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ON

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Tuesday, 24 June, 1980

Time — 10:00 a.m.

MR. CHAIRMAN — Mr. Warren Steen (Crescentwood).

MR. CLERK, Jack Reeves: Gentlemen, we have a slight problem this morning in that Mr. McKenzie says that he will be absent on Tuesday and Mr. Steen has agreed to Chair the Law Amendments Committee for him. I think a motion to appoint Mr. Steen as a temporary chairman would be in order. So moved by Mr. McGregor? Mr. Steen, would you take the Chair, please?

MR. CHAIRMAN: Members of the committee, we have a number of bills in front of us as you are all aware of, and we have a number of persons that have indicated that they would like to make representation this morning regarding certain bills. Perhaps it would be best if I read the names of those persons off who have indicated that they would like to make representation regarding certain bills and then ask if there are any others who are present who are not on our list and, if so, and wish to make representation that they could let the Clerk know their name and which particular bill that they would like to make representation regarding.

On Bill 13, An Act to amend The Defamation Act, Mr. Knox Foster of Aikins, MacAuley has indicated. Perhaps if there are any other persons regarding that bill, they might let the Clerk have their name. On Bill 20, An Act to amend The Change of Name Act, the Manitoba Association for Rights and Liberties. On Bill 39, An Act to amend The Social Allowances Act, we have a Mr. Patrick Riley, a Mr. Arni Peltz, Sheila Rogers and the Manitoba Association for Rights and Liberties. On Bill 49, An Act to amend The Ombudsman Act, the Manitoba Association for Rights and Liberties. On Bill 70, The Blood Test Act, Mr. Knox Foster.

A MEMBER: That is it?

MR. CHAIRMAN: That is the list that the Clerk has handed me as to persons who have indicated prior to the meeting that they wish to make representation, and I have named them and the bills in which they may wish to make representation. Are there any others present today who I have not named who wish to make representation? Seeing and hearing none, we can go to Bill 13. Mr. Knox Foster.

BILL NO. 13, AN ACT TO AMEND THE DEFAMATION ACT

MR. KNOX B.FOSTER: Mr. Chairman, members of the committee, I am present today representing the Manitoba region of the Canadian Daily Newspaper Publishers Association. With me is Mr. Bill Wheatley seated in the gallery who is the Manitoba co-ordinator of that Association. My purpose in attending the committee today is to express the support of that association to Bill 13. In particular, I would address my comments to Section 3 of the bill which introduces a new section to the Defamation Act. That section, gentlemen, is one that has been deemed by many and is supported by the Canadian Daily Newspaper Publishers Association to be necessary to overcome a recent decision of the Supreme Court of Canada.

The amendment does not overcome that decision for the protection and support only of the newspapers. In fact, I would suggest to you that the newspapers per se do not get any great benefit from the proposed amendment; rather it is an amendment to overcome the decision of the Supreme Court of Canada, which has been generally criticized by many people, not just those in the newspaper industry, but many people, for the reason that the Supreme Court decision had the effect of stifling communication. It is for that reason that the bill has the support of the Canadian Daily Newspapers Association in that it overcomes that stifling. It does not, as has been suggested in some of the debates on the bill, does not provide an absolute defence for the newspapers; it merely clarifies and enables them to do such things as publish letters to the editor, which contain opinions that are not supported by the newspaper proprietor or editor.

The Defence of Fair Comment, which is referred to in the section, is one which can only exist where the facts on which the opinion is stated are true, so that it does not enable, in my respectful submission, a newspaper to, with impunity or immunity, publish any kind of defamatory material. For that reason, gentlemen, the Canadian Daily Newspaper Publishers Association supports enactment of the bill.

I'd be happy to answer any questions.

MR. CHAIRMAN: Are there any . . . Mr. Jenkins.

MR. JENKINS: Yes, Mr. Chairman, through you to Mr. Knox Foster. What protection would there be for a person that might be defamed, under this proposed amendment to The Defamation Act? Is there any onus now upon a newspaper to make sure that letters that he receives are from bonafide people, not from someone that might dream up a handle and put it on a letter, as we saw happen in B.C. in the last provincial general election — the bag of dirty tricks that was being played and — (Interjection)— well I'm not going to pass judgment one way or the other. I think that there has to be a certain amount of — and I'm asking the question of you — do you not feel that there has to be a certain responsibility shown by the publishers that they make sure that names, addresses of people are on file with the newspaper, because if I was defamed in your newspaper by a letter, I think then for myself to get justice done, if your clients do not maintain proper records, how am I going to be able to file a suit for defamation in court?

MR. FOSTER: The remedy of suing for defamation is always there and still there. This proposed amendment does not change that. That remedy will always exist under the other provisions of The Defamation Act and the common Law and statutory interpretations that have been given to the Act. So in answer to the first part of your question, if I understand it correctly, what right would you have if you were defamed by a fictitious person. You would still have the right to sue the newspaper and if they could not succeed in any of the usual defences, including the Defence of Fair Comment, your action would succeed. I don't think this, with respect, changes the onuses which are on them in any event, in regard to publishing letters which contain true statements of fact and opinions on matters of public interest. So that I think in practice it is fair to say that the newspapers do check the authenticity of the authors of letters to the editor and keep them on file for a period of time.

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman. Again through you to Mr. Foster. How long are these copies kept on file? What we hear on hotline shows — there is an abuse there because I'm sure anyone who's been in public life can say that they've been in some way, shape or form or other maybe defamed by certain comments, and I know that under CRTC regulations that the radio station is compelled to keep records of the tapes of hotline shows for a certain period of time. In this instance would this legislation protect a radio station who is receiving opinions of fair comment; does this legislation cover radio stations as well as newspapers? What onus is there on the broadcaster to make sure that people who are making statements on the airways, that these are statements of fair comment?

MR. FOSTER: The onus is on them presently and would be with this amendment in the same way. They, I suppose, run a greater risk in that there's more instantaneous communication rather than a time to consider whether they will or will not publish a letter to the editor. The broadcasters perhaps only have a shorter delay to make that decision but they must make the same decision as they do now, with or without this amendment.

MR. JENKINS: Now we come to Section 9.1(2), says "For the purpose of this section, the defendant" — and that I would imagine in this case would be the newspaper or the publisher or the broadcaster, be he of the electronic media or the printed word — "For the purpose of this section the defendant is not under a duty to enquire whether the person expressing the opinion holds that opinion". I just wonder what that section really means. Does that mean that if I was a newspaper publisher, all I've got to do is just put down somebody's name and address and assume that this person holds that their opinion. Is that basically what it is?

MR. FOSTER: I think that section, sir, is a necessary part of obviating the Terneski case, which was the Supreme Court decision, where the majority of the court held that without knowing whether the author wrote or held the opinion, they were liable, and it is that concept that has been the subject of criticism. It doesn't, I don't suggest at all, relieve a newspaper or a broadcaster from taking reasonable steps, that it is a reason to ensure that it is a reasonable opinion or one that might reasonably be held. In other words, for the fair comment defence to exist at all, it has to be based on true facts and a comment or opinion on a matter of public interest.

MR. CHAIRMAN: Mr. Jenkins, are you through? Mr. Mercier.

MR. MERCIER: Mr. Foster, just for the benefit of the committee, could you describe what would be circumstances in your view where a newspaper would still be liable in a defamation action.

MR. FOSTER: With this amendment in place, it would still clearly be liable if the letter was premised on inaccurate facts, or contained comment or opinion on matters which were held not to be of public interest. I read some of the debates that have occurred on this bill at earlier readings and reference was made to publication say, of a letter to the editor which stated that the Honourable the Attorney-General was a Nazi. That would still be actionable and in my interpretation of this, would be successfully actionable with or without this amendment.

MR. CHAIRMAN: Mr. Doern, did you wish to ask a question?

MR. RUSSELL DOERN: Yes. I wonder if Mr. Foster could clarify this situation then. If a newspaper published a libelous letter and there was an action as a result of that, does that mean then that the individual is the one who is prosecuted but that the publisher goes off scot-free? Would that be the case in the case of a libelous letter?

MR. FOSTER: I'm not sure what you mean. That if there was an action by the defamed person against the author of the letter and the publisher, that this would relieve the publisher but not the author?

MR. DOERN: I'm just saying, if a libelous letter was published, could an action also be taken against the publisher as well as the author of the letter?

MR. FOSTER: Oh, yes.

MR. DOERN: So that if a newspaper publishes something which is defamatory or malicious or libelous or whatever, then they cannot say, we simply allow the individual to express his opinion; they, too, could be subject to an action?

MR. FOSTER: Yes, that is the present law and as I interpret this would continue to be the law.

MR. CHAIRMAN: Mr. Corrin.

MR. BRIAN CORRIN (Wellington): Mr. Foster, I wanted to get back to the point that Mr. Jenkins was making. I am not sure that you directly responded to his question. It was my impression that he was asking you whether or not there was currently an

onus in law on the media publisher to corroborate the authenticity and the existence of authors of letters to the editor. Is there a legal onus on the publisher to do that sort of research and make that sort of decision?

MR. FOSTER: In practice there is that onus and they do do it. I can't point or don't recall a specific case or provision in any enactment that requires them to do that, but in order for them to be reasonable, which they must, then they do do that. To be specific, I wasn't trying to evade the question, but I am not aware of any direct authority that says they must do that, but they do.

MR. CORRIN: My concern is whether or not a publisher would be responsible for opinions presented in his or her media — I guess specifically in this case, of course, newspapers — if the comment made, say a letter to the editor, is of counterfeit authorship. So if a fictitious person signs a letter, submits it to a newspaper and that is published in the Letters to the Editor column, even though the letter is not strictly libelous, as it might be construed as being fair comment, but would be of counterfeit authorship, is there anything in law that would make the newspaper responsible for its failure to establish, within certain reasonable bounds, whether or not the author was a real person?

MR. FOSTER: As I said, I don't think there is any prescribed obligation to that effect. Certainly though, with or without checking the authenticity of the author or the existence of the author even, they would be liable if the publication, if the letter is defamatory.

MR. CORRIN: So we have a situation then in this province, at least, where counterfeit letters could be received by the media, they could be published as being essentially fair comment and there would be no liability imposed on the publisher, notwithstanding that the publisher had not taken reasonable steps to ascertain whether or not the person forwarding the material was authentic, was a real person.

MR. FOSTER: If that situation is correct it exists with or without this amendment.

MR. CORRIN: I know that.

MR. FOSTER: That amendment doesn't change that, and it's because of the dangers perhaps which you foresee in that, that the practice at least is that the authenticity is verified in Manitoba; I am not sure what the practice was in B.C. in the case that Mr. Jenkins referred to.

MR. CORRIN: Mr. Jenkins used the example of the British Columbia situation and the so-called Lettergate Scandal.

Mr. Foster, are you aware whether or not the group which you represent would support amendments to the legislation that would require publishers to take certain reasonable precautions to authenticate the authorship of all letters to the editor? Would that be something that your group could support?

MR. FOSTER: I haven't any instructions on that, it has not been discussed to my knowledge; perhaps because of the practice which they do follow.

MR. CORRIN: Could you agree with me that the potential hazard is equally great in the situation of counterfeit letters to the editor as it would be in the case of letters, such as the one that was at the root of the Terneski case, would you agree that there is just as much potential for havoc when those sorts of letters are received and published?

MR. FOSTER: I think I have to answer that by saying that if it is defamatory with or without the authenticity being verified, the publisher will be liable. Greater havoc or danger, I can't foresee at the moment, because if they are publishing a defamatory matter they will be responsible in damages.

MR. CORRIN: This is the final question I had, Mr. Chairperson: Wouldn't the potential in terms of the damage that such letters might have vis-a-vis, for instance, the reputation of people in public life be just as great if the Letters to the Editor page were misused for the purposes of crass political opportunists so that one group or other deliberately set out to misrepresent public opinion by espousing certain positions on the Letters to the Editor page in a co-ordinated concerted fashion? Wouldn't that virtually represent as much potential threat to freedom of speech as the sorts of things that this Bill is attempting to redress?

MR. FOSTER: Recognizing that it is a different kind of problem, it would be perhaps irresponsible of a newspaper to engage in that kind of publication that you suggest, if there was a series of letters from some group that was not verified or authenticated, and would perhaps be considered to be irresponsible, and again if the matters published were defamatory, there would be liability for them. But to say that it would be greater havoc, I think I would have to disagree.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Foster, I previously asked for a review of legislation in other provinces to determine whether any other province, for example, required publication of the name and address of a letter to the editor. The search that was done for me indicated there wasn't any such legislation in any other province. Are you aware of legislation in any other province that would require that?

MR. FOSTER: No, I am not, nor of any cases that in considering the law of defamation that have prescribed that as a common law requirement.

MR. MERCIER: Of course this legislation would be applicable not only to letters to the editor, but to radio-phone-in shows, where the publication of the name or requirement to check the name of the author would be somewhat difficult. Would you not agree?

MR. FOSTER: It would be difficult and in practice in any of the open-line shows that I have heard they don't even ask the individual their name or to

identify themselves as the newspapers do require in their Letters to the Editor columns.

MR. CHAIRMAN: Anything further, Mr. Mercier?

MR. MERCIER: No, thank you.

MR. CHAIRMAN: Other members of the Committee? Mrs. Westbury.

MRS. WESTBURY: Yes, Mr. Chairperson, through you to Mr. Foster. Referring to Section 19, Subsection (1) Publication of a liable against a race or religious creed entitles a person belonging to the race or professing the religious creed to sue, etc.

There are some races and religions that are not represented in our community. I wonder how you would feel about, for instance, I came from New Zealand and the native people in New Zealand are called Maoris, and I don't know of one single Maori in Winnipeg. Now if there was defamation of the Maori race on the radio or in the newspaper in Winnipeg, how would that race be protected against the defamation or liable? Don't you think that an organization such as, for instance, when I belonged to the Canadian Council of Christian and Jews, even though no member of that council might represent that race or represent the creed, they should be able to bring an action to protect the race or creed involved?

MR. FOSTER: They can do so now.

MRS. WESTBURY: Does this not preclude that? " entitles a person belonging to the race or professing the religious creed", it says? Now why can't I, as person dedicated to elimination of this sort of thing, or you, bring a suit?

MR. FOSTER: They can now. I am sorry, I don't have that whole section with me, but they can now under general law bring an action for defamation. Any group that is defamed or any individual in the group can bring action. It doesn't have to be a race or creed. It can be any specific group. If, for example, someone said all lawyers are thieves . . .

MRS. WESTBURY: They say it all the time.

MR. FOSTER: Yes, if that is deemed defamatory as opposed to true, then I, as a lawyer, would be entitled to bring an action in that regard.

MRS. WESTBURY: They never do, though.

MR. FOSTER: There are reported cases, perhaps not on the lawyers are thieves example, but on other ones.

MRS. WESTBURY: Through you, Mr. Chairperson, to Mr. Foster, you mean the general law takes precedence over this particular legislation?

MR. FOSTER: It is in addition to.

MRS. WESTBURY: It is in addition to this, all right. Now if I can go back to open-line programs for a moment, it is my understanding that radio stations only have to keep tapes for a very limited time and sometimes it is not possible for people to hear the tapes or check the tapes, or have their lawyers hear the tapes, before the time that the radio station destroys them. I don't see in this legislation any time limit, any time requirement I should say, for a radio station to preserve the tapes so that they could be available.

MR. FOSTER: No, this legislation, I interpret, doesn't govern that sort of thing. The requirement to preserve and retain tapes is under the federal legislation. The preserving of tapes is perhaps as much of concern to the radio station, I would suggest, as it would be to the person who may be defamed. In other words, if they are sued for defamation and it is alleged and can be shown that the radio station broadcasted such and such a statement, which is defamatory, and if you were the one that was alleged to be defamed, you called two or three of your associates to say, yes, I heard that, then it would fall on the broadcaster to say, no, we didn't, and if they didn't have the tape there, they would have a difficult time doing that.

MRS. WESTBURY: So you feel that is covered satisfactorily under the federal legislation.

MR. FOSTER: Yes, yes.

MR. CHAIRMAN: Any further questions to Mr. Foster regarding Bill 13?

Mr. Foster, would you like to make your comments on Bill 70, The Blood Test Act, at this time?

BILL 70 — THE BLOOD TEST ACT

MR. FOSTER: I can if you wish, Mr. Chairman, if I just might get my notes.

Mr. Chairman and members of the Committee, on Bill 70 I have provided to your Clerk a 3-1/2 page submission, which I would like to read. I am appearing in this regard on behalf of the Canadian Medical Protective Association.

Canadian Medical Protective Association is a mutual defence organization to which many medical doctors in Manitoba belong. The Association is aware of the problem confronting a medical practitioner when a patient is brought to him or treatment say, following a motor vehicle accident, when it appears that the taking of a blood sample would be desirable. As the law presently stands, the blood sample may not be taken, or analyzed, without consent of the patient — otherwise the doctor is exposed to liability and damages under various heads of claim and may be exposed to criminal liability for assault.

The Association certainly does not oppose, and in fact is pleased that the Legislature is seeking some means of alleviating such a problem but is concerned that Bill 70 does not in fact accomplish such alleviation.

Section 1 of the Bill provides in summary that:

i) where a doctor has reasonable and probable grounds to believe that the patient has within the preceding two hours been driving a motor vehicle or navigating a vessel then

ii) he may without compulsion to the patient take a sample of blood and analyse it, and

iii) he is not, by reason of taking the blood sample, liable in damages for assault.

That is my own summary, not a direct quotation of the provisions of Section 1.

A concern arises as to the defence provided by that section being challenged on the basis that the medical doctor did not or could not or should not have had reasonable or probable grounds. A body of case law has developed considering the phrase reasonable and probable grounds, as used in Section 235 of the Criminal Code, but different considerations do and may well apply in a consideration of the provision of Section 1 of the bill.

The section is permissive, in that the doctor may but is not required to take the sample of blood. If he refuses to do so he may be exposed to liability either to the patient, or perhaps, somewhat remotely, to some prosecution for not taking the blood sample if it would have been necessary in some contemplated criminal proceedings against the patient.

The section provides that the doctor will not by reason of taking the sample be liable in damages for assault. Taking a blood sample would in law be considered to be an assault, without the consent of the patient, unless taken under circumstances of emergency treatment for medical purposes, e.g. to match blood types for a blood transfusion. But a doctor under the same circumstances of taking the sample without consent may also be exposed to liability for battery, further he might be exposed to liability for breach of the implied contract which exists between a patient and his doctor to do nothing without consent and to exercise due care and skill or perhaps, as well, he might be liable for breach of The Privacy Act.

In the case of a claim against a doctor for battery, case law provides that a doctor has the onus of proving that the patient did consent, that the consent was given voluntarily, and that it was an informed consent. Section 2(1) of The Privacy Act provides that "a person who substantially, unreasonably, and without claim of right violates the privacy of another person, commits a tort against that person," and by subsection 2, "An action for violation of privacy may be brought without proof of damage."

With these concerns in mind, a medical practitioner faced with making a decision whether or not to take a blood sample, under the circumstances prescribed in the Act, must then, of necessity, be concerned with consent under the present wording.

If the section is intended to obviate the need for consent and to protect the doctor from liability and damages by reason of taking the blood sample, the section might better provide that consent to take a sample of the person's blood is deemed to be sufficiently given where a duly qualified medical practitioner has reasonable and probable grounds to believe that a person whom he is treating, or who has been brought to him for treatment, has at any time within the preceding two hours been driving or had the care and control of a motor vehicle or had been navigating or operating a vessel; and that if the duly qualified medical practitioner does take a sample of blood and analyze it or cause it to be analyzed for alcohol or drug content, he is not, by reason alone of the taking of the sample, liable in damages to the person from whom the sample of blood was taken.

A wording of the section, such as suggested above, would not protect the doctor from performing the taking of the sample in a negligent way.

A deemed consent concept exists in other legislation, such as in Ontario, where I referred to The Children's Law Reform Act of Ontario, where in circumstances where parentage of a child is an issue, consent to taking of a blood sample is deemed to be sufficiently given in prescribed circumstances.

MR. CHAIRMAN: Mr. Schroeder, did you wish to ask Mr. Foster a question.

MR. VIC SCHROEDER: Yes, thank you, Mr. Chairman. Although Mr. Foster didn't comment on Section 2, I am just wondering whether there is any concern at all pursuant to that section. It would appear that a doctor could disclose the name of the person and the results of the analysis to anyone. It doesn't state specifically that that disclosure is limited to certain specific people, including the person from whom the blood was taken and possibly some specific authority. I am wondering whether you might have any comments with respect to that?

MR. FOSTER: The concerns which I expressed in regard to subsection (1) are, to a large extent, alleviated in Section 2 because the protection, or the non-liability, in damages applies by reason of the disclosure. The matter of to whom it is disclosed, I agree, is not limited. It can be disclosed to anyone, and that broad protection for non-liability in that regard flows from the fact that, without such protection, there would be liability for disclosing confidential information. I guess the broader the protection the more preferable, in the sense, that if it is deemed to be necessary to take the blood sample, under certain circumstances, then the disclosure of it is likewise necessary.

MR. SCHROEDER: Further to that, it would seem to me that it would be reasonable to expect that a doctor should be entitled to that protection if he was requested to give the results of the analysis and the name of the individual involved to a specific authority, to a police officer or to a court of law, or whatever. But to give a doctor a blanket right to say to any member of the public, anyone down the street or anyone in the hospital that he has taken a blood sample from Mr. Smith and that blood sample reveals a blood alcohol reading of .01, or whatever the reading is, it would seem to me is giving a little bit too wide a right of disclosure. I am wondering whether Mr. Foster might not agree that this right should be limited to the extent that a doctor shouldn't be entitled to give this information to anyone other than certain specified individuals.

MR. FOSTER: I would tend to agree with that. I might say, just in clarification, that doctors already now may disclose in court if they are under subpoena.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Mr. Foster, on the point raised by Mr. Schroeder, under the ethics of the medical profession, to whom would disclosure be limited to?

MR. FOSTER: Now?

MR. MERCIER: Yes.

MR. FOSTER: I think the basic ethical consideration is the doctors may not disclose it at all, except under compulsion, say, of court or with the consent of the patient.

MR. CHAIRMAN: Mr. Schroeder.

MR. SCHROEDER: The last question and answer would appear to indicate that something is needed in this particular bill to authorize a doctor to give this information to specific authorities, to a peace officer or whomever, because if it is against the ethics of the medical profession to provide this information to anyone, then the fact that we have passed this bill will not change those ethics or the responsibility of the doctor not to divulge the information. Is that not correct?

MR. FOSTER: I would expect that the ethical rules would still apply. This would just protect the doctor from liability and damages.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Foster, dealing now with the first part of your submission and those comments directed at Section 1 of the bill before us, I take it that you would recommend, and I don't want to put words in your mouth so tell me if this is not the case, that you would recommend that there be some provision in the bill for what would amount to deemed consent on the part of the patient, so that, in all cases, the onus would simply be off the physician to make a decision as to whether or not he had obtained proper consent.

MR. FOSTER: Yes, because right now, without proper consent, he can't take the blood sample.

MR. CORRIN: You feel that the section simply is deficient in that it doesn't really do what it was intended to do?

MR. FOSTER: Well, I guess my suggestion, as contained in the last part of my submission, is two-fold. If it is intended to be a deemed consent, then why not say so? However, if it is to protect the doctor from liability for taking of the blood sample, then the protection should be broader than merely by reason, or liable in damages for assault. There are other grounds or bases of claim against doctors which could result in liability and damages, other than assault.

MR. CORRIN: Are you suggesting, then, that a physician faced with a situation involving a patient who has been involved in a motor vehicle accident might have second thoughts about taking a blood sample in order to start the performance of emergency procedures?

MR. FOSTER: No, no. Now they can do that, in that event, for medical purposes, but that would not be, in most cases, for the purpose of having it analyzed for alcohol or drug content. They may well have to analyze it for blood matching or things of that nature.

MR. CORRIN: I'm just wondering, wouldn't that be sort of implicit in that process though; once the analysis had been made, blood content would be on the record, wouldn't it?

MR. FOSTER: Not necessarily. They may not even test for alcohol content.

MR. CORRIN: I thought when they took a sample of blood and they tried to determine what was in it, they sent it to the laboratory and there was an analysis done of the blood content.

MR. FOSTER: They can do that, but they wouldn't need to do that, for example, I don't want to talk as a doctor because I'm not, but it's my understanding that to match the type of blood or to deal with matters that would be necessary for the treatment, they would not necessarily test for alcohol or drugs in the blood. The blood tests are very complicated, and they can have selective things examined and tested, and reported on.

MR. CHAIRMAN: Any further questions of Mr. Foster regarding Bill 70, The Blood Test Act?

Mr. Jenkins.

MR. JENKINS: Thank you, Mr. Chairman. Through you to Mr. Foster, I understand the reasons for this legislation but the only possible way that a doctor, under this proposed amendment, and I'm asking the question to you is, if that person was unconscious; if he is conscious and he says, no, he doesn't want a blood test taken, this Act doesn't do anything then to . . .

MR. FOSTER: I would agree. I would think that in the face of a direct non-consent or refusal of consent by the patient, the doctor would not do it.

MR. JENKINS: Do you not feel that under certain circumstances that where the doctor, if he's going to take a blood sample with the person being conscious — and I throw this question out to you — that he should warn the person that this blood may be used as a sample for drug or alcohol content, if he is conscious? Do you not feel that there should be in legislation, something that . . . After all, if you are being charged with a crime, you're supposedly supposed to be warned of your rights, and I ask you if you feel that under this Act that if a person is conscious and a doctor asks them to take a voluntary blood test, that there is an onus on the doctor to tell the person that under these circumstances there may be criminal charges to be laid in the future?

MR. FOSTER: I would suggest that to require a doctor to explain all of that would put a terribly high onus on the doctor but, as I have referred to in my written submission, that certainly is part of the question of consent which I referred to as a defence to the battery kind of claim where it must be an informed consent.

MR. JENKINS: Then in other words, Mr. Foster, the only case where this legislation would protect a doctor is if a person is unconscious. If the person is conscious and says, no, then this legislation will not protect the doctor.

MR. FOSTER: I suppose it would cover the situations where a person is conscious and there is just no discussion about it, whether they consent or not, because this provides the doctor may take it.

MR. CHAIRMAN: To members of the committee, any further questions to Mr. Foster while he is present? Seeing and hearing none, thank you, Mr. Foster.

MR. FOSTER: Thank you, Mr. Chairman and members.

BILL NO. 20 — AN ACT TO AMENDTHE CHANGE OF NAME ACT

MR. CHAIRMAN: The Manitoba Association of Rights and Liberties. Is there someone present wishing to make representation on their behalf?

Mr. Mercier.

MR. MERCIER: Mr. Chairman, just for the record, I think they made representations at the last committee meeting and we held this bill over to allow the Minister time to consider their comments.

BILL NO. 39 — AN ACT TO AMEND THE SOCIAL ALLOWANCES ACT

MR. CHAIRMAN: The next on the list is Bill No. 39, An Act to amend The Social Allowances Act. The first person on my list is a Mr. Patrick Riley.

MR. PATRICK RILEY: Good morning, Mr. Chairman and members of the committee. Thank you for this opportunity to make submissions on this bill. My name is Patrick Riley. I'm a private lawyer here in Winnipeg and my remarks are purely in my personal capacity as a private citizen. I've distributed one sheet of paper here with some amendments to this bill that I am going to respectfully propose to this committee. I hope everybody has a copy of it. I'm sorry, it's entitled under The Social Allowances Act. Perhaps we'll wait for the Clerk here to . . .

I should say that I do have a greater interest than perhaps the average lawyer in this bill. I have taken a special interest in social allowance recipients and a number of the changes suggested by this bill seemed to be in response to cases that I have worked on on behalf of social allowance recipients. I hope everybody has a copy of the Bill 39 before them. I hope to refer to each specific provision as I go along.

The first clause of Bill 39 involves changing some of the definition sections in The Social Allowances Act. The first change is the meaning of the word "director" throughout the Act. This is in response to a recent Court of Appeal decision which held that only one person, the Executive Director of Social Services or his duly appointed deputies, in which case there are only two of them existing, had the right to reduce or cancel a social allowance. According to the old Act, that had to be done by a written order. It's my understanding that no written order was ever made in ten years of that section being in operation. The allowances were cancelled by financial workers, by case workers, by people at regional offices. These three individuals, who in law were found by the Court of Appeal to have the power and discretion to cancel allowances, were very very rarely even involved informally, let alone did they fulfill their formal requirements of making a written order.

Now it's true that three people can't make all the decisions for 20,000 social allowance recipients and I cannot myself oppose some kind of broadening of this decision-making power. The question is how far should it be broadened. Should every case worker or financial worker be allowed to declare on overpayments and reduce allowances accordingly? That's a very large discretion involved in that kind of a decision. It appears that this bill eventually — there's another section here which changes Section 8 — will permit virtually any person in the Department of Health and Social Development to cancel a social allowance. There are some restrictions, which we'll get to.

The point I'm making here is that there does not seem to have been — and this is one example of many I'll show you here — a tremendous respect for this law shown by the department. I have the greatest personal admiration for members of the department. They are very efficient hard-working civil servants and they do all they can to save the people of Manitoba money. So I don't wish this in any way to be a personal criticism of those invividuals. However, this is a clear example where a legal provision was — I won't say deliberately, perhaps negligently — failed to be followed over a long period of time. And the question is now that one of the major things this bill is going to do is give bureaucrats more power. In light of some of their past failures to respect the Legislature's will, should the bureaucrats be given more power? That's one of the questions I would like to raise. Particularly, I would like to raise that in relation to the social allowance recipients. This is a general comment now, not on a specific bill. It's very easy, I'm sure politicians must feel the pressure by members of the general public against welfare parasites, and I have to make a distinction here. This is The Social Allowances Act. This is not municipal welfare. The individuals involved here are all long-term public aid recipients as a result of either primarily being disabled or being sole support mothers. These are not the young healthy individuals being complained about in the papers. These are people who . . . unavoidably, our society is going to produce disabled people, is going to have sole support mothers, and the question is how are we going to look after them. Are we going to look after them properly or are we going to give them a second rate kind of assistance?

Moving on now specifically through this bill then, we have in Section 1, a change to the definition of "financial resources". This comes about as a result of the well known Wuziuk case. This is the lady who went to the Bahamas. Now the problem with that case is that it's very inflammatory for people to think of welfare recipients, or social allowance recipients basking in the sun of the Bahamas while they are here in the winter. If this had been a broken down

old car worth 400, which is how much the trip was worth, there wouldn't have been any big fuss about this case. It's rather unfortunate that a very one-sided view of the case has been put before the public.

Now I'm going to tell you very briefly some more details of this case — I'm not revealing any privileged information. This is all on the record in front of the Court of Appeals — undisputed testimony of this lady's tragic and heroic circumstances. Tragic, because she married a gentleman who later turned out to become a violent alcoholic. Heroic, because she raised five children, despite this presence, so well that the oldest now has completed one year of law school. I think that says a lot about her quality as a mother that she's able to, despite her straitened circumstances throughout the childhood of these children, was able to instill upon them the desire to go out and achieve something. It would be nice if all social allowance recipients could do that. So that's her background. She raised these kids alone with no help from this husband other than beatings and so on and finally he split on her and didn't pay any money after that, and so in the last 20 years she had never had a vacation. That is the uncontradicted evidence. At the time this vacation came up, she was ill, her children were ill, she was run down, and a friend offered to assist her by giving her a vacation. This friend had no responsibility to support her and her children and simply thought that it would be good for her to get away and relax from her problems.

In no way did the province of Manitoba lose money as a result of this. The whole tenor of the thing was, instead of going to the Director and so on, was, instead of giving this 400 for a vacation, this person should have given it right to the Treasury and saved the Government of Manitoba 400 allowance for this lady. Now that of course would have been appropriate if this person had been her husband and had the responsibility to support these children and her, but this is not the case at all, this is a friend, who had no legal responsibility in regard to her family whatsoever, who simply wanted to give them a little bit of comfort in their life.

The question of comfort is an interesting one here. Later I'll show how one of these amendments is going to allow the government to reduce an allowance below the cost of the basic necessities of life. Now one might well argue that if social allowance contains something for comfort, if they do a study the nutrionists and so on, home economists, and set a certain amount as the basic necessities of life, and then said, okay, just to be sure we're going to add on 5.00 a month so that you're comfortable and that there is no concern whatsoever about you being deprived of the basic necessities of life; fine, take that comfort allowance away to recover her debt. But the result will be that people already very close to the poverty line, if not below it, will be lowered well below it. Just to give you an idea of how much; a single recipient, some will have no children and therefore will be medically eligible for social allowances, and these are not people just with minor disabilities, I've had clients who had multiple sclerosis so bad they couldn't use a telephone. So surely these people can't be expected to go out and earn their own living in life.

A single recipient in Manitoba now earns 75.60 a month for food, 17.80 a month for clothing, 21.70 a month for personal needs, 5.20 a month for household supplies, and is allowed theoretically, although this is occasionally raised, 45 for rent. The total is 165 a month to live on and that works out to the grand total, per year, for a single person living in our society with the current prices, of 1,983.60, and out of that they're willing now to take off even 5 percent of that, which is close to 100 a year, leaving a recipient to live on 1,884.42. So the point I'm making is this — these rates of course have not been raised for some time — is that social allowance recipients are now right down to the bone, and if you allow them to have more cut off, you will be depriving them and their children of some of the basic necessities of life, which I hope, no civilized society would do — to recover what is only alleged to be a civil debt.

I'll explain later other alternatives for collecting back money from criminals. That is an entirely different matter. This is a case of people who are not even proven to be negligent let alone morally at fault.

Now returning once again to this Wuziuk case and this change in financial resources, I fear that in result to this inflammatory case, the Legislature may be brought to make a mistake, maybe brought to close this loophole in response to this one case and slam the door to a lot of worthwhile individuals receiving charity. If the regulations are not amended and if this amendment goes through, the result will be that no social allowance recipient in this province will be permitted to receive a gift of over 100.00. I can explain the complicated way that comes about but that is the policy that the Court of Appeal of Manitoba overturned.

The Legislature had said previously, indicated that regular gifts were income, and just as in income tax law capital gains are treated differently than regular income, so in welfare law, how you characterize money that is received by a recipient is important. If this new section is interpreted to mean that a one-time casual gift is income in the hands of the recipient, then the result will be that no one will be allowed to have over 100 given to them. Maybe that's all right, you say; they're on allowance, what do they need more money for? Well unfortunately, they get a regular sum, which is not, I have indicated, very large, and in addition they only have 150 a year special needs for extraordinary capital acquisitions. As long as that is only 150 a year, they need every penny of charity they can get. It is to be hoped that the Legislature will not act in this way and stop social allowance recipients who are already right at the very bottom, from getting any further assistance from private individuals. If anything, one should encourage them to receive it. Now this does not apply of course to regular gifts. If your father is paying you 50 a month, fine, reduce the allowance by 50 a month. But if someone gives you 125 once in ten years, let that be added to their liquid assets, where the Cabinet allowed them to have 400 per person, up to 2,000 in a bank account. If a gift puts them over that 400 limit, fine, cut them off until they spend the money, but don't say to them, your relatives can't give you any money over 100.00. And to make sure that this would be avoided I have proposed, Number One on this sheet here, that

added to this definition which says, "Gifts, gratuities, whether in cash, in kind, received by an applicant, recipient or dependent of the applicant or recipient on a one time basis or otherwise", I would most respectfully recommend to this committee that it give consideration to adding the following wording, "Regular gifts shall be treated as income and casual, one-time gifts shall be treated as capial additions to the recipients liquid assets". If the Lieutenant-Governor-in-Council is not happy with the amount of money that is being allowed to accumulate in social allowance recipients bank accounts, they can always lower the liquid assets exemption.

Now the second major point I would like to make concerns the addition in Section 3 of this Act of another category under Sole Support Mothers. This is once again simply, I believe, conforming to regular practice. They were not very, and I congratulate them on this, they were not very strict on requiring that someone prove that they were deserted. The fact that 90 days after a separation they were sole support mothers with dependent children was sufficient. So I applaud them for now bringing the Act into line with their practice. I question though why this 90-day period must be retained. During that 90-day period, these people have to go to the municipalities for assistance and by virtue of The Municipal Act, every penny they receive from the municipalities is a debt owed by them, and I could say that certainly in the case of the city of Winnipeg, these debts are very vigorously pursued.

It is respectfully submitted that a mother with dependent children should not be forced to go into debt 300, 400 or 500 worth before the province of Manitoba supports her, and I would recommend most respectfully that this 90-day period be lowered to 30. That would give the bureaucracy enough time to determine this was a genuine separation and not simply open a whole bunch of files which quickly get closed, but it would save a number of people from going into debt as a result of the tragic circumstances of a desertion or a husband being sentenced to imprisonment or separation.

The next section I would like to refer to is Section . . . By the way, please feel free to interrupt me at any time here and ask questions.

MR. MINAKER: Mr. Riley, in dealing with the suggestion to change the 90-day period to 30 days, you are aware I am sure, that the separated mother is eligible for municipal assistance within 30 days and would be on the municipal welfare role until the 90-day period comes about, so that she would not be accumulating debts per se, she would be on the municipal welfare role.

MR. RILEY: Mr. Minaker, the Section 546, I believe it is, of The Municipal Act, make every penny that she receives from the municipality a debt due and owing by her to the municipality.

MR. CORRIN: I wanted to know, in respect to those latter comments, Mr. Riley, is it not true that the municipality can enforce the debt by placing a lien against all the property, the real property that is owned by the recipient, and collected all in that manner?

MR. RILEY: That is the fact, and in fact in the case of the city of Winnipeg, every person who receives assistance has a statement, it's called, statement of registration, otherwise known as a lien, placed against their name in the Land Titles Office, without any notice being given to them, and I would be very surprised if municipal recipients in general were aware of the fact, when they receive assistance, that everything they receive is a debt. I was only made aware of this very recently after studying this area for some time. It's never told to them expressly.

MR. SCHROEDER: Yes, Mr. Riley, just moving back one step. Mr. Hanuschak had asked me whether the change to include gifts and gratuities would also include the Christmas hampers from the Christmas Cheer Board and it would appear that . . .

MR. RILEY: I would say theoretically there is an exemption existing in the regulations for casual gifts of small value, so a one-time gift given to someone of small value, now depends what small value means, their interpretation is 100.00. That's been their past interpretation. Now, recipients could receive up to 100 or something worth up to 100 one time, as long as it's not twice, becoming regular, and that if the regulations stand and if the interpretation of small value stands, there would be no consequences.

MR. SCHROEDER: So if there was a person with a number of children and a hamper of more than 100.00, this would, under this change, have to be reported.

MR. RILEY: Yes, presumably.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, just for the information of the committee and Mr. Riley, with regard to one-time gifts we classify, as Mr. Riley's indicated, a casual gift as 100.00, but we also allow the accumulation of liquidable assets up to 400.00 per person that would be on the welfare roll. In the instance of, an example, four children and a mother then we would allow up to a maximum of 2,000 in the bank and not count that as money that had to be used; but when it exceeds that amount then we consider it a dollar-a-dollar type of thing. So if it was a 400 casual gift, a trip somewhere and the 2,000 had not been accumulated in that instance, then we wouldn't count it as part of the income. I think that should be brought out very clearly. The intention of the change primarily is, if you look at it, says "substantive gift", because what has actually happened now could be a loophole for those people who might want to use the system. I think Mr. Riley acknowledges, like I do, that there might be people out there that would want to use the system, and what could happen now in actual fact with the decision of the court, we could see that a person could give their adult children, say, 10,000 they might have in their possession and say, well, give us back 2,000 a year in terms of a gift over the next five years and we would qualify for welfare; so that we have to have some type of protection for the taxpayers money as well.

This is the objective of the change in the law, not to take away from those people that in actual fact need or where there is a charitable donation of say, taking a boy to camp, we're obviously not going to count that as a gift, and that the only case it could occur I guess, Mr. Chairman, would be in the instance of a mother with one child, say, if the other parent decided to take the child for six months, and obviously we would have to look at that because the mother would then no longer qualify under Mothers' Allowance because she would not be caring for that child over that six-month period. So it's not a clear-cut decision. It's one that will be used with discretion. I think Mr. Riley indicated that our staff are pretty practical people and are fair people that are working in this department.

MR. RILEY: I wonder if I could respond to that. I'm very glad to hear that that's Mr. Minaker's intention. Unfortunately in the Wuziuk case, just to take one example, the lady had no other assets. She received this 400.00 on the strict understanding that she use it for this trip and yet the department acted against her and pursued it all the way to the Court of Appeal. She wasn't over her 2,000 family exemption. She had no other liquid assets in the bank account. Their position was, that this was income, not an addition to her capital assets.

Now, taking your example of the person who divests themselves of 10,000 and gives it to their children to be handed back to them under the table, there's numerous ways, an existing situation of handling that. First of all, if they've disposed of an asset in the last five years, there's a section in the regulations which says, "If you dispose of an asset in the last five years in order to qualify for allowance, the director has the absolute discretion to deem it still be available to you". So he could say, well thanks, you've done a nice fictitious 10,000 transaction here but we're looking right through it.

Secondly, if they gave him 2,000 every year, that would be a regular gift and would be income. It's hard to explain this difference between an addition to liquid assets and income but I'll try and do it using actual figures.

I talked about a single recipient receiving 165.00 a month. Under the existing policy and if this Act is passed, if they receive 99.99 in one month and that is added to their bank account, there is no consequences whatsoever. They receive their full social allowance. If they receive 100.00 and one penny they receive 64.99. The total amount of the gift is counted as income available for current maintenance and the allowance is reduced accordingly, and that is a consequences of saying that a one-time casual gift — if it's over 100.00 — is income rather than simply an addition to your bank account and to your liquid assets. The way to control this kind of underhandedness is to say in the ways I've talked about, first of all, deeming money to be available and secondly, calling it income if it comes in regularly. This amendment will tend to make one-time casual gifts of over 100.00 income, and will make sure that in the month it's received, social allowance will be reduced by entirely that amount. So the whole benefit of the gift will be gone entirely.

I'm glad to hear that Mr. Minaker's intentions are not what this Act does and I would suggest if you left the Act alone and let the Court of Appeal decision stand, you would still be able to bring about the result that Mr. Minaker was speaking about. If somebody has no assets, is a single recipient and gets a gift of 401.00, they'll be cut off until they bring that 401.00 down to below 400.00. So that's the way to control this and the existing controls are sufficient, and this will only, as I say, cut off, discourage people from in any way making charitable contributions to welfare recipients.

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: Just a point of order, Mr. Chairman. I think if the delegation is to be interrupted, the interruptions should be confined to questions otherwise we're going to get involved in a debate with the gentleman.

MR. CHAIRMAN: Mr. Riley, are you near finishing your presentation?

MR. RILEY: I have a few more things to say if that's all right.

MR. CHAIRMAN: Mr. Desjardins, did you want to ask a question at this point?

MR. DESJARDINS: Mr. Chairman, I'd like to ask a question of Mr. Riley. In your proposed amendment, if I understand it correctly, this would change, that the gift or a trip in the instance that you related, would be added as a capital addition to liquid assets. I see your intentions but maybe you don't go far enough because you are saying, in effect, that somebody that already has 2,000 cannot receive a gift then from a friend. In effect, that's what you're saying and I don't see why, what difference it makes if they have 1,900, if there's no harm done, the province is not paying anything, and that 2,000, well then they can't have that.

Mr. Chairman, I would like to also state that the Minister said that a trip, somebody going to camp, would not be considered, but according to the Act it would be. It would be if it's over 100 and if the child is taken to camp — and in fact technically even if it's a provincial or federal program, it might be an exchange student program, something to that effect — if you follow the Act then the family would be penalized. Isn't that the . . . ?

MR. RILEY: That's correct. The problem I think you're referring to is the difference between gifts in cash or in kind. If someone is within their allowable liquid assets, say they've got a family of five and they have a bank account miraculously of 2,000, which is permitted, should they then be allowed to take gifts in kind above that? Obviously they can't get another 500 in cash given to them into their bank account, that would put them over their allowable liquid assets. But should they be allowed to have certain experiences given to them which don't put their cash assets above 2,000. I would agree with you, I'm simply trying to suggest something which will prevent an even more Draconian situation than that one that you are referring to.

MR. DESJARDINS: If you're right, go all the way.

MR. CHAIRMAN: Perhaps, Mr. Riley, you could conclude your presentation.

MR. RILEY: I have a few more things to say at this time. Okay. Moving through the bill, I believe I was on Section 5 where the change is made to the so-called common-law relationship section. This is not yet in response to an actual case but I believe it's in response to an Ontario decision, which is cited in the brief of Miss Rogers, who will follow me.

What they're basically doing here is replacing an objective test which can be tested in court and which has certain standards that everybody can agree on, with a purely subjective determination by a member of the department. If this thing goes through, we will no longer be able to contest the department's determination of a common-law relationship. The department can come in and say, under the following circumstances, which indicate to me, the director, such as what the neighbours say, the fact that a car was parked there once overnight. No matter how flimsy the evidence is, as long as that person is satisfied in law, we will probably have no way of contesting that determination no matter how weak the circumstances are; that are the basis of the determination.

Now, everybody agrees that common-law relationships should be treated for welfare purposes exactly the same as a formal legal marriage. There's no dispute of that. The question is, should these people be given a broad power to basically prevent sole-support mothers from having boyfriends? Obviously if the boyfriend is the father of any of the children, he has certain responsibilities which should be enforced very strictly. But the situations where this usually comes up is a boyfriend who appears on the scene after the husband has split and the department wants to try and force the responsibility of looking after the family onto this boyfriend. Now the predictable result, of course, of cutting the mother off is the boyfriend leaves and the mother goes back on allowance. Generally these gentlemen are not all that eager to accept the familial responsibilities.

Once again, I would recommend most strongly that, first of all, I don't see any reason to change the existing situation. The existing Act is working well. It has certain criteria that must be met and proven, it's not simply the length of the bureaucrat's foot that's going to determine whether someone's living common law, but whether they have an economic relationship of support, whether they've told other people that they're married and so on, a bunch of very complicated facts which are inconvenient for the department to prove but a necessity to protect the privacy and rights of these individuals.

I, therefore, respectfully recommend that if this section must go through that the part saying, "under circumstances that indicate to the director that they are living together", be simply struck and leave it to the courts to determine what, as if they were married to each other, means. That will give us some chance to question the criteria that was the basis of this decision and we will appeal then to the Social Services Advisory Committee and if that committee agrees with the director, then the decision of the director will stand. If this is passed, there will be virtually no reason to appeal. The Social Services Advisory Committee will say to the director, did you have circumstances? Yes, I had circumstances. Fine, that's all we're concerned with. But the nature of the circumstances will be virtually irrelevant unless we can prove really gross bias against the recipient. So it's a very dangerous section which will infringe on the rights of these women involved and I would certainly urge the committee to give some consideration for moving that purely subjective test from this legislation.

Section 7 of the Act, once again, extends even further the delegation of the power to cancel and reduce an allowance to virtually anybody authorized by the director to do so. There is a word left out here, I believe, which you might want to add in if you're going to pass this legislation. That's Section 8(1) at the bottom of the second page of this bill: "Where on the basis of information 'presumably received'" — is the word that should be in there — I don't like to do your drafting for you. I would recommend most respectfully, that all the parts of this section which permits somebody, other than the director, "to cancel allowance" be stricken and I indicate on my sheet of paper how that will be done.

You still have a director who will be both the executive director plus presumably the head person in each regional office, who will have the power to make these decisions. It's very dangerous to leave in the hands of somebody who's right down at the ground level this kind of decision, because personalities become all tied up. If the recipient isn't polite enough to the case worker, will they take revenge? Better to have this in the hands of somebody who could take a detached professional view of the thing and who will be answerable as things stand. If you do this we'll never be able to find out who made the decision or the basis of the decision.

Now moving on to Section 8(2), there is no requirement in this section. This is the section which says, "The notice of an order reducing an allowance must be given to the recipient". I'd only point out that there is no time limit here in this section. You can cancel allowance and wait three months, always telling the person, well, we'll decide tomorrow. I would respectfully submit that the word "immediately" or at least some time limit should be added into the second line of this Act so that once an order has been made cancelling an allowance or reducing it, the recipient will be immediately informed of that so that they can take whatever steps they may have to, to protect their rights. Without any time limit in Section 8(2), they could wait for weeks before informing them of the fact that they're no longer on social allowance.

In section 9(2), these all may seem like technical amendments to the committee but they are the sort of things that, I hope, the committee will be interested in correcting now, rather than later. In section 9(2) it seems that the right of appeal hinges on receiving a notice, well what happens if no notice is sent? In the preceding section 9(1) the right of appeal is given where someone is not allowed to make an application. No order and no notice will flow from that refusal and, therefore, unless the requirement that a notice is received is removed from section 9(2), a person in that circumstance will not have the right of appeal. So I would urge the

committee to remove the wording "who receives a notice under subsection 8(2)" from that section so that people can appeal, even if they are not formally given a notice of the fact that they've been refused.

There are a few more technical points I'll make and then I'll go into the last major point I want to make here.

Section 9(4) is a problem here, as it stands here it says "upon receipt of a notice of appeal from an appellant". Well unfortunately there's no requirement in here that the appellant deliver a notice of appeal to the respondent. The requirement is that the appellant deliver a notice of appeal to the appeal board, so this section has no effect unless you change it because the respondent will never receive a notice of appeal from an appellant. So I'm recommending that instead of this 9(4), I respectfully recommend to the committee, that the 9(4) which I have put on this sheet of paper be adopted, and I'll explain why in a minute. It states: "Upon receipt of the notice of hearing from the appeal board, the respondent shall forthwith deposit at the office of the appeal board a copy of any document which has been relied upon in making the decision or order under subsection (1) which is being appealed. The deposited documents shall be open to examination by the appellant, or the appellant's representative or counsel, but not to members of the appeal board. A document which has not been so deposited cannot be introduced into evidence at the hearing of the appeal, even if otherwise admissible under the rules of evidence."

The reason this change is made is for the following reasons. First of all it gives appellants a chance to understand the case against them. Currently you arrive at these appeals, the director's representative has a very thick file and keeps pulling rabbits out of a hat all through the hearing and you never get a chance to see what the documentary evidence is against your client. It might, in some cases have saved the hearing, had I been able to see the documented evidence and seen how convincing it was. In other cases, it would certainly have assisted me greatly in preparing the appeal and properly representing these people, to know the case presented to me. So it is a form of discovery which is permitted in any civil proceeding but, up till now, has not been very effective in this situation. I should point out that this section 9(4) was in the old Act, virtually the same wording, and I have never heard of a case where the director actually did deposit forthwith, upon receiving notice of appeal, these documents. They brought them along to the hearing and that seemed to be enough.

The reason why the appeal board should not be allowed to read these documents is because very often they contain totally irrelevant, prejudicial, inadmissable material and this should be the subject of argument for the appeal board as to whether this should be presented in evidence. I would note that section 9(5), which has not been changed, calls for this appeal board to hear evidence, not just information or anything they want to hear, but evidence. So I respectfully submit that these self-serving documents should not be, without the chance of a challenge, be placed before the appeal board; they should be deposited at the office of the appeal board and appellants or their representative should be allowed to read them and see what case they have to meet and then the respondent should be bound by these documents, they should then say, oh well, we forgot this one here, this anonymous note from some kind citizen, and so on. The documents that made the decision should be presented to the appeal board and they should be bound by that selection and shouldn't be allowed then to keep pulling things out of their files, all through the hearing, without any kind of warning to recipients. It's fine in a civil proceeding which is going to drag on for a long time, you can request an adjournment and fight the thing somewhere else but in a case of social allowance recipients, where basically they are saying, we're starving, get us welfare, you can't afford the luxury of a three or six-month fight in other courts to make sure that this hearing is correct. You can't request adjournments, or else your clients will suffer. It's an emergency situation from their point of view. So I respectfully urge the committee to give consideration to this section 9(4).

My final comment on this Act is perhaps the most important and I'm sorry in a sense that I left it to the last. It is in regard to section 20(3) of this Act. The effect of this section will be to make these disabled, aged people, these sole-support mothers, these widows, strictly liable for the mistakes of the department and not just after they go off allowance when they've won the lottery, but while they are still on allowance. The director makes the mistake and they pay for it and they pay for it by having 5 percent or more taken off their allowance. There's no restriction on the amount that the director can declare as a deduction here. And it has been my experience that they vigorously pursue this policy.

Now I said earlier that I would show how there are alternate arrangements to stop cheaters. Now, of course, everybody wants to stop this sort of thing and the honest recipients are the ones that suffer, of course, as well from this activity, so they have as much interest at the general public in correcting this kind of abuse. And there are available right now, The Criminal Code of Canada, somebody commits a fraud or a theft, they can be tried, proven guilty under proper procedural rights, and then the judge can take into consideration all circumstances and can order restitution. So that will handle virtually every case of welfare abuse available. Then the person, of course, who's convicted of that has the opportunity of either saving money from his meagre allowance and paying the fine in restitution or going to jail, in which case, of course, he will cost the province a lot more money than 2,000 a year and probably be fed better as a result. As well you have all the provisions in this Act, which seem to broaden the fraud provisions of the Criminal Code and allow a country court judge, upon proper procedural proof of moral fault on behalf of the recipient, not just rumour or whatever, something proven in a court of law, he can then take the very solemn step of ordering restitution, which is a very hard thing to do on a social allowance of less then 2,000 a year. As it stands the only people this will affect, apart from those people that they decide not to prosecute for their own reasons, are those people who unknowingly accept money from the government, which is paid to them by the mistake of the

government, and this happens all the time. The most common case is that someone is receiving assistance from their separated husband, they report it completely and fully to the government and then in the course of certain changes which come about in their allowance, due to other circumstances, a service clerk fails to note the fact that they are receiving this money. The change is so complicated that the recipient has no way of knowing that this mistake has taken place and by the time it's been discovered it is a year down the road, they've discovered an overpayment they claim of several hundred dollars and they hold her or him, strictly accountable for their own mistakes and then they say, okay, for the next, often ten years, you're going to live at 5 percent less than the basic necessities of life and that is a very harsh sentence for someone who hasn't been proven guilty of a moral fault or even of negligence. They are totally blameless and in common law, under the doctrine mistake, someone who accepts payments from someone who pays, the payor makes the mistake, the payee makes no mistake, takes the money and puts it beyond his reach, that person would not be liable to repay. If someone goes out and commits a deliberate fault in our society, of the most wanton type and racks up a civil judgement against them, they are protected by the Garnishment Act and the Judgement Act and they would be living in luxury compared to these people. So I think this is a shameful change to our Act and one which no one in this society should be proud of, to see people like this put in such jeopardy and I would urge this committee to give very serious consideration to stopping this situation right now. As things stand, through a complicated appeal process, if I can prove that the recipient didn't know that the mistake was happening, I can get them off the hook but if this section is passed, as it is, it will be extremely difficult to do so and large numbers of people will be living for a long period of time and, of course, their children along with them, will be deprived of some of their basic necessities of life because of this section here.

So I do recommend that an addition be made to this section 20(3) if it need be passed, which states that: "However, no such deductions shall be made if the alleged debt is the result of an error by someone other than the recipient, and the recipient did not know that the alleged debt was being incurred". These are the only people that are going to be hit by this section. Everybody else theoretically is liable to the Criminal Code or the penalty provisions of this Act. It is only the innocent that will suffer as a result of this amendment.

MR. CHAIRMAN: Mr. Desjardins.

MR. DESJARDINS: Mr. Chairman, first of all, talking about a possible government mistake, maybe you'd want to read your amendment and correct the mistake, I imagine that you mean the recipient did not know. I have one concern. With the addition of this suggested amendment, for instance if there was a case that it was an error in typing, that a cheque was being made and it was a fairly large sum, instead of 100 there was another zero, a thousand. Now this then would put the responsibility to prove that they didn't know it. Couldn't that be worded in a way that you wouldn't have this kind of abuse. If you — I'm no lawyer but it seems to me that if you read this, if this was accepted, then the onus would be on the court to prove that they knowingly accepted that. That at times might be difficult to do.

MR. RILEY: Well you could add on to that "or had reason to know" and that I would, I think, fulfill your . . . Of course in that situation, where someone receives ten times their allowance, it's very difficult to say that you didn't know it and the result would probably be theft. There are many cases where people get too much money put into their bank account and they go out and spend it and have been convicted of a criminal offence as a result. But "or reason to know" would be sufficient, I suppose.

MR. DESJARDINS: Thank you.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Mr. Chairman, I wish to ask Mr. Riley for some further comment and clarification on the first suggestion that he makes with respect to gifts. I'm somewhat of the opinion, of the same view as Mr. Desjardins, that I don't think that this goes far enough, although I wish to say at the outset that I cannot disagree with your proposed change. But I would like to ask for your comments on gifts that a welfare person may receive which are of a type that the benefits of the gift do not really directly, or may not directly accrue to the welfare recipient.

For example, the welfare recipient may have a child about to marry and the mother wants to give that child a proper wedding, and someone comes along and offers the 2,000 or 3,000 for the cost of the wedding to the mother, which she merely acts as conduit, she receives the money and then pays out the bills for the wedding reception. Whether she is the beneficiary or that gift or not I really don't know, because if anyone is a beneficiary, I suppose that is being shared by many people.

Or the welfare recipient may wish to provide a close relative, a parent, with a proper funeral and the parent dies leaving no assets, and again someone comes along and offers the 1,200 or 1,500 to provide a proper funeral and again the welfare recipient merely acts as a conduit. Or the cost of a trip to a funeral of a parent, or a trip to a wedding of a child. Or someone within the family, either the welfare recipient or a dependant of the welfare recipient, wins a medal or a trophy of substantial value in some athletic contest or musical contest or whatever. So have you any comment to offer as to how gifts of that type should be treated, because it would seem to me that it would be unfair to add those one-time gifts to treat them as capital additions to the recipient's liquid assets.

MR. RILEY: There a number of ways of responding to that. One obvious way would be to say that if you received 3,000 to pay for your parents' funeral and you are a social allowance recipient, if you spent that — under the old system it would go into your liquid assets. It would temporarily in theory be cut off; but if you disposed them immediately, you would also then be restored immediately to allowance. So if you took the 3,000 and spent it for the purpose it was

given to you immediately, the period in which you would theoretically be ineligible for allowance would be only the period from when it goes into your bank account and goes out, which could be very small.

There are other ways of dealing with it. I agree with you that it seems unfair to count as available for living expenses money which, in fact, is clearly earmarked for something else. There may be a contractual obligation on the person receiving it, not to spend it on anything else other than the funeral which may assist them. I don't really know myself how one can prevent them being considered though, if the gift is theoretically to the allowance recipient.

MR. HANUSCHAK: Thank you very much. I merely wanted to hear your comments because I realize that this is a matter, the discussion of which I should pursue with the Minister responsible for the bill.

MR. RILEY: Mr. Chairman, if there are no further questions?

MR. CHAIRMAN: Mr. Corrin, did you have any questions?

MR. CORRIN: No, but I would like to thank Mr. Riley for his submission. It was very detailed and very enjoyable to hear.

MR. RILEY: Thank you very much.

MR. CHAIRMAN: Mr. Arni Peltz, is he present? Or Sheila Rogers?

MISS SHEILA ROGERS: Yes, Mr. Chairman.

MR. CHAIRMAN: Would you like to proceed or do you want the . . .?

MISS ROGERS: I believe there's a brief being distributed.

MR. CHAIRMAN: To Miss Rogers, is it your intent to read the brief or to highlight it?

MISS ROGERS: It was my intention to read it. I don't know whether or not there is time before — it's fairly long.

MR. CHAIRMAN: Could you proceed now, please?

MISS ROGERS: Thank you, Mr. Chairman. I appear this morning in the dual capacity of an articling student with Legal Aid Manitoba and as a member of the Legal Aid Lawyers' Association, representative of attorneys and articling students employed throughout the province by the Legal Aid Services Society of Manitoba. The association has expressed concern about the tenor of the amendments in Bill 39. However, there has been insufficient time to circulate the text of the brief to all members for their approval.

A substantial number of the clients serviced by Legal Aid Manitoba are recipients of social assistance and frequently we are called upon to represent them before the Social Services Advisory Committee with respect to cancellation, reduction or refusal of assistance. Because of our work in the area of welfare law, we feel that we are in a position to make a useful contribution to any discussion pertaining to the amendment of the legislation which governs the provision of social allowances.

Before considering the bill in detail, I would comment on what we see as the major problems with the proposed amendments. With respect to Section 5, first of all, we note with regret that the bill does not recognize the right of single fathers to obtain social assistance. In addition, we see little justification for a provision which requires a three-month waiting period in certain circumstances before assistance will be paid under the Act.

The amendment to Section 5(5), particularly causes us concern, for it appears to place the recipient of social assistance at the mercy of his or her social worker by giving the latter the power to determine whether or not the client's living arrangements are acceptable. The allegation of a common-law relationship is one which is very serious and the client must be assured that objectivity and reasonableness will prevail and that her rights will be protected.

It is, we feel, essential to ensure that The Social Allowances Act provide some basic protections against decisions to alter assistance being made on the basis of flimsy and unsubstantiated evidence. It's for this reason that we propose changes to Sections 8 and 9 of the Act. We feel these will assist in meeting this goal.

Section 3 of the Act states, in part, that the government ''may take such measures as are necessary for the purpose of ensuring that no resident of Manitoba lacks such things, goods and services as are essential to his health and well-being.'' We are dealing here with the provision of the basic necessities of life to those in need. As such, amendments to The Social Allowance Act should receive the most careful consideration to ensure that no one who is in need will be forced to go without, and to see to it that the rights of welfare recipients, historically one of the most powerless groups in society, are protected. We would propose, therefore, that because of the seriousness of the amends before you, that any changes to the legislation be postponed until the fall session of the Legislature to provide sufficient time to consider the amendments.

Dealing with the Act in a little more detail, first of all, Section 2(h). This amendment would permit the Executive Director, as defined in The Social Services Administration Act, to delegate his authority. We appreciate that the Executive Director cannot make every decision and that delegation is necessary. However, we are of the opinion that the subsection as proposed is too broad and suggest that the legislation be somewhat more specific in outlining who should be given the authority to make decisions which affect an individual's right to obtain social assistance. As it now stands, the amendment could conceivably result in decisions being made by financial workers or other income security counsellors. We recommend, therefore, that delegatory power be given only to the directors of the area offices of the department.

The amendment to Section 2(h.1) appears to be a response to the Manitoba Court of Appeal decision in the Wuziuk case in November of '79. It's in our opinion too sweeping; it leaves too much discretion in the hands of individual income security

counsellors. Are all gifts to be included in the determination of financial resources? Who is to ascertain the value of a piece of furniture or a trip to the lake for the children? By assisting a family or an individual receiving or applying for social assistance, a charitable friend could indirectly be jeopardizing the right of that recipient or applicant to assistance. The amendment as it now reads is unduly harsh in our opinion. Recipients of social assistance should be able to receive casual gifts of small value without fear of their allowance being affected.

We recommend, therefore, that Section (h.1)(iii) read as follows, and it's essentially what is in the Act right now, that regular gifts and gratuities, whether in cash or in kind. The Court of Appeal in Wuziuk, in holding that "income has the character regularity" found that 400 gift to be used for a holiday did not fall within this definition and constituted instead part of the recipient's liquid assets. If the proposed amendment to Section 2(h.1) is intended to eliminate the possibility of this situation occuring again, then we feel this goal could be met by amending Regulation 4(1)(c) to delete from the category of "income" casual gifts of small value, placing them instead under the heading of "assets" in Regulation 4(1)(a).

Moving on to Section 5, this section outlines who may receive social allowance payments and we have two comments to make. Firstly, why does this section continue to exclude male spouses in Subsections (b) and (c)? We submit that in the 1980s it is unrealistic for legislation to continue to perpetuate the idea that only women should have the right to social assistance if they have dependent children and must remain home and out of the labour market. Why should a widower with dependent children or a husband who has been deserted by his wife and who is left with children to care for be denied the right to apply for assistance?

The same applies to the proposed Section 5(1)(c)(v) where a couple have been separated for a specified time. We would draw your attention to a 1977 decision of the Manitoba Court of Appeal in Fitzpatrick, that was November 29, 1977, where a father who wished remain home with his young son. The court's hands were tied by the provisions of the Act which states that to be eligible one must be a "mother" under Section 5. A more recent decision in Ontario in Leonard Walker against the Director of Family Benefits also resulted in a single father being found ineligible for assistance. The court in that case noted that it is for the Legislature to decide whether or not a father should have the same benefits as a mother. At this time, those rights given to a mother have not been given to a father.

We submit that it is time to recognize the right of a single parent, whether a mother or a father, to apply for and receive social assistance where, as Section 5 states "if the social allowance were not paid, that person would be likely to lack the basic necessities." Our recommendation, therefore, is to amend Section 5(b) to include a widower and Section 5(c) so that the term mother is replaced by "parent" and the terms husband and wife are replaced by "spouse".

My second comment on Section 5 relates to the 90-day period which must pass before an applicant under the proposed Subsections 5(1)(c)(i), (ii) and (v) will be eligible for assistance; while the waiting period may be justifiable, 90 days seems to be an unnecessarily long time. The length of the waiting period is particularly significant in light of the fact that those in need of assistance are forced to approach their municipality, and if the recipient happens to own a home, any funds received from the municipality become a debt and a lien will be placed against their interest in the property.

We therefore recommend that the waiting period be reduced from 90 days to 30, as well as reducing the time a person requiring assistance would have to rely on their municipality. We feel that 30 days is sufficient time for a spouse to determine whether or not he or she is to remain separated, and also to establish that one spouse has in fact deserted the family.

The amendment to Section 5(5), as I mentioned earlier, we consider this one to be of great significance. The allegation that a welfare recipient is living in a common-law relationship is often made and because of this fact alone, we should strive to ensure that any legislation relating to such an allegation is concisely and carefully drafted. We must remember that we are dealing with the provision of the basic necessities of life and any finding that an individual claiming to be in need is ineligible should be arrived at only after it is objectively established that circumstances exist which support such a finding.

The current Act states that where a man and woman who are not married to each other are living together "as man and wife" then for the purposes of the Act they will be considered to be legally married to each other. The proposal outlined in Bill 39 is to replace the words "as man and wife" with "under circumstances that indicate to the Director that they are living together as if they were married to one another".

It is our opinion that the amendment proposed by Bill 39 replaces objectivity with discretion. Referring back for a moment to our comments regarding the amendment to Section 2(h), were that proposal to be enacted unchanged then we might be faced with the prospect of having a recipient's social worker armed with the authority delegated under Section 2(h), making a decision to terminate assistance because of his or her impression of a client's living arrangements. Because of the seriousness of a decision to terminate, vary or refuse assistance, we would urge that some measure of objectivity be retained in the legislation.

We refer you to the Ontario Court of Appeal decision in Warwick where the court stated at Page 336 that marriage involves a complex group of human interrelationships — conjugal, sexual, familial and social as well as economic. The Social Assistance Review Board and the Divisional Court erred in law in deciding that the determination of Mrs. Warwick's status as a wife was a question of fact alone and in interpreting the Act and the regulation to mean that only economic criteria were to be considered in determining whether the appellant was living with Mr. Galea as his wife.

As you can see, the Ontario Court of Appeal is of the opinion that the determination of whether or not a man and woman are "living together as if they were married" involves some complexity and is not simply a matter of a social worker considering that the

circumstances of his or her client's living arrangements are such that they indicate that there is a common-law relationship. Our recommendation, therefore, is that Section 5(5) remain unchanged in The Social Allowances Act.

Section 7(5), this is a new section. The rationale behind this section, which permits the Director to bring an action in the name of and on behalf of a recipient of social allowance, is understandable. However, we submit that there are situations where such action would be unwise and inappropriate. We are concerned that no protection is afforded the recipient of assistance who is unwilling to pursue her remedies against, for example, a former spouse. I'm talking particularly about The Family Maintenance Act here.

With frequency we encounter women who live in fear of their spouse, having perhaps just left a relationship where they were subjected to violence. Because of their lack of resources, they must turn to welfare for support. Often they are too frightened to go to court for maintenance and/or support, fearing their spouse's reaction when he is served with legal documents. While we do not wish to imply that those charged with the responsibility of bringing legal action in the name of unwilling recipients would be insensitive to their client's feelings and wishes, nevertheless we fear that the pursuit of such actions on behalf of reluctant litigants may become so automatic that there is no provision made for the consideration of each individual situation.

We recommend, therefore, that guidelines be adopted for the taking of representative action and that departmental policy be such that careful consideration is given to the possible consequences for the client if such action is instituted.

The new Section 8(1), it appears that a word is missing, presumably it should read "on the basis of information received by the director." This section as proposed permits delegation by a delegate.

Referring back again to Section 2(h), once again it is noted that director "includes any person authorized by the director" and that's the executive director. The new Section 8(1) would permit "any other person authorized by the director" to make a decision. Therefore the situation could arise where the executive director delegated his authority to an income security counsellor, making that person a director for the purposes of Section 2(h). Section 8(1) as outlined in Bill 39 would permit that income security counsellor to delegate his or her authority to someone else in the office.

Obviously the ramifications of a decision made under Section 8(1) could be very serious indeed for the recipient of assistance and we therefore recommend that those persons with the authority to discontinue, reduce or suspend social allowance be clearly defined in the legislation and that the exercise of such powers be limited to a specified group of department employees.

The new Section 8(2) outlines the procedure to be followed after a decision to alter social assistance has been made pursuant to Section 8(1). This section would require written notice to the applicant or recipient with reasons for the decision. Currently Section 8(2) of The Social Allowances Act requires the department to forward the provisions of the Act regarding appeals to the client. The proposed section does away with this requirement.

In practice today, when a decision is made to alter or refuse social assistance, written notice is frequently given to the client. Often the provisions of the Act are included and often reasons are given. Just as often, however, those reasons are sketchy at best and on occasion no kind of written notice is given at all.

Once the recipient or applicant has been made aware of the decision to alter or refuse assistance he must, if he desires to appeal, obtain a copy of the appeal form, complete it and have it in the hands of the Social Services Advisory Committee within 15 days of being notified that assistance was being changed. He is not informed of the fact that legal assistance is available through Legal Aid Manitoba and he faces the prospect of appearing before a board unrepresented and unaware of what evidence may be adduced against him. If he manages to get through this procedure, when he appears for the hearing he is handed a copy of the department's case. At this time he knows what evidence he must counter. We wonder how many recipients never bother to appeal at all because of the problems involved, which to many must seem insurmountable.

Our recommendations then would include some basic procedural protections for recipients and applicants. The following provisions we believe would go a long way toward ensuring some measure of equality for the appellant.

First of all, written notice of any proposed change in assistance to be forwarded to the recipient or applicant, together with a statement of the reasons, this statement to be comprehensive enough to permit the prospect of appellant to determine the case he must meet before the Appeal Board.

Secondly, copies of the appeal form to be sent to the applicant or recipient as well as the provisions of the Act.

Thirdly, the applicant or recipient should be advised of the availability of legal assistance through Legal Aid Manitoba and the names, addresses and phone numbers of community law offices should be listed on the appeal form itself.

The new Section 9(4) requires the respondent to file certain material with the Appeal Board "upon receipt of a notice of appeal from an appellant." However, Section 9, subsection (2) as proposed, does not require the appellant to file his appeal with anyone other than the Appeal Board. This section therefore should be changed to reflect the fact that notice of an appeal comes to the respondent from a Social Services Advisory Committee and not the appellant.

With respect to the remainder of Section 9(4) as proposed, we suggest that some protection from self-serving and untrustworthy evidence being used at the hearing should be included in the legislation. As previously mentioned, generally the appellant has no opportunity before the hearing to examine any documentary evidence which the respondent intends to submit and consequently is forced to deal with whatever is presented by the respondent without an opportunity to peruse it beforehand. There is no restriction either on the respondent adding to its case.

When a decision to terminate a varied assistance has been made, the respondent may not be in receipt of sufficient evidence on which to base his decision, but there is always enough time to bolster the case by further documentary evidence right up to and including the day of the hearing. To remedy what we see is a situation which can and does result in unfairness, we propose the following:

Firstly, that documentary evidence to be used by the respondent should be forwarded to the Appeal Board within 10 days of the respondent receiving the notice of appeal. The documents would be held at the committee office, subject to the appellant's right to review them at any time prior to the hearing. The documents would not be seen by the board members until the hearing, when objections as to relevancy and reliability could be made.

Secondly, the respondent should be required to deposit "its case" as far as documentary evidence is concerned in the manner outlined in (a) above and the respondent would not be permitted to add this evidence after the documents were forwarded to the board.

The amended Section 19(1)(d), the addition of the words "and for determining whether an applicant is entitled to recieve any social allowance" to this section of The Social Allowances Act we feel is unnecessary and permits delegation to the Lieutenant-Governor-in-Council of the powers under Section 5 of the Act. In our opinion, it is desirable to retain objective criteria for the determination of eligibility within the Act itself. If the intention of this amendment is to enable the department to pay social allowance payments to an individual who would not otherwise be eligible pursuant to Section 5 criteria, then we recommend that an additional clause appropriately worded be included in Section 19(1).

Section 20(1)(b), although this is not the subject of amendment by Bill 39, it states in part as follows: "Where the government has provided or paid assistance or social allowance to or for a person, if the assistance or social allowance would not have been provided or paid except for an error, the government may recover the amount or that part thereof as a debt due and owing from the person to the Crown." Thus, where there has been a government error the recipient can be hald liable and deductions may be made from the allowance otherwise payable. We recommend that this section be amended to read "recipient's error" or words to that effect. Any deduction from the amount of social allowance paid will have a serious effect on the recipient's ability to provide for him or herself; and as is often the cae, it is the children who will suffer the most from any reduction in income. We feel it is unfair to make those living on such a basic allowance responsible for government error.

The new Subsection 20(3) gives the director the authority to authorize a deduction from social allowance payable, notwithstanding any other provision of the Act or regulations. Currently when an overpayment has been assessed, departmental policy permits recovery of the amount in any of the following ways, and usually it's 5 percent of the monthly budget. The result of such action is, of course, that the recipient is forced to subsist on less than the amount which has been considered necessary to provide the basic necessities.

If the Legislature is prepared to permit such reductions in social assistance payments in order to recover overpayments, then we feel a ceiling should be placed on the amount of deduction permitted and this amount should be contained in the regulations of the Act.

We would recommend then that the guidlines noted above, particularly the 5 percent, be incorporated in a regulation under The Social Allowances Act and that the legislation itself be made subject to it.

MR. CHAIRMAN: Mr. Corrin, did you have a question?

MR. CORRIN: Yes. Miss Rogers, I'd like to thank you as well for a very comprehensive, thorough and easily understandable brief, obviously a by-product of many hours of work on the part of yourself and your colleagues.

Miss Rogers, I'm particularly interested in your association with Legal Aid and I say that because I presume — and I think I fairly presume — that all the people who would come before the Social Services Appeal Board — I may not have the correct designation of that but it's the Welfare Appeal Board as it's commonly known — would be eligible for Legal Aid assistance.

MISS ROGERS: Yes.

MR. CORRIN: I'm wondering if you have any knowledge as to the numbers of people who are currently utilizing the services of Legal Aid in presenting their appeals to the board.

MISS ROGERS: I think I might have. It's a very small number and of course doesn't include the number of people who never appeal at all because they simply . . . I can't find it here. I can get you the information later. No, I just have the number of appeals filed between '70 and '78. That was 4,555. It doesn't indicate how many were represented or not.

MR. CORRIN: There were 4, . . . ?

MISS ROGERS: 4,555 between 1970 and 1978; 1,221 were allowed, 1,449 were dismissed, but that doesn't indicate who was represented and who wasn't.

MR. CORRIN: I'm wondering whether you would regard a provision in the Act that would require that a prospective appellant be given notice of Legal Aid availability as an enhancing feature of the bill. Would you like to . . .?

MISS ROGERS: Definitely. In fact we suggest that it should be, yes, and that the names and addresses of the community law offices should be included. It at least bring it to the attention of the prospective appellant.

MR. CORRIN: I'm wondering whether or not you can elaborate on some of the things you said about equal rights provisions being included in the bill. You indicated that male spouses and fathers should have

the same rights as mothers and wives and that this was not being accorded such people with these provisions.

MISS ROGERS: There is a provision, I think, under Regulation 13 of the Act which permits social allowance to be paid to single fathers and I understand that that is how it is done. But strictly on a policy basis, I think that the time is long past when we should restrict it to single mothers. Single fathers perhaps want to stay home with young children as much and should be entitled to.

MR. CORRIN: So you feel that there should be an amendment that would provide equal access to social allowance for both sexes?

MISS ROGERS: Yes, I do. Yes.

MR. CORRIN: Did you have a chance to study Mr. Riley's proposed amendment to Section 1(h)(1)(iii), the one dealing with gifts and their treatment as either income or capital?

MISS ROGERS: Is that 2(h) you're referring to?

MR. CORRIN: Is that a 2, I said 1, excuse me. It's the Wuziuk amendment anyway.

MISS ROGERS: Yes.

MR. CORRIN: It's h(1) (iii) on the first page.

MISS ROGERS: No, I didn't see the wording of the . . .

MR. CORRIN: He suggested, just to remind you what he said, he suggested that a more suitable definition, if one was necessary, would be as follows: that regular gifts shall be treated as income and casual one-time gifts shall be treated as capital additions to recipients' liquid assets, thereby enabling the Wuziuk-type gift to be . . .

MISS ROGERS: Yes, essentially that's what I said. We suggested that casual gifts of small value be changed from one regulation to another to be included under the heading of assets rather than income, because there is not the character regularity about them.

MR. CORRIN: So you and Mr. Riley agree on that point as well.

MISS ROGERS: Yes.

MR. CORRIN: Dealing with the garnishment, are you familiar? Mr. Riley mentioned that he was familiar with cases that had been brought against welfare recipients who had perpetrated theft in the nature of fraud against the department, taking benefits to which they were not entitled. Are you familiar with any such cases?

MISS ROGERS: No, I'm not, personally, no.

MR. CORRIN: Are you familiar with the law regarding theft and restitution?

MISS ROGERS: Yes.

MR. CORRIN: Is Mr. Riley's submission that such cases could be prosecuted by the Attorney-General's department and become the subject thereby of restitution correct?

MISS ROGERS: I would say so, yes, in my opinion.

MR. CORRIN: So that there is a mechanism by which the government could recover overpayments in place today?

MISS ROGERS: Definitely, it's a civil debt, yes.

MR. CORRIN: Are you also familiar with the provisions of The Executions Act and The Garnishment Act and the exemptions provided to judgment debtors in those two Acts?

MISS ROGERS: Yes, I am.

MR. CORRIN: Do you see any contradiction as between the bill before us today and the right of the department to debit allowances and the exemptions provided to ordinary people who are not the subject of social allowances in those two cases of legislation? Do you think that there is differential treatment given, not deferential, but differential treatment given or accorded to welfare recipients that has not been given or not been imposed upon ordinary people? In other words, are we treating welfare recipients as being essentially inferior to everyone else?

MISS ROGERS: Are you suggesting then that remedies against ordinary people not receiving social allowance, should be made available against welfare recipients in order to equalize them?

MR. CORRIN: No. I'm just asking you whether or not, if we pass this particular bill, we will be denying welfare recipients certain rights which we have accorded to other citizens? This is in the area of . . .

MISS ROGERS: Oh, in regard to the exemptions under the other legislation? Yes, perhaps.

MR. CORRIN: Yes. Is it not the case that those exemptions deal with necessities of life?

MISS ROGERS: Yes, it is.

MR. CORRIN: And is it not the case, as I think Mr. Riley suggested, that welfare recipients are already essentially only receiving an allowance which accords with the basic necessities?

MISS ROGERS: Yes. Our basic position would be that it is essentially unfair to make anyone live lower than what society has considered to be the basic necessities of life. But if the Legislature sees fit to do that, we just want to ensure that some ceiling is put on it, and in respect only of overpayments.

MR. CORRIN: You also touched upon the delegated power to be given to members of the area offices of the department. In your experience, and perhaps here I'm asking you something which you

cannot inform the committee of, do the various departmental officials always act consistently in their interpretation of the regulations?

MISS ROGERS: No. In my experience they do not.

MR. CORRIN: I see. So again you sustain Mr. Riley's submission that there is differing treatment accorded various people.

MISS ROGERS: Yes. And I would just emphasize that we're dealing here with the provision of enough for people to live on. I think it is essential that there be protections built in, perhaps moreso than in other situations.

MR. CORRIN: The question of the waiting period. You indicate in your brief that you feel that 30 days is sufficient time . . .

MISS ROGERS: Yes.

MR. CORRIN: . . .for people to be granted eligibility to go on the provincial roles. Do you know of any particular cases of hardship? I'm just wondering from . . .

MISS ROGERS: Well, I know of cases because of the Municipal Act, I believe it's section 444, if I'm not incorrect. I know of cases of course where liens have been placed on a family home, and this is not in respect of overpayments as under the Social Allowances Act but in respect of any payments by the municipality; it becomes a debt. Therefore, I think it's unnecessary that that 90-day period be retained, placing people in debt, or if they ever go off social allowance this is due or owing.

MR. CORRIN: Are you telling us that, to use an example, are you telling us that a disabled widow, who was receiving social allowance, perhaps the mother of several children, prior to becoming eligible for provincial welfare, would have her property, if she owned any, become the subject of a municipal lien?

MISS ROGERS: Yes. Section 444 reads "the cost of maintenance or municipal assistance provided by a municipality is a debt due by the person to or for whom or on whose behalf the maintenance or assistance is provided, and by the spouse of that person, and if the person is an infant, by his parent or guardian, and it may be recovered."

MR. CORRIN: So you're suggesting then that municipal welfare is in fact not really a social right, rather it's simply a loan?

MISS ROGERS: A loan in a sense.

MR. CORRIN: Which must be repaid and can be the subject of recovery through the process of the enforcement of the lien.

MISS ROGERS: Yes.

MR. CORRIN: Also, the common-law relationships, you mentioned that you were unsatisfied with the bill because there was wide discretion given to members of the government department to determine who might be living within a common-law relationship. I'm just wondering whether you would think it would be possible for us as legislators to provide a suitable and adequate definition of common-law relationship in the legislation, so that that wouldn't have to be the subject of judicial interpretation in the courts. Mr. Riley suggested, and perhaps I should have asked him the same question in fairness, that he thought that it should be left essentially to judicial discretion which, you know, in fairness is one approach. I'm wondering whether you would think that we could arrive at a suitable definition of common-law relationship through the legislative process in order that that interpretion not be reposed with the courts?

MISS ROGERS: I really don't know whether you could or not. My own opinion would be that it might be better to leave it to the courts to interpret. Simply because of the ward decision in Ontario it's a very complex situation. You have a woman, living in a household with a man but no sexual relationship, no marriage relationship, as we would determine it. For example, an income security counsellor could simply say because she's living there, she's in a common-law relationship, and that does happen, because he visits. There are too many situations that I don't think could perhaps be covered in legislation.

MR. CORRIN: My only concern, perhaps it's not so much my concern, but it would be the concern, I think, of the First Minister of the province, that the courts not be the final arbitor of human rights and liberties. I'm wondering, it's hypothetical, of course, and it's solely a manner of speculation and conjecture, if we as legislators were to relinquish our responsibilities to create law and allow the courts such broad discretion, I'm wondering whether in effect, what we're doing is creating special small pockets that essentially are parallel to mini-bills of rights.

MISS ROGERS: For example, the Family Maintenance Act considers common-law spouses, but there's no definition, that's left up to the courts. So presumably whatever definition is arrived at under that legislation could be used here.

MR. CORRIN: Well, in the Family Maintenance Act though, in order to become eligible, and I ask you to confirm this, in order to become eligible for some of the benefits that flow from the Act, I remember that the party must establish that they have cohabited for a certain minimal period of time.

MISS ROGERS: One year, yes, and have a child. So perhaps that is a . . .

MR. CORRIN: So I'm wondering whether the same sort of provision couldn't be put into this legislation. I'm not sure that it would be a positive . . .

MISS ROGERS: Well the Family Maintenance Act includes usually, having lived together for one year and that there be a child of the union. Presumably there are common-law relationships, people who live together without having any children, so it . . .

MR. CORRIN: Yes. How about the time feature though?

MISS ROGERS: I really don't know. I really don't feel that I'm in any position to comment on that.

MR. CORRIN: You indicated in your submission that this particular bill should be adjourned to the fall session. I'm sure you're unaware, but it is very unlikely that there will be a fall session of this Legislature. In the event that the government in it's wisdom does not convene the Legislature in the fall, would you think that any harm would be done if this legislation were held over till or adjourned till the next session of the Legislature, which would probably be convened in 1981?

MISS ROGERS: As the amendments stand now, I don't think any harm would be done if they weren't passed until next year.

MR. CORRIN: I'm sorry I missed . . .

MISS ROGERS: If the alternative is that Bill No. 39 as drafted is to be passed, then I would prefer that the matter be put over. I'm particularly concerned about the section 5 common-law provision and the gift provision.

MR. CORRIN: Is your main concern that there will be a great deal of arbitrariness imposed on welfare recipients prior to some determination by the Court of Appeal?

MISS ROGERS: I just think that section 5 permits too much delegation. It allows for too much discretion. There is the possibility of too much arbitrariness.

MR. CORRIN: I see. Would it be possible for the Court of Appeal to make a decision as to restricting the jurisdiction of the departmental staff? Or would it be the case that the latitude given and granted to the departmental staff is so broad that welfare recipients and applicants will become totally at the mercy of the staff.

MISS ROGERS: Well, in my opinion, of the way the bill stands now, that is possible. There seems to be no restriction at all on the power to delegate.

MR. CORRIN: Thank you. I've no further questions.

MR. CHAIRMAN: To the members of the committee, any further questions to Miss Rogers? If not, thank you very kindly.

We have two other persons that have indicated that they would like to make representation. Is their a Mr. Erickson regarding Bill No. 39? And on Bill No. 49 a Mr. Dolin? Mr. Dolin is present. To Mr. Erickson, the time now being about seven minutes before committee would normally rise, and having heard two lengthy briefs on this subject, could you give us, as members of the committee, some indication as to the length of your brief?

MR. GARTH ERICKSON: It has been distributed or is available; three and a half pages; deals mostly with topics that have already been dealt with, and I don't expect I'd be more than ten minutes.

MR. CHAIRMAN: Perhaps at this time I could get an indication on Bill No. 49 from Mr. Dolin as to the length of time that he would expect to be — (Interjection)— a matter of a few minutes? Mr. Mercier, as House Leader for the government side, could you give us some indication as to what your intentions might be in dealing with the matters before the committee?

MR. MERCIER: Mr. Chairman, it would be my intention to call the committee again for Thursday morning at 10:00 o'clock. I've made commitments on the basis of a 12:30 ending, so I would not be agreeable to going past 12:30.

MR. CHAIRMAN: We must be through by 12:30. Okay, Mr. Erickson, you've got six minutes.

MR. ERICKSON: Given the time restraint then, I do not propose to read the brief but to simply comment on the points that we consider to be of substantial concern. I represent the Manitoba Association for Rights and Liberties, which is a broadly based organization, having over 300 members and some 24 affiliate groups. I simply, therefore, wish to support the positions that have been put forward by the previous speakers.

We have a few areas that are of primary concern. One is the inclusion of gifts on a one-time basis, which we think is a very bad suggestion, because of the fact that in effect it eliminates the possibility of friends or other persons, distant relatives, giving to a person who has had perhaps a very difficult life, a gift of any meaningful nature on some occasion. To include that as part of income, and to deduct it in future from support payments, we do not think is the kind of thing that would be supported by the majority of the people of Manitoba, nor should it be the policy of the government of Manitoba.

The second point that I would like to raise, is the inclusion, or the lack of inclusion of fathers. We believe that this can be simply changed by changing the word "mother" to read "parent" and that this is entirely consistent with modern thought, throughout the province, throughout the world perhaps, that there should not be a discrimination on the basis of sex.

The third major point that we would like to raise, is the ability or the right proposed to be given to the director, to deduct moneys from social allowance payments. I must say that, to me personally, upon reading the Act — and it is not an Act that I work with regularly, or am all that familiar with — when you start from the position that what you are giving is basic necessities, then how do you possibly come to the conclusion that one can reasonably deduct from money that is given for basic necessities, without putting the person from the whom the money is deducted, into a position where they are not able to have what society has deemed to be basic necessities of life. It seems to me to be very logical, that when you start from basic necessities, you can't go lower than that, and that you must go lower than that if you're going to make any deduction.

There are a couple of other points that are mentioned in the brief, but have been mentioned by previous speakers and I don't propose to elaborate further upon them; that is the extent of my submission this morning.

MR. CHAIRMAN: Are there any questions to this delegate, or could we get on to maybe Mr. Dolin on Bill No. 49 and . . .

Mr. Corrin.

MR. CORRIN: The question of protecting an appellant before the Appeal Board from the inclusion of self-serving or unreliable evidence, I am wondering what position you took on that.

MR. ERICKSON: It is mentioned in our brief. Because of the time restraint, I didn't comment on it. It would be our view that the logical thing to do is to deal with the matter the same as one would before any other tribunal, that a copy of all of the material available to the director should be given to the appellant and that it should then be presented to the board at the time of the hearing on a document-by-document basis, therefore giving the appellant the opportunity to object to the inclusion of any particular item that should not be included. At present, the director is entitled to toss in there anything and everything and from a quick reading of the Act, it looks like it becomes evidence, though it doesn't exactly say that, but I assume that it's something that can be relied on even if it's hearsay or even if it's wrong or whatever.

I also note there is no requirement in the Act to even provide the material to the appellant, even though it's going to the board. The appellant doesn't necessarily get a copy, but presumably it's available from the board.

MR. CORRIN: Mr. Erickson, with respect to the question of notifying the prospective appellant of his or her eligibility for legal aid assistance, do you agree with Miss Rogers that that should be enshrined in the legislation as a matter of right?

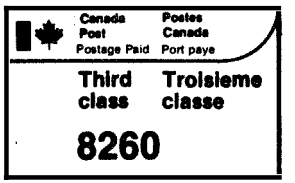
MR. ERICKSON: Yes, I do. I think that the people are almost certainly without question, virtually all if not all, eligible for legal aid, that many of them may not be aware of the availability of legal aid, and that the inclusion of that information, along with the inclusion as is provided in the Act of the provision of saying you have a right to appeal. It's a simple matter to require that notice be also given that if you want to appeal, you may qualify for legal aid and you should contact some phone number or some address.

MR. CORRIN: Mr. Erickson, you're a lawyer as well as a member of Manitoba Association for Rights and Liberties. In reviewing this particular bill, do you think that if it were to be enacted in its present form, do you think it would be better that the bill be overheld or adjourned to the next session of the Legislature as an alternative to that?

MR. ERICKSON: As I understand the present law, this Act would change the law with respect to the gift provision, which I think is very serious, and I think you're better off with the present bill. Whether it be the fall or whether that provision is going to be enacted, better that nothing be enacted.

MR. CORRIN: Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Erickson. It's past 12:30 now. Committee rise. We will meet at 10:00 a.m. (Thursday)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