

MR. CARLETON: Essentially that's correct, and also 6(2) just as a matter of consequence acknowledges that the amendment or repeal of a bylaw also has to be ratified by the general meeting.

MR. BRUSEKER: If it is as it is, why are we seeing an amendment? Why are you listing them all if there is no change?

MR. CARLETON: I'm sorry; I didn't understand that.

MR. BRUSEKER: Well, you've listed here six under 6(1)(a), and I'm wondering why they're there as an amendment when in fact there's no change.

MR. CARLETON: I guess we could have dealt with the issue of the fact that the current legislation enumerates by way of example certain kinds of bylaws that the directors can make. That's what the current legislation does. It says: can make any bylaws it wants, like these ones. I guess in this proposed amendment we could have said: "What's the point of saying 'making ones like these ones?' Let's just eliminate it and make it one statement." Frankly, we didn't elect to do that simply because we perceived that to the extent we were able to minimize the proposed changes to the wording of the statute, it would be more understandable for the delegates and do less violence to the current legislation. Indeed, you're quite right. I guess we could have said: "Why, really, when we think about it, have we set out these examples? Let's just get rid of them." That just never entered our minds as part of that process.

MADAM CHAIRMAN: I have to ask for clarification. When I read this Act and I read this Act, sir, with due respect, there seems to be only a few words changed, but I think they're substantive words. I refer you to 6(1)(b). It starts: the board of directors may "unless the bylaws otherwise provide, by resolution without authorization of the members," go into various things. The other one says "to pass by-laws," and the bylaws have to be ratified at the annual general meeting. You're switching from bylaws to resolutions.

MR. CARLETON: The intention of this was to address two things. One, the concern raised by the bank that the board had in an appropriate quorum setting determined to borrow money, and the issue was raised by the bank: "Where's the bylaw to do this? We know you met and we know you, the board, decided to do this. Where's the bylaw?" That was problematic. So it's firstly intended to address this.

Secondly, however, it was intended to identify that the bylaws can restrict the borrowing power of the directors. As it stands right now, 6(1)(b) says that the directors simply have the power to pass bylaws to borrow money, period. They can just do it. This one says that unless the bylaws otherwise provide, they can borrow moneys on a resolution, which addressed the question of the bank: "You guys did meet and you did determine for the UFA to borrow this money; where's your bylaw?" But it was intended to say, okay, there can be bylaws that can restrict the authority of the board of directors to borrow money. As it stands right now, there is carte blanche authority for the board to pass a bylaw to borrow money on any terms that it wants, and that is effective forever. It's not a bylaw that requires confirmation at the next annual meeting.

MR. CHIVERS: So why is the bank asking, "Where is the bylaw?"

MR. CARLETON: I'm sorry?

MADAM CHAIRMAN: Mr. Chivers.

MR. CHIVERS: Sorry, am I in order at this point? So why is the bank asking, "Where is the authority for you to borrow"? Why are they asking for bylaws if you've got that kind of ability already?

MR. CARLETON: Well, the question, I think, was a question of both form and substance. The bank was aware that the board of directors had resolved to borrow money from the institution. But the issue or the technicality, getting into the legal opinions side of things that were being requested, is: where is the bylaw? Where was the notice of the meeting of the directors to pass this bylaw? Where is the proposed form of the bylaw as presented to the board of directors? Where is the vote of the directors in relation to this bylaw? It's very technical stuff, and I will admit that. But the reality is that banks get very technical with you. The way in which bodies corporate borrow money is that their board of directors makes a business decision as to whether that should happen, and then the board resolves whether to do it or not. That supports the borrowing with the bank.

MR. CHIVERS: Can I just come back to the bylaws briefly, because I'm concerned about the change in formulation, amongst other things, with respect to your power to make bylaws. In the 1966 legislation it reads,

For the purpose of managing the affairs of the Association the board of directors has the following powers.

Then it goes on:

and in particular but not so as to restrict the generality of the foregoing by-laws governing and regulating . . .

and then they go on to enumerate certain powers. So you've got the usual sort of statutory construction, but in your amendment you've got a totally different formulation, and one that causes me a great deal of concern. In 6(1) it reads:

The directors may:

- (a) by resolution make, amend or repeal any by-laws to govern and regulate the affairs of the Association, including without limitation, by-laws governing and regulating . . .

Now, that's a totally different bylaw-making power. It's a very, very expansive one, and it causes me some concern.

I'm sure that you can see the difference between those two formulations. The one says that you have the general power, which includes certain things; this one says you have a power without limitation. Although there may be a construction issue here, I wouldn't want to be on the other side of that particular argument, saying that your powers are limited.

Now, my question, because we've got obviously a lot of concern on the committee and a lot of questions have been asked. I understand also that you have the reality of having to deal with financial institutions and that there are some time pressures on you. But I'm wondering if it's not possible for us to deal with the one part of your application, which seems to me is reasonably clear, which is dealing with your ability to engage in these transactions that you've enumerated in the future, to deal with an expanding definition of your entity's powers to include the powers of a natural person, et cetera, for the future and then come back and deal with these other things after we've all had some time to review them. Does that meet the needs of your organization? I'm putting it to you because I'd like to have that answer, but if it's something we have to deal with now, then we'll have to deal with it now. You may need some time to get back to us in answer to that. It might not be simple.

MR. CARLETON: Yeah. May we do that?

MADAM CHAIRMAN: That would be fine; yes, certainly. If you would direct correspondence through Parliamentary Counsel, we'll see that any answers are distributed, which is fine.

MR. CHIVERS: I certainly don't want to put you on the spot, giving an immediate answer to that.

11:34

MRS. HEWES: Just a quick question, Madam Chairman. It seems to me there's somewhat circuitous thinking in 6(1)(a) and (b), perhaps even incompatibility. Section 6(1)(b) says "unless the by-laws otherwise provide," you may borrow and so on, but 6(1)(a) says that you can write them or change them anytime you please. So it doesn't matter whether the by-laws that are there have a prohibiting clause; you can change that. Would that be correct?

MR. CARLETON: In the first instance, that is correct; yes.

MRS. HEWES: So 6(1)(b) really needn't be there, because you can do whatever you please anyway under 6(1)(a). It has no force or could have no force.

MR. CARLETON: I'm sorry; perhaps I misunderstood your question or your point. Can I impose upon you to . . .

MRS. HEWES: Certainly. Section 6(1)(a) gives you ultimate powers to make, amend, or repeal, right? Section 6(1)(b) says "unless the by-laws otherwise provide," you may borrow, issue, or mortgage. If the by-laws prohibit you, then you simply change them under 6(1)(a). So I don't see that 6(1)(b) has any force if in fact under 6(1)(a) you can change any by-laws that are inhibiting any borrowing, issuing, or mortgaging. Would that be correct?

MR. CARLETON: Yes, I think I would concur with that.

MRS. HEWES: Well, Madam Chairman, perhaps you could take a look at that, too, because I think that is circuitous thinking.

MADAM CHAIRMAN: Mr. McEachern.

MR. McEACHERN: Yes. I was looking a little more closely at 6(1)(a), and you said that there weren't really any changes in there, that the directors had those powers before. But there is a slight difference. Besides the change in the introduction part, where it says "including without limitation, by-laws governing and regulating," -- that expression is different, as I think Mr. Chivers probably pointed out a minute ago. In 6(1)(a) in the old one it said "but not so as to restrict the generality of the foregoing by-laws governing and regulating."

Also, 6(1)(a)(ii) says "the qualifications for and election of delegates and directors," whereas in the past 6(1)(a)(ii) was "the qualifications of and election of directors." So you've now also added "delegates" to that. Well, that's a pretty significant increase in power to the board, who can not only set the qualifications for their own membership, thus perhaps restricting half of the general membership or whatever portion they want out, but also they can control, to some extent anyway, the qualifications of the delegates.

I think there is some significant strengthening of the powers of the board in matters that probably didn't need strengthening as far as solving the problems that you were talking about earlier are concerned. I'd be interested in your comments.

MR. CARLETON: You've raised two points. Firstly, sir, it was not perceived that the modernization of the language to say "including

without limitation” was substantively different than “not so as to restrict the generality of the foregoing.” There was no intention that there be a substantive difference between those two statements. To the extent it's perceived by this committee that there is a substantive difference between those two, then we certainly can go back to the way it was. There was no intention to address anything substantive there.

With respect to the inclusion of the word “delegates,” frankly, I've just forgotten. Mr. Metz pointed that out to me. Yes, indeed, that was raised and put in at the time that the proposed amendments were discussed, simply because there was not under the existing form any origin of authorization for determining the qualifications for delegates as there are for directors. The legislation currently says the board can determine the qualifications for membership, can determine the qualifications for directors, and in the middle is in fact the delegate who represents the members at annual meetings, and it was like there was a hole there. It just didn't state it.

MR. McEACHERN: Of course, the assumption being that all these bylaws go back to the AGM anyway and are approved. Yeah, okay. Thank you.

MADAM CHAIRMAN: Thank you very much. We've come to the end of our list of questions, and I know it's been rather grueling for you. This is a very complex Bill, and I think the committee wanted to spend a little extra time on it asking questions. We do appreciate the offer you've made to send us the survey or the list of information that you gave at your annual meeting to your members and the two responses that came from committee members. We look forward very much to receiving those, and we hope we can receive them as quickly as possible because we do operate in a slightly tight time frame. We would appreciate a quick response to those if we might.

I'd like to ask you at this point if you have any brief closing comments -- I know you've dealt with a massive variety of issues today -- you'd like to make to the committee.

MR. CARLETON: If I may, I'd just like to clarify where we may go from here. I thought I heard that the issue of the capacity, being a pretty fundamental concept, was something that the committee might be prepared to deal with more immediately and that we might address that. Some of the revisions to the bylaws and the manner in which those are created and dealt with perhaps require some further consideration, and we might deal with Parliamentary Counsel on that in terms of perhaps an amendment to the Bill to address those sorts of things.

MADAM CHAIRMAN: Okay. Well, Mr. Metz, we'd like to ask you if you have any closing comments. I'm afraid you've been listening to us talk most of the morning.

MR. METZ: Yes, Madam Chairman. Certainly there was considerable discussion at our annual meeting with our delegates concerning it, but most of it was quite positive. Certainly the question was raised and was addressed about the power of the board. There was one individual in particular who asked similar questions to what has been asked about the powers of the board of directors and didn't realize that they'd had all those powers before. We left it for that day after a long discussion and asked everybody to think about it. The next day we held a formal vote on it, and it was unanimous except for the one individual. He still voted against it, but just because he wasn't sure anymore. He wasn't as adamant as he was. We asked him if he wanted his vote recorded as being negative and he said no.

I have not heard any negative comments at all come back from any of the advisory meetings that we have held. They are still in progress, but about 80 percent of them have been held already. The delegates were quite comfortable with knowing that all administrative types of bylaw changes have to be brought back to the annual meeting. They were comfortable with that and with the fact that the board of directors only has a term of two years, and if they did anything they didn't like, they would be gone very quickly, and this body would be well aware of that.

11:44

MADAM CHAIRMAN: Well, thank you very much for your presentation, and as I say, if we can receive the information as quickly as possible, we certainly would appreciate it. Our committee will be deliberating as a committee at a later date, certainly after we receive your information and before we make our recommendation to the Assembly as a whole. It will be the Assembly as a whole who will determine the outcome. We do thank you very much for coming today, and we look forward to your information. Thank you.

Committee members, as you know, we will be on break within our constituencies working very hard next Wednesday, so we will see you in two weeks.

Motion for adjournment? Mr. Tannas. Thank you very much.

[The committee adjourned at 11:45 a.m.]