LEGISLATIVE ASSEMBLY OF ALBERTA

Monday Evening, November 20, 1972

[The Speaker resumed the Chair at 8:00 p.m.]

DR. HORNER:

Mr. Speaker, I move that you do now leave the Chair and the House resolve itself into Committee of the Whole to study bills on the Order Paper.

[The motion was carried without debate.]

[Mr. Speaker left the Chair at 8:02 p.m.]

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COMMITTEE OF THE WHOLE

[Mr. Diachuk in the Chair.]

Bill No. 2: The Individual's Rights Protection Act

MR. FRENCH:

Mr. Chairman, as we start our clause by clause consideration of Bill 2, I would ask the government to give very serious consideration to changing the name of this bill to The Human Rights Act.

I think that we all realize that in this bill the authority under which the bill would be functioning is going to be called the Human Rights Commission. The authority to function is going to be given under The Individual's Rights Protection Act. I think, to say the least, that it would certainly be very confusing in the minds of the public. I should say, Mr. Chairman, that I have checked the legislation in some of the other provinces in Canada and I notice that Prince Edward Island calls its act The Human Rights Act, 1968; Nova Scotia calls its act The Human Rights Act, 1969; Ontario calls its act The Human Rights Code, 1962; Saskatchewan calls its act The Fair Employment Practices Act, 1965; and they also have another act, which is called The Fair Accommodation Practices Act, 1965; British Columbia calls its act The Human Rights Act, 1969. In Alberta we have The Human Rights Act, 1966; Manitoba calls its act The Fair Accommodation Practices Act, 1960; and they also have another act called The Fair Employment Act, 1956; Newfoundland calls its act The Human Rights Code, 1969; and New Brunswick calls its act The Human Rights Act, 1971.

In summary, Mr. Chairman, Manitoba and Saskatchewan call their acts, The Fair Employment Act or Fair Accommodation Practices Act. In all other provinces in Canada, it is known as The Human Rights Act or Human Rights Code. I might say I couldn't find the name of the act for Quebec. I did spend some time and they may possibly have a human rights act but I couldn't locate it. I am wondering, Mr. Chairman, assuming we go ahead with The Individual's Rights Protection Act and give this act the same name without making a change, whether we are going to have students in other provinces that will be going into libraries wondering what we are doing in Alberta with respect to human rights. They won't be able to find the act because it will be called The Individual's Rights Protection Act. And unless they go all the way through the index, maybe they will not locate it. And so I say, Mr. Chairman, that I think if we are going to be consistent with the other provinces, we should give every consideration to changing the name of the act to be called The Human Rights Act. I am sure that we all recognize that we were the first province in Canada to enact a Bill of Rights. We have taken the leadership in this field, and I for one would certainly like to see us keep ahead of the other provinces in Canada.

Mr. Chairman, I would like to have the indulgence of the hon. members for just a few minutes. I hope, Mr. Chairman, you will permit me to make this little experiment. I would like the hon. members in the House, without looking at the name of this act, to just take a pencil or pen and on a piece of paper write down Individual's Rights Protection Act.

AN HON. MEMBER:

O.K., teacher.

MR. FRENCH:

I wonder how many have just written down "Individual Rights." I wonder how many have forgotten the apostrophe "s." In any case, I don't want you to feel too critical if you have made one of these mistakes. I have searched Hansard, and going back to the remarks that were made in the legislature on May 15, I see that the Hansard staff has made a similar mistake with respect to the speech of our hon. Premier. On May 17, I notice that there are three errors in spelling in Hansard with respect to the remarks made by the hon. Member for Calgary Buffalo on page 52-33 of Hansard. Not that the members will think that I am all that 'lily-white' as far as my speech was concerned, I had no less than ten errors in spelling. I had seven on page 52-41, one on 52-42, and two on 52-44. I think we all recognize, Mr. Chairman, that the members of our Hansard staff are highly trained in the field of transcription and in the English language. If these people are going to make mistakes in Hansard, then I submit there will be very few people in the province who will be able to call the name of the act The Individual's Rights Protection Act.

And so I would ask, Mr. Chairman, that the government give very serious consideration to changing the name of the act to The Human Rights Act, so that we will be consistent with other provinces in Canada, and so that it will be possible for other provinces to follow the leadership that we have taken in Bill No. 1. I should also say, too, with respect to Bill No. 2, that we have one particular feature, which I don't think is present in any other similar act in Canada and that is the overriding section over other laws in the province. Again we are leaders in this field. I thought at one time that I would possibly move an amendment to have this name changed, but after giving it some thought I would ask the government to give it very serious consideration.

With these few remarks I would hope that the government will consider the matter. The name will be changed to Human Rights so that the name of the commission, the name of the act, and what we are doing will be consistent all the way through. Thank you.

MR. GHITTER:

If I may respond to the hon. Member from Hanna-Oyen whose comments I certainly appreciate. I know his concern and study in this area as something that has been of great assistance to us in the House with respect to The Bill of Rights and certainly, I am sure, with respect to The Individual's Rights Protection Act.

I might say at the outset though, that it might not always be Hansard's fault that we have these misspellings. Sometimes I think that maybe the hon. members might not be quite putting the words down as we think we are.

I had an opportunity last spring to meet with the Canadian Association of Statutory Rights Agencies who had their founding meeting here in the city of Calgary, pardon me, the city of Edmonton. I keep thinking Calgarian. I think we have to move this Legislature down to Calgary. And I might say that in discussing with them and -- Alberta was honored in that our present administrator was appointed as the first president of the Canadian Association of Statuatory Rights Agencies -- our legislation, and the novel approaches of our legislation, there was never really any comment about the manner by which we were naming our legislation. And even though all of the members represent human rights agencies across Canada, it is interesting to note that they called their own agency The Canadian Association of Statuatory Rights Agency. I think one of the primary reasons why the act is named The Individual's Rights Protection Act is to ensure that there will not be the confusion with our Bill of Rights. For after all, the two pieces of legislation, although they are companion legislation, certainly it must be understood and hopefully it will be by the citizens of the province, that the one act, The Bill of Rights, is designed to protect the individual from the infringement of government. The other, the Individual's Rights Protection Act is designed to do just that, in other words, vis-a-vis two individuals, the rights that they can enjoy in the protection of the law that will allow them to enjoy it.

It is my personal view, and I say this to the hon. Member for Hanna-Oyen, although I certainly regard your point of view as well taken from the approach of standardization, that I'm more concerned because Alberta is the forerunner in this area, as you've already mentioned, in being the first province with a Bill of Rights, that the Bill of Rights may be confused if we had a Bill of Rights

and a Human Rights Act. I would feel better on the basis of the present naming of it to avoid that confusion so that people know that we do have, for two pieces of legislation, two acts in this province. Because of the novel aspect of it that in itself might well be the reason why, in the other provinces they call it human rights legislation. So I would respond to your point of view on the basis that I believe in order to maintain and clearly set out what this act is doing, that is protecting the individual rights of the citizens of this province, and to make it well known that is our intention, I personally would support the maintaining of the present name. However, I would also say to the hon. member that if at a later date, we found that there was an undue confusion; that the two acts were being confused and this was way deterring from the Legislation as we hope it will be accepted, in any way I would be the first to come along with you to sponsor a change of name if in any way it was detracting from what we are trying to do here.

MR. FRENCH:

There's just one point that I forgot to make. I think we all recognize that going through Bill No. 2 and going through the present statute with respect to human rights, clause after clause, clause after clause, are identical. The people in the province of Alberta, since 1966, I believe, are well aware of The Human Rights Act; it's been enacted now for about six or seven years. The people in this province know The Human Rights Act, they know the name of the administrator, it's well known. And here we are going to thrust on the people of this province a new name, something different, and I still maintain, and I appreciate the comments of the sponsor of the bill, and although I realize that the government is not prepared to accept my suggestion that the name be changed, I am giving this in good faith. I was just hoping the government would change it because I support the bill and I think it would improve it. This is the only reason I make the suggestion. I was really hoping the government would change the name so that the name of the commission and the name of the act, would be identified with human rights and this is what we want in the Legislature.

MR. DEPUTY SPEAKER:

Any further comments?

[Section 1, subsections (1) and (2) were agreed to.]

MR. HINMAN:

I am a little concerned about the implications in the Code of Conduct. It says, "No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate ...." Well, I was thinking perhaps of separate schools or seminaries where the cross may be an emblem on the schools, and would indicate very specifically to people that this is, for instance, a Roman Catholic school. It would intimate that a non-Catholic applying for a position in a seminary might not get the job, and this is the kind of thing that I am always worried about when you attempt to set out specific protective clauses. There are in fact, as I mentioned in Bill 1, cases of justifiable discrimination, and this would certainly be one. I could give you other examples. But I am concerned about such a clause, unless there is some way of amending it to make sure that it does not apply in such very evident cases.

MR. GHITTER:

I appreciate the concerns expressed by the hon. Member for Cardston, and that was shown by our endeavour in the amendments to cover certain situations that could arise as a result of that. For example, from the points of view of many of the submissions we received over the summer, there was concern from the school board. For example, if you take a Catholic School Board that wishes to have Catholic teachers because of their background or religious beliefs, they wouldn't be in any way inhibited from advertising for Catholic school teachers. And under the way the legislation was drafted and presented at the second reading I think this would have been inhibited. But, of course, we have changed that so that there would be nothing to restrict the right of, for example, the Catholic School Board in their advertisements to do this. And I refer the hon. member firstly to the amendments for Subsection (3)(a): "the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by only one sex" -- that was in order to cover the obvious situation, and then Subsection (3)(b): "the display or publication by or on behalf of an organization that (i) is composed exclusively or primarily of persons having the same political or religious beliefs, ancestry or place of

origin, and (ii) is not operated for private profit." In other words, there would be nothing from the point of view of this legislation which would restrict this from happening. After all, the key words in Section 2 are "indicating discrimination or an intention to discriminate," and, of course, this is the law as long as it relates to bona fide occupational qualifications. So the fact of putting a religious emblem beside an advertisement would in no way inhibit that. So I think that with respect to the amendments in tying it into the reference to bona fide occupation qualifications, hopefully we will overcome the situation that you have raised with respect to this. I hope I have answered your point of view, hon. member.

MR. TAYLOR:

Mr. Chairman, I believe this is covered. I noticed it in the amendment, which we may just as well discuss now that you have brought it up. In the case of an all boys' school, where they wanted male staff, and that is operated for profit, would the (b) section prohibit that as not operated for private profit, or is section (ii) under (b) only applicable to section (i) under (b)? If item (ii) is applicable to (a) it would interfere with a private school that is operated for profit.

MR. GHITTER:

Well, I think, as you have said, that the one section would cover that where the facility is customarily used by one sex. The YMCA, for example, can advertise for males; the YWCA for women; the men's and women's signs over lavatories, for another example. I look at them from the same point of view, and that was the intention of that subsection.

MR. STROM:

Mr. Chairman, I would like to make a further point. I don't know if the hon. member is aware of this. I think it was a rescue mission in the States that advertised for help, and they lay down certain qualifications that related to what their objective was, and I am wondering if, in your opinion, this would cover that kind of an operation, because I am thinking of issues that we have had throughout the country. They are not necessarily tied to any religious body, although they have a religious qualification that they tie in with what they are doing. I am just wondering if you would express an opinion as to whether you think this actually covers that kind of operation also.

MR. GHITTER:

I would say that that was certainly the intention of the drafting of the amendment, that it would cover situations of that nature. There is always a difficulty in this area with respect to signs. We don't in any way want to restrict the freedom of speech and, of course, that's contained, hon. members, over the page in Subsection (2).

I also think that we don't in any way want to affect organizations like you have mentioned, and we tried to draft the amendment on that basis when we talked in terms of persons having the same political or religious beliefs, ancestors or place of origin. But that would cover this situation and we feel that it would -- I think if you can just show in a bona fide way that that is the intention of the organization, that their intention is not to discriminate by the placement of the sign aside from the exceptions, there is just no problem. It is our intention that the situation that you have expressed will be covered by this legislation.

[Section 2 was agreed to.]

Section 3

MR. BUSTE:

Mr. Chairman, I think it's a good place to ask the one sponsoring the bill where this legislation provides for the physically handicapped in housing, employment, accommodations, and services provided. Is that provided in different sections here?

MR. GHITTER:

No.

MR. RUSTE:

Well, is there is any possibility of including it in this bill so that so that they are not discriminated against?

MR. GHITTER:

Well, I have never had a submission to this point, where they have been discriminated against in my meetings with the present Human Rights Commission. It has never been brought to my attention that there was an area of concern from the point of view of them being discriminated against by other individuals. Possibly the hon. member may have some examples.

MR. RUSTE:

Well, Mr. Chairman, I am just referring to a brief. I have just got Page 31 here from that brief, and it is a submission from the physically disabled. This was given to a research team and in it there is Point 7 on Page 31, if you want to refer to it.

MR. GHITTER:

What submission are you referring to?

MR. RUSTE:

It's a submission by the physically disabled.

MR. GHITTER:

Relating to Bill No. 2?

MR. RUSTE:

It's relative to Bills Nos. 1 and 2. We were handed this some time ago and I just took this page out for discussion at this time. It is Page 31, Item No. 7, and I quote:

> "We recommend that The Individual's Rights Protection Act now before the legislature be amended to include the disabled in those classes of persons who cannot be discriminated against in such areas as housing, employment, accommodations, and services provided at any place where the public is regularly admitted."

And I would ask that this be included in there.

MR. GHITTER:

I think there would be many difficulties from that point of view. To take your example of employment practices: for someone who is applying for the job, being disabled would indeed be a handicap which would restrict him or her from obtaining employment. I would be more inclined to think that this particular area of concern would be better overcome by many programs that would be offered by a government, and I think that we have been showing ourselves to be very responsive in a programming sense in trying to overcome many of the difficulties that the physically handicapped have met. I don't really think that in this particular area we are talking in an obvious or even an actual area of existing discrimination and, after all, the purport of this bill is to overcome areas of discrimination.

I doubt if the Human Rights Agency under the present act has had any complaints whatsoever of discrimination because of being physically handicapped, and I would think that the problem you have mentioned, if it be one of discrimination - and I somehow doubt that it is - would be one of assisting these people so that they could receive the training and the assistance that we are giving them now and hope to encourage in the future sittings.

MR. RUSTE:

Mr. Chairman, to that I would just suggest that they certainly feel that they are individuals under this act, and they are just asking that this be included to cover it.

MR. GHITTER:

I can think of many categories of individuals who feel that possibly they should be included under this act. It's a matter of where do you stop and where do you combat discrimination? If there has been shown to be a discrimination with which we should be concerned, then I would submit that this act should be expanded; but I also think that until there are some demonstrable examples where we are concerned in a prejudicial sense -- we could expand this bill to include many, many other categories as well. But I don't think the discrimination of which you are are concerned, hon. member, is subject for legislation of this nature. The purport of legislation of this nature is to overcome prejudiced prejudgments concerning people which result in discrimination. Unless we find that this situation you mentioned really does occur, then I would suggest that there is no need to put it in legislation until we find that there is a problem in that sense. And I certainly haven't heard of problems in this area from the people who are involved in it on a day to day basis, that being the present Human Rights Commission in the province.

MR. TAYLOR:

Mr. Chairman, I wonder if I could suggest this: many people who are disabled are discriminated against in a very brutal way, but not deliberately -- for instance, a person in a wheelchair who wants accommodation and finds that there are 16 steps to climb, or a person in a wheelchair who wants to go to a dental office and finds there is no elevator. I think that we as a people in Canada have been very slack in making sure that there is a ramp up to some of these places. Some of our cities, including Edmonton, have now done this on their curbs; I would think that we could be doing a real service to our disabled people, most of whom find it difficult to climb steps, by including provisions for the handicapped in our building codes, our provincial public buildings, and all of our architectural requirements. I think this would be a real kindness as well as a service, and would avoid much of the real discrimination that occurs now, although I don't think the people intend it, they just never think about the problem.

MR. FARRAN:

It really is in the building code. There is a whole section of the National Building Code that applies to facilities in public buildings for the handicapped. The City of Calgary has already adopted it. It is an optional section in the National Building Code. I wouldn't be surprised if Edmonton probably has adopted it or is about to adopt it. This is the angle of attack for that particular problem.

MR. TAYLOR:

The point that I was worrying about is that it is optional, because some of our highrises and of our business places that have been built in just the last few months and years have not made any accommodation. It is just simply that point that I wanted to bring out.

MR. HENDERSON:

I would like to bring up the question of age that is specifically missing from Section 3. And I notice section 2(1) which deals with advertising mentions the question of age. So the way I see the act, Section 2(1) prohibits somebody advertising a facility for rent, if it is a commercial facility, with any qualification of age attached. With the absence of age in Section 3 he could refuse to rent it because of age. More often than not the question of discrimination is going to come against younger people with families as opposed to older people, but I noticed that there is no mention of age. Age is specifically left out of the section - and I could see some difficulties in putting it in - but I would like to know why it is left out, because I think if it is in Section 2(1) it should be Section 3.

While I am on my feet I would like to bring up the same question relative to Clause (4). That it is missing from Section 4 as well, and I notice that under 4(a), if I could just have the indulgence of the House to move ahead, it says, "deny to any person or class of persons the right to occupy as a tenant, any commercial unit or self-contained dwelling unit that is advertised or otherwise in any way represented as being available for occupancy by a tenant." I presume that under that clause the fact that they can't advertise age as a discriminatory factor means, by inference, that they can't withhold the facility because of age. So inherently if it is an advertised facility, and most commercial facilities are, I think it follows that age would not be a discriminatory factor in Section (4), because you can't advertise or put a restriction on age under 2(1), the way I read the bill. But there is no question of age being covered under Section 3, but the same question applies to 3 and 4. Why isn't age covered in both these sections? Conversely, why is it left out?

MR. GHITTER:

In the proceedings of the redrafting of this bill, there were many areas that we went into, for example, from the point of view of expanding the bill or adding sections that were totally new and different from the existing Human Rights Act in the province.

One of the guiding factors was the consideration of areas where there was, in fact, a concern. For example, is there a concern in public accommodation from the point of view of age, or for that matter, from the point of view of commercial accommodation as to discrimination? The hon. member is signifying by the nod of his head that that is the case, but again in talking to the Human Rights Commission as to whether or not there is a problem in that area, they have expressed to me the fact that no, there isn't. But if an elderly person, for example, wishes to rent accommodation he is regarded --

MR. HENDERSON:

That includes young people and little children, that is the problem more than the elderly. It's not just restricted to elderly, it could be younger people, too.

MR. GHITTER:

Yes, I understand. I think, as well, in that area they have not had complaints or expressed the thought that there was a need for it, but we have expanded the section under the proposed bill from the existing section as it is under The Human Rights Act. The present Human Rights Act, I should bring to the hon. member's attention, does not have any reference to age in the similar sections. We have expanded both Sections 3 and 4 which refer to public accommodation and commercial accommodation; we have expanded them considerably to broaden them to cover more situations. You may recall in the present Human Rights Act they were talking in terms of the self-contained dwelling units, which were restricted to being over three in number. We have removed the consideration of three in number, and have now said just any public accommodation. We have expanded that considerably.

We have not felt that it would be necessary to put in the age classification within Section 3 or Section 4 on the basis that apparently, from our investigation, it wasn't a problem, and I guess it wasn't a problem when The Human Rights Act that we presently have was drafted, because it's not in the existing legislation. In areas of that nature, we only expanded the categories where we felt there was an actual need to do so. We have relied considerably upon the judgment of the people who are working in this area on a day-to-day basis, and that is the reason why that is not included in the section. I would also say that if, in the future, it does become a problem -- my personal view is

that it may not be quite the problem the hon. member suggests, but if it does become one I would suggest that a new consideration should be placed upon the age category.

I would also add, if I may, that age is defined at the end of the legislation, as you are probably aware, in Section 27, as the age of 45 years or more and less than 65 years. So the act is not directed in any way towards the discrimination that may or may not exist towards the young. There are no sections relating to discrimination towards young people in this legislation, again on the basis of that not being a problem at this time. If it becomes one, possibly we should reconsider it.

MR. LOUGHEED:

Mr. Chairman, perhaps I might add to that, in considering that legislation, if I could refer the hon. Member for Wetaskiwin-Leduc to the amendments in 1971 to The Human Rights Act. The Member for Calgary Buffalo, the Attorney General and myself did a review with regard to the very question he has raised, to try and get a feel for the need for that particular question that he has raised in those sections. We came back to the amendments of 1971 where there did not appear to be that need, and we are very strong in our desire to work on this age concept between 45 and 65, as the hon. Member for Calgary Buffalo has said. It would, of course, require a different sort of definition of age if we made the addition the hon. member refers to.

MR. HENDERSON:

Mr. Chairman, I come back again to the implication that the way I read Section 4, the question of age can be inserted as being a factor, because it refers to any accommodation or self-contained dwelling that is advertised. In Section 2(1) we've got a prohibition against mentioning age. If you can't advertise anything with an age clause in it, under Section 2(1), but you can refuse to rent it to somebody because of age, I rather wonder the reverse. Just because there is no objection, that's really no reason not to put it in the act. It may be all the more reason why it should be in there. There are a lot of things in the act that probably no objection has been raised to at any time, anyhow. I wonder if there have been no objections raised, what harm is there in putting it in the act?

I think that it stands pretty well as a matter of record that certainly the question of age in the younger families, particularly when you get into apartment complexes is significant. There are a lot of apartment facilities that won't allow anyone in them with children, and that is discrimination. What you are saying to me is that the act won't deal with that problem. As you get into Calgary and Edmonton, particularly, where there is more and more high-rise apartment type of accommodation dwelling, one wonders if the clause respecting age should be in there. It brings up whether the 45 to 65 age is really relevant as well.

MR. GHITTER:

I am wondering though, on the point that has been raised by the hon. member, if this particular problem can really be dealt with under human rights legislation or if that, as well, isn't a matter of programming. Certainly there are many people who would like to rent to families and young people if they could again program the right type of housing policies and program so that this accommodation would become available. Again, I think that the area of concern, if there is a problem in this area, and I have seen certain areas of difficulty, that it is more again one of programming and the providing of the facility for the young people and the marrieds with children who cannot get accommodation where they want it. The problem might be solved in a better housing policy but I don't know that it has a particular place in The Individual's Rights Protection Act. Possibly the hon. The Attorney General might wish to comment further from the point of view of the legal sense as to the use of the age category that you have raised and the advertising.

MR. HENDERSON:

Before the hon. The Attorney General comments, I would just like to remind the House that when the debate on age came up on The Bill of Rights I think the hon. The Premier pointed out that it might have some relevancy to Bill No. 2; and it is somewhat misleading to suggest that we should approach it under The Bill of Rights, because it doesn't deal with the question and it was specifically turned down by the House dealing with it. If it is to be dealt with, it should be dealt with in Bill No. 2.

MR. LOUGHEED:

It is.

MR. HENDERSON:

It is, in a very limited sense, but it still doesn't deal with some of the basic questions of discrimination, including the matter of age -- the bill basically evades those. That is my purpose in bringing the matter to the attention of the House. It doesn't deal with some of the problems of discrimination that do exist in society, particularly young families with children and, in other circumstances, with elderly people.

The question that I have mentioned, insureds for example. I agree that maybe you can approach it through The Insurance Act but I won't belabour the point any further, Mr. Chairman. I wondered why it was left out when it is in Section 2(1). It seems to me that if there would be no complaints about it, there would be no harm in putting it in. If it only comes up once in 10 years, it may be justified; but if nothing develops there is no harm in it being in there.

MR. LOUGHEED:

Mr. Chairman, I just want to speak about the question of age and there are two problems. There is one that the hon. member raises and whether it is a problem or merely a question is another matter. But the question of age as placed in this bill is an extremely important one, and we admit that we are arbitrary about the question of 45 to 65. But frankly, in my experience, when I was sitting in the seat opposite -- I don't recall the context, perhaps Workmen's Compensation -- I got involved in more cases where I felt there was really a difficult question facing the people of Alberta, that is the question of people in that age group -- and let's use the age of 50 and on -- where they find themselves for one reason or another without employment. They go around and they talk to all the large employers in this province and they are literally turned off. Yet they have skills, they have talent, they have good health, they have an awful lot to contribute. Partly it is our fault. We intend, hopefully in January, to convene a conference of the major employers of the province, because what we are trying to do is see if we can come to grips with some of the technical reasons, the affordability of pensions and the factors that are involved with hiring people at that age level. We hope that at this conference we might be able to bring out, in a seminar way, what the problems are. It is a very real and a very important problem.

I am no against the young people of Alberta. I think I am very strong in trying to give them opportunity, but perhaps in our over-emphasis on youth we fail to recognize that the people who still want to be very actively involved in a work situation are placed in these very sad circumstances. I doubt that there is a member here who has not faced at least once as a legislator an example of people who come and present to their legislator the argument that they are 52 years of age, they have worked hard all their lives and for some reason or other, there may have been a merger or something, they have no job, and they are trying to find employment. And they simply cannot understand why it is that they are completely closed out, particularly by the major employers, and I underline that, because I don't think it is quite so bad with the smaller employer organizations. And for that reason it is a very fundamental part of this bill. It is not going to be easy to administer it, and it is going to require some very judicious discretion by the Human Rights Commission, but it is a very real problem. I just wanted to respond that way to the hon. member for Wetaskiwin-Leduc, although I realize he is on another point. The position and the emphasis that we give to this question of age is distinguished for that period. That age 45 to 65 is a very important one in our mind, and I hope in the minds of members on both sides of the House.

MR. HENDERSON:

I, quite frankly, never thought of the bill as being aimed that specifically at just dealing with the problem of age and employment. I can cite a case I heard on a phone-in program in Wetaskiwin on a radio station some time earlier in the year. One subject that came up was welfare and I was taking my usual reactionary line on 'bums on welfare' and the only telephone call I got really floored me, because it was from a woman who had a husband 70 years old and they had three small children. She was most unhappy that nobody would hire her. And so the question of 45 to 65 would not really deal with the problem. It is rather unusual, I agree, but I just cite it as an instance that comes to mind.

I was wondering if that is the basis for 45 to 65, because it is the view of the government that it is applying the question of age basically in this bill to the question of employment. May I, on the point, say, when other questions of age are dealt with specifically in other legislation, why isn't the question of age dealt with specifically in legislation on employment and a broader term put in this bill? That definition seems to be rather restrictive, just saying it is relating to 45 to 65 for the question of age. All it is in here for, I gather, is strictly employment then. It has nothing to do with these other matters at all. I was bringing it up in relationship to accommodation and what you are really saying is that it is irrelevant insofar as the clauses on age in this bill don't mean much from the standpoint of accommodation, and they are not intended to.

MRS. CHICHAK:

I would just like to comment on the context that the hon. Member for Wetaskiwin-Leduc brought up with respect to children and accommodation. I think that if we broaden it to include infants here or children we may run into far more difficulty, and I don't think that what you want here can really be put in this legislation. I think what is perhaps necessary can be accomplished through other means, by requiring in the construction of apartments or apartment dwellings that certain apartments give provision for accommodating families with young children. I think we will agree here that many of the apartments in the central core particularly do not have the kind of facility playground facilities near enough to be able to accommodate, nor is the construction of such a nature that the owners would in fact have taken into consideration the accommodation of young people of an age below adult. If included in this kind of legislation it would be very difficult to police, required to be built to have this accommodation.

MR. HENDERSON:

I'd just as soon leave it to the family to decide whether they think it's adequate or not because what suits one person doesn't suit another. So, really, I can't see that argument. I find it difficult to follow the argument of age but still sex is in here. It's a fact there are apartment places in larger communities that will only rent to women; there are no men allowed in them. There are bachelor apartments. But under this bill, this would be prohibitedd. Quite frankly, it seems to me prohibiting that type of discrimination could be rather frivolous as compared to the complaints about some of the problems of age. I have to say, if age is out, what's sex in there for? It seems almost frivolous. It is a fact that there are apartments in communities where only women are allowed to rent. I think it is a well-established custom in the larger city. I'm not going to belabour it any further, Mr. Chairman. I can only say I'm disappointed that the bill has been so narrow. It doesn't deal with the question of age in accommodation. I can see some problems. I find it difficult to follow because there have been problems put in the bill that shouldn't be in the Bill, and that might be all the more reason to put it in, to make sure none develop, I don't know.

MR. STROM:

Mr. Chairman, if I could raise just one more question in regard to age and the displaying of an ad. Does it mean then, that they can't put in the ad that they would want a certain age group to apply, such as between 25 and 45? Will that be strictly prohibited?

MR. GHITTER:

Only as it refers to the Act, that is, to the age category of 45 to 65. When age is mentioned in the act, it is defined at the end of the bill, and it only relates to 45 to 65.

MR. HENDERSON:

Mr. Chairman, if you put something in there, 20 to 44, that's exactly what you're trying to get rid of, and the bill wouldn't prohibit you from doing it. It's only if you mention the figure between 45 and 65 that it's relevant, according to your definition.

MR. GHITTER:

That's right, and of course, that's where we regard the problem more to be. I think when we're looking in terms of the legislation, certainly I can remember the hon. Member for Highwood when we were debating second reading, speaking in terms of the right of the landlord to discriminate. Possibly the

hon. member recalls our brief debate as to what 'to discriminate' means. There's a balance that must be achieved in legislation of this nature. We must not forget the people that are doing the renting as well. They have certain rights. They spent their money, they put up their buildings, they are renting. We must be concerned for their point of view as well. To make it unlawful for an apartment owner, for example, to say no to a family of five that comes in in a one bedroom suite because they happen to be a family would be a very difficult situation. I think that what we are trying to do in legislation of this nature is achieve a balance that protects the rights of those who own buildings and are renting accommodations to that they can do so freely but will not prejudge people who are coming to their door in a reasonable way looking for accommodation.

As the hon. Premier suggested, it is indeed true that we are very preoccupied with the problems of those who are between the ages of 45 to 65. I need only refer to a document issued by the Ontario Human Rights Commission entitled "The Problems of the Older Worker," which has some very revealing statistics that we must all be concerned with. It states that between 1951 and 1968, Ontario's total population increased from 4,597,600 to 7,306,000. In 1968 one out of every four persons oldons was 45 years old or older, and one out of every two of this group participated in the labour force. But a breakdown of the figures shows that, while in the period 1951 to 1968 the number of people aged 45 to 64 in the labour force increased from 518,000 to 898,000, an increase of 57.7% and the number employed rose some 70.9%, the number of unemployed rose from 6,000 to 23,000, which represented an increase in unemployment in the age group 45 to 65 of 283.3%. This indeed is the area of our concern. There are facts upon facts to support the principle that our legislation should most definitely cover the cover the problems of our senior citizens in the category of 45 to 65 who have many many wonderful years of work ahead of them but that cannot get jobs. So it's true that we are concerned with this category. Quite frankly, hon. member, I am not nearly as concerned in the area of placing age in the accommodations sections because, to this point at least, it's questionable as to whether there is a demonstrable need for that. So it is true that the legislation relates more to employment and more to age, but there is certainly a lot of verifiable data available to support the need for such legislation.

MR. TAYLOR:

Mr. Chairman, when I first read 3 and 4 I wondered why age wasn't in there. As a matter of fact I had written age in. Then I came to Section 27, and, of course, I came back and scratched it out because it appeared to me that if you put 'age' in then it would not be an offence to refuse accommodation to an Indian who was under 45 or over 65 if the age is only applicable to that age. It would not be applicable, it would not be an offence to show discrimination against a hippie who was 22 or to somebody with long hair and a beard at 19. I think I strongly support the 'age' in connection with employment. But I think it is just as big an offence to discriminate against an Indian or a hippie or someone else in accommodation not respective of the age of that person. For that reason it seems to me that you couldn't put 'age' in without then discriminating against all others who are over 65 or under 45.

MR. BENOIT:

This means then that those hundreds of ads that now appear in the paper asking for someone aged 25 to 40 would be classed out? You couldn't put that in?

AN HON. MEMBER:

That's right.

MR. D. MILLER:

Mr. Chairman, I was interested when the sponsor of the bill said that the property owner had rights that must be considered. I believe that too. Experience has taught many, if not all owners, who have self-contained apartments. They are most willing to rent to anyone providing he is of good character and good habits. This individual that I know very well of -- and I mentioned this in my talk the other night -- would be willing not to rent at all if he didn't have that right to make sure, because those to whom he will rent will do more damage and drive out the people who have been renting from him for years, and they are the problem. Sometimes the police have to be called to put some of them out because of the way they carry on. I am just wondering about protection for the property owner in this regard.

MR. GHITTER:

There is nothing to stop the property owner from checking into a person's credit, checking out his past background, the nature of his character, how reliable he is, where he was before, and how he handled the property of which he was a tenant, to determine whether or not this person would be a suitable tenant. But this act covers the situation, and so it should, where if a black person or a native person comes to the door that that property owner will not look at him and say "no because blacks are all dirty" or "natives don't respect personal belongings or property." That is the type of prejudice that we are endeavouring to overcome. But there is nothing to stop the landlord or the property owner from making the other judgment as to the quality of the character that is coming before him. And I think that we must never forget the procedures, which must follow under this legislation when a complaint is registered. People who are working in this area with our present human rights commission and with human rights commissions right across Canada most certainly respect the rights of the landlord from the point of view of investigations that the landlord should undertake. But they do get many complaints. Probably the largest category of complaints involves public accommodation. Many of them don't amount to anything, but this is the commonest area of discrimination, and it is a very delicate balance. I quite agree with you that it is a difficult position for the property owner who is renting. But the endeavour is not to restrict him from making a choice of his tenants as long as that restriction is not based on preconceived notions that relate to ancestry, place of origin, religion, and things of this nature. It's a delicate balance but we are fortunate in that the human rights commissioners, and workers right across Canada well understand the problem, investigate in thoroughly, and adopt an approach that any landlord who has occasion to deal with them has found, I am sure, to be very reasonable and understanding. That's just as important because they are the people who are doing the work.

MR. HENDERSON:

I have a question of slightly different aspect just on the general question of age and maybe you could clear it up now. What are the implications that have come to the hon. member's attention relative to the age restrictions or lack of restrictions or elimination of discrimination in the area of employment because of age in the bill as it relates to pension funds, where there is an employee contribution to the fund? A number of companies require 15 years contribution before you are entitled to any benefits out. The Canada Pension Plan has a five year minimum period during which you have to pay into that. I just want to ask, are there any implications in this question of age relative to private pension schemes, which really while they fall under maybe the classification of insurance are not normally considered to be public or even union responsibilities?

MR. GHITTER:

I might refer the hon. member to Section 6 (2), which states that the provisions of Section 6 (1) relating to age, "shall not affect the operation of any bona fide retirement," and then we are amending that as well to add "and matrimonial or marital status or pension plan or the terms or conditions of any bona fide group or employee insurance plan." That subjection was designed, I trust, to satisfy the point that has been raised by the hon. member for Wetaskiwin-Leduc.

MR. HENDERSON:

I guess what I am really wondering is if there shouldn't be something in the act dealing with the question of pensions other than what's in here. Because I can see an individual with under 15 contributory years - they say 65 is the normal retirement age - if the private plan says, "There shalt not be any contribution for anybody that starts service after the age of 50," that would still apply under this act, and wouldn't be interfered with? I'm not too certain that maybe we shouldn't interfere with it. I am just asking a general question.

MR. LOUGHEED:

Mr. Chairman. on that particular point, that's one of the reasons for this conference or seminar that we discussed. We want to raise this matter with the major employers in the province. It may be that they will raise with us very legitimate suggestions that require some sort of amendment to this act. We don't expect that. Our studies don't indicate that, but it is a possibility. By taking this very strong position we want to see if the people aged 45 to 65 are running into the problem the hon. member is suggesting.

While I am on my feet, I think we all chorused "yes" to the question made by the member for Highwood with regard to the question of notice. But the employment situation, of course, has that exception. We read in Section 6(3), "if there is a bona fide occupation." I always think of that one -- the pile driver one, you know.

MR. STROM:

Mr. Chairman, I think maybe this would be as good a place to make a comment that I want to make.

First of all, I think the discussion up to this point has just indicated that there are some problems that arise in the administration of the act itself. I think all of us recognize that we will continue to have these problems and that what we have to do is to try to determine the objective rather than look at the details. Everytime I think of the details I am reminded on a little incident that I witnessed a couple of, maybe three, years ago out in Victoria. My wife and I had been staying at a motel and in the morning we came down to have breakfast. In this particular restaurant they had the required number of waitresses, at least in my opinion, but we sat there and we waited and waited, and waited for service and after a very long time we were finally served. While we were eating our breakfast a white man and an Indian woman came in and sat down and the table and started to wait for service. They did not wait nearly as long as we did when you could see the dark cloud of anger come over their faces and they finally got up and they walked out. Now it is very easy for me to recognize that the complaint they would make was that it was discrimination. But in that case, it was a case of very sloppy service.

Now, I for one do not want to use those kind of examples to indicate that there are going to be abuses of the act itself. All I am trying to point out is that when we express our concerns in some of these areas, I don't think we can come up with a perfect solution. It seems to me that we are going to have to depend on the commission that is set up; and I know that at the time that we passed our act, I had some real concern because I was too inclined to try to assess all of the reasons why it wouldn't work for the very reasonthat I mentioned in bring out this example of mine. It seems to me that what we are going to have to do is to try to view it in the light of what the objectives are; and then of course we will have to recognize that having brought in the legislation we will find a number of people who will try to seek protection under a particular section that may not really apply to them. But because that one doesn't there may be some legitimate cases to which it really applies and it is for that reason that I rationalize myself into a position of saying that we have to proceed even though we can't spell it out as clearly as we would like. I thought, Mr. Chairman, that I should express that view because, in resume, we may leave the impression that we think it is not necessary or that we in fact are moving too far. I don't know whether we are moving too far or far enough. All I am suggesting is that we will have to proceed and depend on the good judgment of the commissioners, who I believe have a tremendous responsibility in this area.

MR. D. MILLER:

Would there be anything in the act that would prohibit a landlord from advertising self-contained suites available for teetotallers only?

AN HON. MEMBER:

It is not in the act.

MR. GHITTER:

Well, I think from the point of view of accommodation we would have to look at section 3. I don't think that is a discrimination which arises with respect to race, religious beliefs, colour, sex, ancestery or place of origin, unless all teetotallers in the world come from one location. So I think that is all right.

If I just might, while I am on my feet, thank the hon. the leader of the Opposition for his comments, because the whole tenor of this legislation is based on the role of the commission and that is why the enforcement procedures which are contained in this bill are of a low-key nature to the extent where all the commission can really do is to negotiate matters on a voluntary basis. The commission has no rights of enforcement whatsoever. All they can do is refer it to another body from the point of view of enforcement. The whole tenor of this legislation is that it is signifying the importance, the faith that we place in the commission to be reasonable, to be amicable and to negotiate and to do

things in a very low-key way. That recognizes the whole philosophy behind this legislation, and the contribution of the hon. the leader of the Opposition certainly showed great understanding of what this legislation is endeavouring to do.

MR. TAYLOR:

Mr. Chairman, I don't think we have to worry about that place mentioned by the hon. Member for Taber-Warner for teetotalers only -- I think he'd go broke in two weeks.

MR. DIXON:

Mr. Chairman, I was wondering if I could direct a question to the hon. member sponsoring the bill, because in other provinces -- I did a little research on how it is working in some of the other provinces, in particular Saskatchewan, Ontario, and British Columbia -- the commission members pointed out that discrimination is such a subjective subject that a lot of the complaints they get are from unsound people. They say one of the problems that they are faced with is to make a decision as to how far these complaints should go; should the commission hear them, or should the commission carry them on further? I was wondering if, in the hon. member's research, he has run into this problem. It has been pointed out that in most cases this seems to be the subject that takes a lot of the time of the commission -- complaints by people who really haven't get a legitimate beef when it boils down to it.

MR. GHITTER:

I think that is a very valid observation. I think that if we were to examine the figures of the Human Rights Branch in this province we could see that in 1971 there was a total of 291 complaints; 92 were settled very quickly and were generally found to be of a somewhat trifling nature. It is the unhappy lot of some people that when something doesn't quite go their way they feel they are being discriminated against, and as a result they complain wherever they possibly can. Fortunately we have a Human Rights Branch that will at least listen to them and they can feel that government or our society is at least receptive to their point of view. I imagine the Ombudsman possibly finds himself in the same situation on many occasions with the same type of complaint. So I quite agree with the hon. member in that many of the complaints they receive are ill-founded, but at least they have a place to go to express their point of view and they, at least I hope, understand that governments are sympathetic to everyone's problems, be they in human rights or in the areas of the Ombudsman's work.

MR. HINMAN:

I had occasion once to talk to a landlord who had just constructed an eight-unit apartment building. A particular ethnic group came to him and told him that they thought they could fill his apartment with people of their ethnic group. They wanted to do this so they could afford a tutor to keep their people aquainted with their native language. He had all the suites filled but one when another fellow came along and wanted to rent it. The landlord explained what he was trying to do for these people, but the fellow offered every objection he could. The landlord held out and very quickly the suite was taken by a family of the particular ethnic group. Do you think the procedure of the commission is enough to let such things as this work once in a while? I can conceive of problems like that coming up with the Blackfoot people. They are very concerned now with the Indians who leave the reserve. If they can get them sort of 'community-ized', they can keep up their Blackfoot language; without it they can't. Do you think the commission and the enforcement procedures would be enough to let this happen if it were wise?

MR. GHITTER:

I imagine there is always one way of getting around that -- they could turn the eight-suiter into a private club and then they could restrict it to whatever they want. Maybe they should get a lawyer to advise them as to how to do that. But looking at it realistically, I think it would be doubtful that under those circumstances, firstly, that anybody would complain. If someone went to that eight-suiter and there was nothing but Swedes in it and there was one vacancy and he wanted to get in and it was explained to him that they were only allowing Swedes into it because they provided this service for the tenants, it would be very doubtful that anyone would complain because that's not really a discrimination against the person who wanted to get in; it's just a matter of the eight-suiter being set up on that basis. I'm sure that if that were referred to the Human Rights Branch, they would take that on an understanding

basis and not be too worried about it. I can't see that this act would really stand too much in the way of a situation like that.

MR. DIXON:

Two points, Mr. Chairman, I forgot to mention when I was on my feet. I was wondering if we turned the tables the other way -- and if you read American papers they have -- and I am sure it will be here before too long -- they are advertising Swingers' Townhouse, which is very opposite of what most landlords wish. I guess under this bill they would be allowed to advertise that; that wouldn't be discrimination against the ones that aren't swingers or the squares.

The other thing, while I am on my feet, is that every once in a while in Calgary I know some of the rowdy members get invited to what they call a lease-breaking party. Now this is actually discrimination because this is an action to force the landlord to break the lease and be glad to get rid of them. Now, how do we deal with a case like that under this bill?

MR. GHITTER:

If I could respond to the swinger or non-swinger situation: I guess that is a matter of definition. But we certainly don't hold anything against either of them, so the hon. Member for Clover Bar could certainly be acceptable. From the point of view of the lease breaking parties, I am not quite sure that I understand where the discrimination exists under your example there, hon. member; possibly it is more towards the landlord under those circumstances that the tenants that are there. If it gets too rowdy at a lease-breaking party there are other laws that can overcome that situation.

[Sections 3 and 4 were agreed to.]

Section 5

MR. NOTLEY:

Mr. Chairman, on Section 5, I have a question to the sponsor of the bill. I notice the words "similar or substantially similar work." I am wondering whether the government had given consideration to the words "equal or substantially equal." I gather that this is the phrase that is in The Royal Commission's Report on the Status of Women and it would seem to me to be a somewhat stronger phrase than "similar or substantially similar". I am wondering if you can elaborate on your views for the reasons for that choice of phrase.

MR. GHITTER:

I think really that the difference might be more in semantics that in any other view. I refer you to the report that was tabled this afternoon, which was circulated to the members, when they are talking in terms of equal pay -- and that is on page nine and the hon. members have all received a copy of this -- when they are talking in terms of The Individual's Rights Protection Act, The Royal Commission on Status of Women in their report, which is an Interim Report on the Status of Women in Alberta, states that "Alberta's new Individual's Rights Protection Act, the companion act of The Alberta Bill of Rights, prohibits discrimination in rates of pay to male and female employees. The act specifies the rate must be the same for similar or substantially similar jobs but does not include differences due to factors other than sex. The Human Rights Commission is empowered to carry out the intent of this act. Although the Alberta act does not go as far as the commission recommends, it is felt that the Human Rights Commission will be able to act in some of these areas." I think that the commission right in its own report has probably given the best answer to your suggestion, hon. member, from the point of view of the use of words in that the Human Rights Commission is the one that will be judging that, or possibly, if it gets further, a court of inquiry or a court of law. I think that "similar or substantially similar" covers the situation.

MR. NOTLEY:

Well, just to follow that up a bit, then in your view it is just the matter of semantics because it seems to me that there is a distinction between "similar or substantially similar" and "equal or substantially equal." However, I wanted just to follow that one step further and ask whether or not you considered inserting the objective criteria of work, which are skill, equal skill, effort, and responsibility. This is something taken from the Report on the Status of Women and they also, I gather, are the standard criteria in the new Canadian

Labour Code provisions dealing with equal pay for equal work. Now have you perhaps considered strengthening this section by inserting perhaps an addition as I have suggested to you?

MR. GHITTER:

Well, I would hope that the act in its present form covers the hon. member's concern. For, of course, Section 5 (2) says, "Work for which a female employee is employed and work for which a male employee is employed shall be deemed to be similar or substantially similar if the job, duties or services the employees are called upon to perform are similar or substantially similar." And I would think that Section 5 does cover the situation relating to the concern you have expressed. I think there is nothing new to this particular section. Of course, it just relates to something that was in The Labour Act; what is significant is that it has been removed from The Labour Act and has been placed in the human rights legislation where I believe it belongs.

No, quite frankly we have not considered the expansion of that, because it is my view that it covers the situation that you have raised.

MR. NOTLEY:

The other thing is that apparently the Ontario equal pay statute uses the phrase, "same work" and defines "same work" as "work requiring equal skill, effort and responsibility." In other words, the Report on the Status of Women took its phrase from the Ontario equal pay legislation. I have had several groups contact me about this part of the act and suggest it would strengthen it if we placed these objective criteria in it. Now I am not a lawyer, I don't profess to be able to read into the various phrases all the possible interpretations, but I do think that we want to make sure that we nail down as clearly and definitively as possible that what we are talking about is equal pay for equal work. And if that means perhaps an expansion and a borrowing of Ontario phraseology, then why don't we do so?

MR. LEITCH:

Mr. Chairman, I would think that the phrase "equal" rather than strengthening it would give it a narrower meaning because "equal" by itself means that they have to be identical, whereas "similar" allows for some differences. Now even if you say "equal" or "substantially equal," I think you are still dealing with a narrower field than if you say "similar" or "substantially similar." So that the equal pay treatment by using the words "similar" and "substantially similar" covers a larger area, if anything, than would the words "equal" or "substantially equal."

MR. DIXON:

Mr. Chairman, there is one point that actually covers both Sections 5 and 6 and maybe I could, at this time, discuss it. I was wondering if somewhere -- this particularly refers to Section 6 but has something to do with Section 5 -- and it is where we are pointing out here discrimination against any person with regard to employment and so on, race, religion. I was wondering if somewhere in the bill we should not put some protection in for a person who is trying to prove that he or she is being discriminated against, because last week in British Columbia there was quite a famous ruling given. Maybe I can read it out to the hon. members, because I think what is going to happen with this Bill No. 2 is that we are going to run into all sorts of situations and we are just beginning with some of the problems. I thought this might be of interest to the sponsor of the bill and the government and members in particular. "This week the commission received a rare burst of publicity when it became the centre of a controversy between Office Assistance Ltd. and two of the company sales representatives. The commission initially issued a decision in favour of the two women who claimed they were fired for demanding enforcement of equal pay legislation." And this is where Section 5 comes in. "It then issued a second ruling, again in their favour, after the two women were fired for removing company documents to substantiate their original case." And this is what I am trying to bring in under Section 6. "The commission came out the loser on both sides of the dispute and proceeded to castigate the B.C. human rights legislation as 'vague and inadequate for the protection of employers and employees.'" You can see where they were fired in the first case, at least according to the ladies, because of equal pay, and then the company wished to dispose of their services again because they said they had stolen the documents to prove they were being discriminated against. I wonder in a situation like this, is there some way you can put a clause in there that you cannot be penalized for trying to prove your case, even if it does mean taking documents to prove it.

MR. GHITTER:

That is a dynamite situation. I guess that is what complaints are made out of in this area, but I can refer the hcn. member to Section 9 which may answer it partially. Section 9 in the bill says, "No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty upon, or otherwise discriminate against any person because that person has made a ccmplaint or given evidence or assisted in any way in respect of the initiation or prosecutien of a complaint or other proceeding under this Act." So I think that protects the employee somewhat from the pcint of view of the making of the ccmplaint. That's a new and innovative section within this legislation. That doesn't go all the way at all, but I'd have to think about that frcm the point of view cf whether anything cculd be done, but I think there'd be a real problem in devising legislation that cculd cover that situation. I think you'd have to rely on the good judgment of the ccmmissicn and possibly if the commission in B.C. had handled it a little more tactfully, that would not have occurred.

[Sections 5 to 7(1) were agreed to.]

Section 7, Subsection (2) Section 7, Subsection (2)
MR. FRENCH:

Mr. Chairman, I think this is a good time to draw the attention of the hon. members to this: in the present act, referring to the present Human Rights Act, we have an exception clause here which states that Sections 5 and 6, which are similar to our Sections 6 and 7, do not apply with respect to (a) a domestic employed in a private home, or (b) an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit or any organization that is operated primary to foster the welfare of a religious or ethnic group and that is not operated for private profit, or (c) a refusal, limitation, specification or preference based on a bona fide occupation."

MR. FRENCH:

Mr. Chairman, I think we realize that Section 6 deals with the prohibition against discriminatory practices in employment. Section 7 deals with the prohibition against discriminatory practices in advertising, so this is the reason, I think, that we should have a look at this legislation, and I think we should all agree, with respect to human rights legislation, it's the type of legislation that requires understanding, tolerance and education.

When I look back to 1966, this legislature took a very progressive step in passing the present act. Last year we had some amendments to the present act, and so we now have a better act than what we had in 1966. When we look at the present Bill No. 2, I'm sure we all agree it incorporates some new ideas, which is a step forward. I think we must also recognize that if we are to be successful in this type of legislation we must attempt to achieve a very harmonious acceptance of our ideals through an educational program. I don't think this type of legislatien should be judged as a yardstick by the number of prosecutions that we have. As a matter of fact, I understand that in the past six years, there have only been one, two or three complaints that have ever gone to inquiry. The legislatien has been successful in that you've had two people that have been able to get together and come to an understanding; and I think if we're going to achieve this type of legislation, we must have some type of understanding, education, at least a general acceptance by the people at large.

This brings me to the pcint, and when I go back to Bill No. 1, I wonder what right we as legislators have to pry into the personal lives of our citizens. Bill No. 1 states that from henceforth on, the government will not be able to pass any legislatien that pries into these individual homes and so in order that we could have a full discussion of this matter, Mr. Chairman, I would like to move an amendment. The amendment is seconded by the hon. Member for Highwood. m e21

Mr. Chairman, I'd just like to read the amendment. After Section 7, add the fcllcwing:

Sections 6 and 7 do not apply with respect to (a) a domestic employed in a private home, cr; (b) a farm employee who resides in the private home cf the farmer who employs him. or; (c) an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit or any organization that is operated primarily to foster the welfare of a religious or ethnic group and that is not operated for private profit.

I should say, Mr. Chairman, that I gave some consideration to Section 6(3) which states, "does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification." I question very much if Subsection 3 covers some of the problems that I'd like to bring to the attention of the legislature.

In the first place, I'd like to make reference to the The Ontario Human Rights Code, 1961-61. And briefly, Mr. Chairman, reading from Section 4 in the Ontario Act I should say Section 4(1) is very similar to our Section 6; Section 4(2) is the same as our Section 8; and Section 3 is the same as our Section 7. I could read all these to you, but they're exactly the same as our Sections 6, 8 and 7. Now Section 4(4) in the Ontario Act reads, "This section does not apply," and that's with respect to the same as our Section 6, 7 and 8. "This Section does not apply, (a) to a domestic employed in a private home; (b) to an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit or to any organization that is operated primarily to foster the welfare of a religious or ethnic group and that is not operated for private profit, where in any such case race, colour, creed, nationality, ancestry or place of origin is a reasonable occupational qualification."

When I look at the Ontario Act, Insomuch as they make reference to a private home, to a domestic employee in a private home, I personally feel that the domestic in a private home possibly doesn't really cover some of the problems. What about a farm employee? I question very much if a farm employee would come under the definition of a domestic employed in a private home, and so basically the amendment, which has been seconded by the hon. Member for Highwood, makes the one basic change from the Ontario Act in that in Section 8(a) I refer to "a domestic employed in a private home," and in Section 8(b), "a farm employee who resides in the private home of the farmer who employs him". Outside of that minor difference, including the definition of a farm employee, it is pretty well the same as the Ontario Act. The reason I am bringing this to the attention of the hon. members, is that I think that in the Bill of Rights we recognize the right of the individual to freedom of religion. Unless we have this amendment we are limiting the right of the individual to give preference to a person of the same religion when considering applications for employment in a private home.

I think there is a distinct difference between employment in the private home and employment in a public store or factory. I am sure we recognize that employment in a private home invariably consists of a living-in arrangement, where the person is a vital part of the private life of the family. I think we could agree that this is a very vital matter. And I should also like to remind the hon. members that we have given preference to mothers today in adoption procedures, to specify in what religion, or what religious faith, her child is to be reared, at least for a six month period. We recognize some of these things. I would like to give you another example: are we going to say to the Bishop that you should not be able to give preference to one of your own parishoners when selecting someone to be your secretary?

I am sure that without this amendment we are limiting a right which separate schools have enjoyed since 1905: the right to use religious beliefs as a criteria in recruiting, hiring, and retaining staff, and for all other matters essential to the organization and development of other jurisdictions.

Now with respect to 'fraternal', which I have mentioned in the amendment: many men, for centuries, have accepted the high ideals in some of our fraternal organizations, and to these men their vows are very sacred. Are we now going to say to these fraternal organizations, "You are no longer permitted to advertise and accept a person who is not a member of that fraternal organization when accepting someone for employment."

With respect to the ethnic groups, I am sure that there are many hon. members in this legislature who are more qualified than I to speak in this area. Some years ago when I attended university, some of my friends lived in St. Stephens and some of my friends lived in St. Josephs. Are we going to say to these organizations ... that they will no longer be able to indicate religious faith as a prerequisite for admission to these residences? Now I fully realize that the amendment is very similar to the Ontario piece of legislation. I also recognize that we do have in Section 6(3) a clause that may seem to cover some of the problems that I have raised before the hon. members of this legislature. But I again refer the hon. members to the Ontario code. There is a special section to spell this out. And I would ask that we give some consideration to the amendment that I have proposed so the vital matters that I have raised in this legislature will not be a problem in the future. I think we must realize that it would be very foolish for us to pass legislation we won't be able to

enforce and I believe that by putting in this amendment we will improve the legislation so that there will be no doubt as to where we stand on the matters that I have brought to the attention of the legislature.

MR. CHAIRMAN:

Is it in the bill? You have it numbered 8.

MR. FRENCH:

Actually, Mr. Chairman, if you read the last line

MR. CHAIRMAN:

The number

MR. FRENCH:

If you read the last line, it says "Renumber subsequent sections."

MR. CHAIRMAN:

Very well.

MR. FRENCH:

My amendment is, "A section 7 add the following," without reading it, and naturally if this amendment is approved then you would renumber subsequent sections. I am certainly not going to make any suggestions with respect to other sections.

MR. CHAIRMAN:

Very well.

MR. LEITCH:

Mr. Chairman, I believe there is a lot of merit in the amendment, or at least a portion of it, that is being proposed by the hon. Member for Hanna-Oyen and I am prepared to support part of it. I think the basis for that support can be very simply stated. Neither the Bill of Rights nor the Individual's Rights Protection Act dealt with the private lives or the home lives of people. The (a) and (b) parts of this amendment will retain that principle intact, in my judgement that is one that should be retained intact. I can think of a number of cases where families - and we would all find their wishes acceptable - would wish to have people living in their own homes with particular beliefs, or faiths, or things of that nature, because those people would be living in some instances in very close asscciation with the family. There may be many homes where the female domestic help may substantially replace the mother's role because of the mother's ill-health or because she is away. think it very, very proper that someone who feels strongly about a particular belief should have persons in his home and looking after his children who share that belief. And the first portion of this amendment, Sub section (a), carries that out. The arguement of course, is equally applicable to the farm home. I am not sure that the (b) part of the amendment is necessary because I think a domestic may well include a farm labourer who lives in the family home, but as there may be some doubt about that there is no reason not to remove the doubt by specifically including it in the amendment.

I am not so sure that I can support part (c) of the amendment, Mr. Chairman. It seems to me that that goes farther than we need to go to protect the freedoms, if you like, of the people within their own homes. Many of the examples the hon. member gave in support of the (c) portion of this amendment would be covered, I would think, by Section 6(3) , which provides for an exception based on a bona fide occupational qualification. And I would think, for example, that if a fraternal organization or an ethnic organization advertised for a secretary, say, or a club manager, and put in as one of the employment qualifications that applicants be of that faith or that ethnic group, that could very properly be said to be a bona fide occupational qualification. It's quite proper for an ethnic group to want a manager who can speak the language of that group, who knows the customs of that group, who knows what kind of events that group may want? This is equally true of the secretary or the manager of a religious club or operation.

However, if we came down to where they were advertising for, say, a janitor, it may not be necessary at all for the janitor to speak a specific

language, or be familiar with certain ethnic customs, or be a member of a particular faith. I'm not at all sure that in those circumstances we should extend the freedom, if you like, to a position where it is not important that they be a member of that particular ethnic group or religion in order to properly do their work. For that reason, Mr. Chairman, I feel that (c) goes farther than we need go to protect the freedom of the home, if you like. But I certainly support (a) and (b).

MR. GHITTER:

Mr. Chairman, with respect to these amendments, I think it should be said for the record that there is also another point of view with respect to the human rights legislation and the things it is intended to do. I've noted that these particular exemption clauses, with respect to domestics, have, in fact, in the past few years, been taken out of legislation in the provinces of New Brunswick and Manitoba. They have not really been needed in their human rights legislation, and I am further led to believe that they have not had any adverse feedback from people who are looking for domestic workers.

I am also led to believe that Ontario now is moving in the direction of removing sections that the hon. Member for Hanna-Oyen has mentioned, although that has not become the case as yet. I also understand that a number of major United States jurisdictions, such as Maryland, Missouri, and Massachusetts, have done away with such exemptions in human rights legislation. Yet, I can also say that I understand the point of view of the hon. member and his concern not to affect in any way the sanctity of the home and the rights of people to obtain domestic workers who will best fulfill needs from the point of view of the relationship they have with their children.

It was my original viewpoint that the "bona fide occupational qualification" subsection would even cover that category. That was the original consideration in leaving the reference to domestics in the past legislation, because of the exclusion which states that the subsection "does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational qualification." 'Bona fide,' by definition, means 'in good faith', 'with sincerity', or 'genuine.' On the basis of that approach, then, if the family wishes to hire someone, for example, of the Catholic faith or whatever it might be, they generally sincerely believes that, as a bona fide occupational qualification, that person should be more aligned to its way of thinking, to its religion, to its attitude, or whatever it might be.

Personally, I am content to accept just the definition of "bona fide occupational qualification," although if it be the will of members of the legislature to be more definitive and actually express that, putting it in the legislation, as the hon. Member for Hanna-Oyen has suggested, with respect to the (a) and (b) portion of the amendment, then certainly I don't have any objection in any way to to that occurring.

I'm a little more concerned, however, with respect to Subsection (c) in the suggested amendment of the hon. member, because there I would suggest very strongly that the exclusion based on "a bona fide occupational qualification" should be more than adequate. We are just, in fact, adding another category where someone could hang their hat and discriminate, when after all, all they are talking about is employment. And what difference does it really make if the janitor happens to be of a different racial background, colour or ethnic origin? So I would submit for your consideration that I concur with the viewpoint expressed by the hon. Attorney General and from the point of view so well expressed with respect to the (a) and (b) portion of the proposed amendment. But with respect to the (c) portion I would have a little more difficulty in coming to grips with that to agree with your point of view. I am also wondering if the hon. member would consider, in order to maintain the numbering and ease of the legislatio, merely adding to the amendment rather than renumbering it as Section 8 but adding a subsection to Section 7 to merely say what Sections 6 and 7 do not apply with respect to, and then (a) and (b), so you would have a subsection (3) of Section 7. Then we could maintain the numbering and keep it in that context rather than maintaining a separate clause with respect to that exemption.

MR. FRENCH:

Mr. Chairman, I would ask the indulgence of the hon. member to withdraw Section (c) and if the hon. Member for Calgary Buffalo could draft those words with respect to how what I would call subclauses (a) and (b) fit into Section 7 and send it to the Chairman, I would be happy to add this to my amendment with the permission of the seconder.

MR. CHAIRMAN:

Can we come back to the amendment later? Very well, Section 8 --

Section 8

MR. PURDY:

[not recorded]... or my responsibility if you are going to bring it up to the sponsor of the bill. It says that no trade union shall stop an employee from becoming a member. How about the reverse of this when you have the situation of a closed shop where an employee doesn't want to become a member of the trade union, or the association.

MR. GHITTER:

We received one submission out of the 48 or so that we received over the summer, which set out that point of view -- that it is a reverse form of discrimination from the point of view of the employee. I think that has many ramifications that the hon. Minister of Manpower and Labour might wish to introduce. I think that if we were to do something of that nature we must first have a very close liaison with the labour movement to discuss it with them and to see their point of view. I certainly wouldn't feel at the present time that it would be appropriate. The hon. Member for Spirit River-Fairview might have some comment to make in that area, but I think that if we were to proceed on that basis we should certainly give the labour movement adequate opportunity to give us its input and see what its viewpoint might be.

MR. TAYLOR:

Would it be covered by employers' organization?

MR. GHITTER:

I'm not sure that it would. The employers' organization is defined at the back of the bill, hon. member, where it states that it "means an organization of employers formed for purposes that include the regulation of relations between employers and employees." I am not sure that that would really cover the circumstance that the hon. member has brought forward.

MR. HENDERSON:

Just a brief question, which I don't think really would be related to the bill but still might have some implications under Section 8. It is becoming a not uncommon practice with a number of firms to retire an individual on medical grounds, or pension him off, or something like this, but really age is probably one of the real reasons behind it. You know you can get medical opinions just like you get lawyer's opinions, or engineer's opinions that cover quite a divergent view on a case. What I am really wondering is that with this in here, if an individual was suspicious that age was the factor and wasn't mentioned and medical grounds were the reason given, he could go out and challenge the medical grounds and prove that they were invalid? It isn't mentioned in the bill, but I happen to be aware of some instances where the question might really fundamentally relate to age but medical grounds is sort of a convenient way of getting around it. How could you deal with a question such as this under this section or would it even be applicable?

MR. LOUGHEED:

Mr. Chairman, I would like to respond to that. I would hope that Section 8 would cover the exact point that the hon. member raises and that it would be quite appropriate under that particular circumstances for the complaint to be made with the Human Rights Commission and that an opportunity be obtained, the same way as with workmen's compensation, for some outside medical opinion to be raised. It is that sort of discrimination on the basis of age that I think is really important that this bill would hope to eliminate to a degree. I think that that is a good example of where the Human Rights Commission could use its force to come up with a way that might counterbalance the concern of the hon. member about an employer's advantage of fallacious or questionable medical position to have an older person, say at age 50 or so, terminated when there really was no justification for it.

MR. HENDERSON:

Mr. Chairman, many cases may relate to early retirement. In some cases it works to employee's best interests to do it and stretch it out. But I am

thinking of an instance where this broad argument of medical grounds has been used and the employee objects. I know of quite a number of cases where the individual has been retired on medical grounds at an early age, and you see him the next week working for somebody else and he is in as good health as he ever was and keeps on going until he is 75 years old or something. And so while it is not spelled out in the bill, it would be your suggestion, Mr. Premier, that the commission, logically, in spite of the bill, would look at it, and if they had outside medical advice that raised sufficient doubts, this would be the basis for challenging the action of an employer.

MR. STROM:

I just want to raise a question with the hon. member sponsoring the bill in regard to the point that was raised by the hon. Member for Stony Plain. My question is, is a person who does not want to belong to a union and is forced to in order to work being discriminated against in your opinion?

MR. GHITTER:

That is a difficult question. Do you mean from the point of view of whether or not he is being discriminated against because he refuses to join the union?

MR. STROM:

I would just like to add another point that I should have, and the reason I raise it again is because I have had a number of people who have raised it, who for religious reasons do not want to belong. They say they are prepared to pay the dues. They will pay them to charity or some other way, but they just refuse to become members of a union and pay the dues as union members. I am just wondering is that discrimination in reverse? This is what I had in mind.

MR. GHITTER:

I think that depends somewhat on which side of the philosophical fence you might sit as to what the role of the union is. It could be argued from the point of view of the union that they are there to protect the workmen, that they are there to assist them in many ways, and that it is for the good of the workmen that the union exists. The workman might say I don't want to be involved with that at all. But I think that the history of trade union movements in this country has been one that has accepted that premise by our very acceptance of the trade union movement. I would think that the present line of thinking in our society today is one that accepts that the premise that the union is there and exists for the good of the workmen and that as a result we allow and condone by the legislation we have, things like closed shop. As a result I would think that our society has accepted that premise and I would not regard it as being a discrimination as such. Possibly the Attorney General might wish to respond a little additionally to that.

MR. LEITCH:

Mr. Chairman, there is one additional argument in that area that has some merit and that is that they are not being discriminated against on the basis of their religion. For example, if you take the case of the closed shop agreement between a union and employer, the employer is perfectly willing to hire. He does not say, "I am not hiring you because you belong to religion "A" at all. He does not say anything like that. He says, "I am not hiring you because it is a condition of the agreement with the other men I have working for me that you join their group." And the person's answer to that is, "I cannot join it because my religious belief prevents me from doing it." Now those are the facts of the situation and I take it that the hon. Leader of the Opposition had this in mind. You must move then from that point to say it is religious discrimination that such agreements are allowed to exist. But I wonder if that isn't too big a jump to take. If you take that jump, you can reach the point where people have religious beliefs against paying taxes.

They can only live in a place if they pay taxes, or they may have a religious belief that they only pay so much. The House will recall a while back that when talking on Bill No. 1, I recounted a case where people talked about religious freedom including the freedom to smoke pot because that was a part of the person's religion. As you know in North America there are something like 600 recognized religions, with a great variety of beliefs. And to take all of those beliefs, and there are a number of them, some deal with medical treatment and so on and so on, and to say that people are discriminated against because of religion because their children have to be treated in hospitals or things like that, seems to me to be carrying that argument further than it can logically be carried. Going back specifically to the labour situation, I think that it is

valid to say, "This isn't a discrimination against them on the basis of their religion." But it nearly always happens that some hold a religious belief that prevents them from doing certain things. But no one on the labour side, or the management side is saying, "We won't hire you because of your religion." It just turns out that they have a particular belief that prevents them from working in this area. I don't think it's fair to say that the result is religious discrimination.

MR. COOKSON:

Further to this, and I think I raised this point earlier when we were discussing the other Bill of Rights. Despite the assurances that the Attorney General gives, I have a personal feeling that it is discriminatory. Possibly in this section there should be some provision for some method of opting out of membership in an association if it can be stated in some way or another that it is discriminatory against a person's wishes or whatever basis he might have for claiming that he does not wish to belong to an association or an organization. It's very hard to charge. I know that it might be based on a religious belief. But we know we have several cases now whether a case was made for long hair, which is claimed to be part of a religious belief. Really, I don't follow the distinction that is made if someone makes a case because of a particular belief that he has in the area of religion.

MR. D. MILLER:

After listening to the debate which I've enjoyed, I wish to add that I was raised in a union home. My father advocated organized labour all my life, although I've never belonged to a union. I've worked for myself all these years. But, in answer to that question, I wonder if we could solve it just by asking ourselves a question, or asking that individual if we were in his place. Are you satisfied with the pay you're receiving? If he says yes, and naturally he is or he wouldn't stay there, then he might be told that an organized labour got him this pay raise. I think it's obvious that if they got it, then maybe he should belong to the organization.

MR. PURDY:

You get a situation of an employer starting a company up with 40 men, and a year after, 30 of these men decide they should go into a union status and ten of them don't want to. But, because of the closed shop atmosphere, they have to. Would this not be a type of discrimination?

MR. NOTLEY:

I suppose we could get into a very, very long discussion tonight that would take us until two or three o'clock in the morning on the philosophical questions involved here. It really should be made quite clear, Mr. Chairman, that it's not an easy thing to obtain certification under The Labour Act, as the hon. Minister of Labour can point out. There are certain very specific procedures that have to be met, and in most cases a vote is taken, and it is a decision not thrust upon the workers but a decision which is democratically arrived at by the workers themselves. Furthermore, once a union is certified as a bargaining agent, it must also be remembered that they are not the bargaining agent for ever and ever. Changes are made. We have cases of other unions coming in and persuading workers at the end of the contract to decertify the local that was representing them, and put another local in its place. We have even some cases where workers have thrown out the union completely, and gone back to a totally open-shop situation. It seems to me, Mr. Chairman, that the good sense of the workers involved, and the provisions of The Labour Act that we have developed over the years in concert with the labour movement, are a good protection for the individual liberty of the workmen involved, and that if individuals feel that they don't want to go along with a particular union there is a time and place for them to try to change the minds of their fellow workmen. But within the provisions of The Labour Act, once a decision is made it's made for the duration of that contract, and it seems to me that for us to insert in this, The Individual's Rights Protection Act, a clause that would allow opting out, we would be creating a management-labour jungle in this province that would cause us no end of trouble, and would set back the job of developing cordial relations between labour and management, and would not really suit the purpose of defending individual rights either.

MR. TAYLOR:

You talk about the right to work, and yet if the person is not prepared to join a union he loses that right. He just can't work in that particular area. I hold a teacher's certificate. Unless I join the ATA I can't teach in this

province, in either the public school or the high school or the separate school system. So it goes much further than just simply the matter of employees. It goes into a great number of the professions where our society has decided that you must belong to certain organizations before you can carry out your duties, irrespective of even whether you are the best teacher in the world or the best workman in the world. You don't work in a coal mine unless you join the union. I was raised in a coal-mining area in a very strong union family, and there was very great concern in our home if somebody wanted to gain all the benefits that the union secured for the workman and not pay his dues by becoming a member of the union. There are two sides to the story. But I think when you start discussing the right to work, or the right to teach, or the right to practise law, you find that these rights are no longer there unless you are prepared to join the particular association. I think that is the basic thing that is being considered here, and I am not sure that putting in the suggested clause is going to change that.

MR. HENDERSON:

Mr. Chairman, I don't normally jump up and defend the professions. But there is a slight difference in the professional situation because there are certain legal requirements spelled out in legislation. Usually they relate to discipline of the memberships which are delegated to the body collectively by the legislature, and the question of membership in a profession that has that statutory obligation based upon the body -- with the lawyers they say, "Keep your house clean," and with the threat of that from the legislature they do it, because they know if they didn't, and if it were in the public interest, the legislature would do it for them. But you don't get into the same arguments as that when you get into the question of the unions.

I suggest, Mr. Chairman, that probably the nature of the subject is better brought up as an entity in itself under The Labour Act whenever it comes into the House.

MR. TAYLOR:

Mr. Chairman, I would point out that you don't have to be a member of the professional engineers to practise engineering in this province, and that's a profession.

[Section 8 was agreed to without debate.]

MR. FRENCH:

Mr. Chairman, we will get back to the amendment.

What I was wondering: I made one amendment and the one that was drafted here is slightly different and I am wondering if it wouldn't be better if we could just hold this section and check with Legislative Counsel.

MR. GHITTER:

Possibly.

MR. FRENCH:

Mr. Chairman, if I could just have the indulgence of the hon. members. It says "after Section 7 add the following," and it's numbered 7a, and I wrote "after Section 7 add the following," and I called it subsection (3). Now I don't know which is the better way to do it.

MR. LEITCH:

Mr. Chairman, I think that the hon. member has the one I had drafted and I had suggested we put it in as Section 7a rather than putting it in as a subsection (3) because it says, "Section 6 and 7 do not apply," and I thought it was inappropriate to include in a subsection of 7 a provision that Section 6 didn't apply. It's a little confusing. So this is really a new section and rather than calling it 8, we can call it Section 7a, and that means we don't have to renumber all the others.

MR. FRENCH:

Mr. Chairman, this is fine. I just felt that when we put in the act we want to it in the way we want it so we don't have to amend it next year.

MR. CHAIRMAN:

So the amendment, Mr. French, is as drafted now. Section 3a states that "Sections 6 and 7 do not apply with respect to (a) private home, or (b) a farm employee who resides in the private home of the farmer who employs him."

[The amendment was agreed to.]

[Sections 9 to 13 were agreed to without debate.]

Section 14

MR. NOTLEY:

Has the government given any consideration to expanding the commission and perhaps including representatives from minority groups as workers for the commission? I suggest that this is perhaps a point that is worth looking at quite carefully. People who come from the minority groups are probably in a better position to appreciate the very serious difficulties of discrimination that are involved. I believe there is one of the three now who comes from a minority group, and I am wondering if there is any policy on this and what moves the moves has in this area.

MR. GHITTER:

Mr. Chairman, I think the point is very well taken. As the hon. Member for Spirit River-Fairview mentions, there is already an employee working with the commission who is of a minority group. I think we must have the legislation passed before we can consider what, in that sense, can be done as to the make-up. Your point is certainly well taken and I believe it would fall upon the Minister of Manpower and Labour to take the consideration under advisement. I think it certainly has merit.

[Section 14 to 16(1)(a) were agreed to]

Section 16(1)(b)

MR. KING:

I would just like the mover of the bill to comment at this point about something which he and I have discussed privately and he had indicated he would discuss with the Human Rights Commission. That is the possibility of anonymous complaints. It was a suggestion made in the Report on the Status of Women, tabled in the House this afternoon and also made in a number of letters which we both received, and I wonder if he has any further thoughts on ways in which this might be achieved.

MR. GHITTER:

Yes, I think Section 9 to a certain extent will cover the situation where someone is coerced as a result of making a complaint. I think the hon. Member for Edmonton Highlands is concerned that there may be a certain reluctance on the part of employees to make a complaint with respect to a grievance to the Human Rights Commission because of the fact that they are concerned with repercussions that may arise. It has been the general policy of the commission not to accept complaints on an anonymous basis and I think the reasoning behind that, in my discussions with them, is based on the difficulty of so many of the type of complaints that the hon. Member for Calgary Millican raised: that if people know they are going to be dealt with on an anonymous basis, then the frivolous, vexatious type of complaints are more common. I think, however, there is nothing in the legislation which suggests that it can not be anonymous. In other words, there must be a written complaint, but there is nothing which says the complainant will be known; and it is a matter of policy of the Human Rights Commission, and the way it conducts its approach to the legislation, and I think in certain situations, if it feels that the situation warrants itthe complainant remain anonymous. However there is always the problem that if you go through the inquiry and the appeal procedure the anonymity may soon be lost; because if a board of inquiry is appointed, if witnesses are called and people come before the board of inquiry,then there's no more anonymity matter may be appealed to end up in the courts of law, of course, there isn't as well. So the suggestion of anonymity is something that is very limited from the point of view of someone remaining anonymous and Section 9 endeavours to cover that to a certain extent. We can only, I think on the present basis, rest on the hope that the commission, in dealing with a delicate manner, will deal with it in a very tactful and a very judicious manner.

MR. NOTLEY:

I appreciate hearing the sponsor's comments on this matter. As most of the members know, the Alberta Human Rights Association has taken quite a strong position that we should place in the bill some provision for anonymous complaint. I understand some of the reluctance on the part of the Human Rights Commission to see such a clause inserted in the act. No doubt there would be a number of complaints that are totally irrelevant, stemming perhaps from totally unrelated causes which would come flooding into the Human Rights Commission as a consequence of anonymity of complaints being part of this act. But, on the other side, it seems to me that in the occasions when I have dealt with people who had genuine problems there is a fear of lodging the complaint. I have had so many people come to me on different matters and say, "Well, do you know what is going on here? But don't use my name. I just don't want to get involved." It is a type of fear that is particularly prevalent among the type of people, Mr. Chairman, that an act like this is designed to really help. Most people in Alberta today, particularly professional people, are in a position that they can look after their own problems without any serious difficulty. But it is the lower income group; perhaps people who did not have a great educational background; who are maybe not aware of their rights; who are frankly frightened to lodge complaints. I am rather surprised that last year there were only 291 complaints to the Human Rights Commission.

I rather suspect that we would be a bit naive, in this House if we thought that represented a beautiful picture of Alberta, where they don't have discrimination, where everyone is getting along harmoniously. I would rather suspect that would it represents more clearly is that there are a large number of people who are, for one reason or another frightened of lodging a complaint. I appreciate the sponsor's comments when he says that once we get into an investigative situation it would be very difficult to preserve anonymity, but I really suggest that in terms of bringing to life some of the problems which do exist, we have to take a pretty close look at whether or not, as a matter of public policy, the commission shouldn't be encouraged to work on the basis of anonymous complaints.

I would say one other thing, and this relates more clearly to the hon. Minister of Manpower and Labour, whose department this comes under. I would guess that if the commission were to operate on the basis of accepting some anonymous complaints, we would have to increase the budget of the commission and would have to expand the number of people working for the commission in order to accomodate the increased demands on the commission. Of course, I have felt for some time that the commission as it stands is under-financed, and that we have to be ready to engage more competent people to really do the job properly. I believe that the points that have been raised in the human rights brief by the Alberta Human Rights Association are pretty cogent. They are points that we have to consider very, very carefully. If it is not inserted in the act, at least the government has to assess it in terms of implementing it as a policy in the years ahead.

[Section 16(1)(b) was agreed to.]

Section 16(2)

MR. GHITTER:

Mr. Chairman, if I may speak on Section 16(2), the copy of the bill that I have has, "give written notice", and that should not be there. It should be just, "give notice of the complaint." The word "written" should not be there for obvious reasons. When you go to a hotel or an accomodation complaint to investigate, if you have to give written notice first, by then the complaint is remedied because they have doctored up the books. Any notice should be satisfactory, and it was not our intention to have "written" in there, but just "notice."

[Sections 16(2) to Section 21(2) agreed to.]

Section 21(3)

MR. KING:

The amendment was made in Section 17(1) changing the word "may" to "shall" with reference to the minister. I was just wondering if perhaps the same amendment shouldn't have been made in Section 21(3), where it says "the Attorney General may, within 30 days after receiving the commission's files," for exactly the same reason as was behind the first amendment.

MR. GHITTER:

No, it wasn't the intention that that should be 'shall'. The idea of taking the matter to a court proceeding was, at least in the belief of the drafters at the time, that it should be something after due investigation by the Attorney General's department. If the Attorney General feels that proceedings should be taken he would have the right to do so. But if we change that to 'shall' it would become mandatory and I don't believe that that should be done unless the Attorney General had the opportunity of looking into it to see if the case would properly lie.

[Sections 21(4) to Section 26 were agreed to.]

Section 27

MR. FRENCH:

Mr. Chairman, with respect to Section 27, I notice (age) means "any age of 45 years or more and less than 65 years." I am wondering what the thinking is for making this age 45. I notice in the present act, it is 40, and the Ontario act it is 40. I am wondering what particular reason was behind this. If it is 45 are we going to discriminate against people between the ages of 40 and 45? I would just like to know the thinking of the change.

MR. LOUGHEED:

Mr. Chairman, I would like to respond to that. It is an arbitrary decision. You could pick age 45 or age 40. It was our feeling that we were going to concentrate and we intend to, to the extent that it is possible, on the problems of the older worker as described by the sponsor of the bill. We felt that the basic problem lies in that more compressed age period between 45 and 65, which is a period of some 20 years and that if we did it that way we would have a greater chance of coming to grips with it. That was the purpose of making that particular decision.

MR. FRENCH:

Mr. Chairman, could I just ask a question? Does this recommendation come from the present people who are looking after the human rights legislation that it go to 45. At the present time it is age 40. Are they having a problem in this age bracket, from 40 to 45, or what is it?

MR. LOUGHEED:

Mr. Chairman, that is again an arbitrary matter. I don't want to be facetious in suggesting that he check the history of the 16th Alberta Legislature that the bill that I introduced at the age 45 in the amendment next year went down to 40. But I just think that we are going to do a better job by that compressed age period and that was the purpose of selecting that age.

[Section 27 to Section 29 were agreed to.]

Section 30

MR. BENOIT:

May I ask if it is the intention of proclaiming this one at the same time that Bill No. 1 takes effect?

MR. GHITTER:

That would be proclaimed as at January 1, 1973.

MR. CHAIRMAN:

The preamble -- Mr. Premier?

MR. LOUGHEED:

Regarding the preamble, I wanted to come back to my comments with regard to the conference concerning older workers that we are scheduling for, I believe, January and issue a public invitation to the Leader of the Opposition for his side to bring forth, if they like, two delegates to that convention and we will give him notice with regard to it. We hope it to be a seminar a legislative function of trying to come to grips with the possible ways that we can minimize the difficulties of people in that age group and to try to improve their

opportunities for employment. I think that is a very important and significant part of the bill.

MR. GHITTER:

Mr. Chairman, may I revert to Section 21(5)(e)? There is a typographical error that I wish to bring to the attention of the members. Where it says, "To pay to the Crown a penalty of not more that $200," that should read, "not more than $200." If that might be corrected with the permission of the hon. members.

HON. MEMBERS:

Agreed.

[The title and preamble were agreed to.]

MR. GHITTER:

Mr. Chairman, might I thank the hon. members at this time for contributing so meaningfully to the debate on Bill No. 2.

DR. HORNER:

I move that the Committee rise and report and ask leave to sit again.

[The motion was carried without dissent.]

* *

[Mr. Speaker resumed the Chair at 10:27 p.m.]

MR. DIACHUK:

Mr. Speaker, the Committee of the Whole Assembly has had under consideration Bill No. 2, and begs to report same with some amendments, and begs leave to sit again.

MR. SPEAKER:

Having heard the report and the request for leave to sit again, do you all agree?

HON. MEMBERS:

Agreed.

DR. HORNER:

Mr. Speaker, I move the amendments be read a second time

[The motion was carried without dissent.]

DR. HORNER:

Mr. Speaker, I move the House be now adjourned until tomorrow afternoon at 2:30 p.m.

MR. SPEAKER:

The House stands adourned until tomorrow afternoon at 2:30 p.m.

[The House rose at 10:29 p.m.]