ISSN 0542—5492

First Session — Thirty-Second Legislature

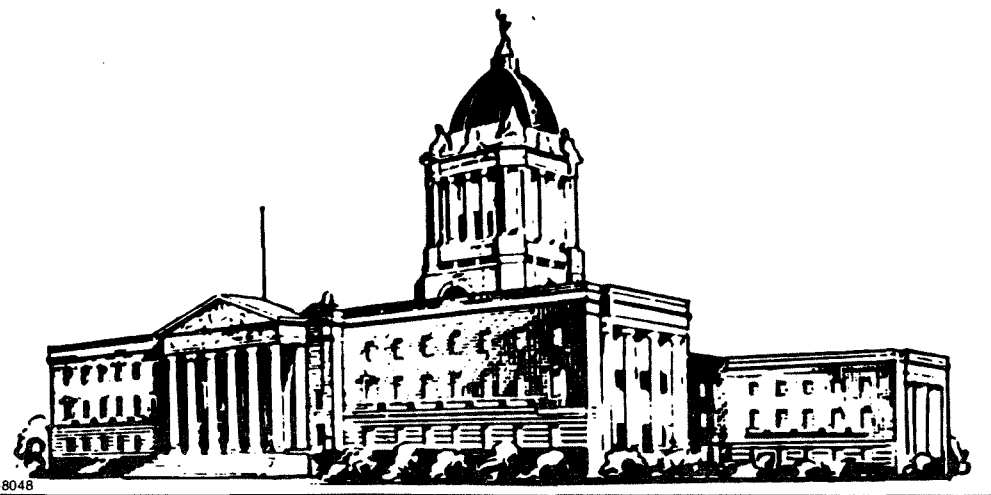
of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
LAW AMENDMENTS

31 Elizabeth II

Chairman
Mr. Phil Eyler
Constituency of River East



MG-8048

VOL. XXX No. 7 - 8:00 p.m., MONDAY, 28 JUNE, 1982.

Printed by the Office of the Queens Printer, Province of Manitoba

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	NDP
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
DODICK, Doreen	Riel	NDP
DOERN, Russell	Elmwood	NDP
DOLIN, Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virden	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Hon. Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNESS, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SHERMAN, L.R. (Bud)	Fort Garry	PC
SMITH, Hon. Muriel	Osborne	NDP
STEEN, Warren	River Heights	PC
STORIE, Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
USKIW, Hon. Samuel	Lac du Bonnet	NDP
WALDING, Hon. D. James	St. Vital	NDP

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Monday, 28 June, 1982

Time — 8:00 p.m.

CHAIRMAN — Mr. P. Eyler.

MR. CHAIRMAN: Committee come to order. For those of you who might have come for presentations on other bills, Bills No. 32, 33, 50, and 63 have been referred to the Municipal Affairs Committee which is meeting down the hall.

BILL NO. 23 - AN ACT TO AMEND THE LEGAL AID SERVICES SOCIETY OF MANITOBA ACT

MR. CHAIRMAN: We left off this morning in the middle of Mr. Green's presentation, so if there is no pressing business, we'll continue with Mr. Green's presentation.

MR. S. GREEN: Thank you, Mr. Chairman. You have indicated that I was in the middle. I hope that I was at least three-quarters of the way down. In any event, we'll continue.

I was at the point where I was indicating, Mr. Chairman and Ladies and Gentlemen, Committee Members, the nature of groups that would be eligible under the rules that are set out in the legislation; namely, in Section 3.1(2), that the matter in the opinion of the society, involves an objective or interest common to the members of the group or relating to an issue of public concern. I wish to repeat that, indicating the broadness of it.

Involves an objective - it needn't be a legal case. Indeed, much of the activities of Legal Aid in these areas won't necessarily involve legal cases at all. When I say that, I'm talking about it in a narrow sense. They could be representations at meetings or appeals of a various nature, public demonstrations, or what have you. All of these things, in my respectful submission, could be covered by what is suggested here and indeed, in my view, are intended to be covered. I say that by virtue of what I know the Legal Aid people have felt to be a legitimate provision of Legal Aid, such as occurred with the Sherbrook-McGregor Overpass.

I am not certain, but I believe that the Attorney-General was quoted as saying that this would help people such as those who were opposed to the Sherbrook-McGregor Overpass. If that's what's intended, Mr. Chairman, then there couldn't be a better example of providing legal assistance to people involved in a political issue. Each one of these things are political issues.

I indicate, Mr. Chairman, that a group could come to this Legislature or to the Legal Aid Committee that's mentioned here and, if in the absolute discretion of the Society they believe that this group is correct, the group could ask for funds for obtaining legal assistance to declare that portion of the Criminal Code of Canada which prohibits hate literature to be unconstitutional. Mr. Chairman, that's not farfetched. I, for one, think it is unconstitutional. I was opposed to it as a Statute, but certainly once you have a Statute which says that nothing shall interfere with freedom of expression and freedom of speech, then it is questionable; even more questionable whether a Statute that outlaws hate literature is unconstitutional.

Now, Mr. Chairman, I just happen to think that it is and I certainly don't disagree with those people, the sincerity of those people who think that such a Statute is helpful and necessary and think that it does confer protection on people who have been hurt by that kind of discrimination. In my view it doesn't, but that's beside the point. A person could ask for money to do that and unless you are going to deal with these applications subjectively, that money should be granted. That is an issue of common concern and a matter in the public interest. The only way of preventing that kind of thing is not making legal assistance available on these types of issues.

I'm certain, Mr. Chairman, again, because I have been in communication with the people who are proponents of this type of thing, that a tenants'association seeking to deal with their particular block or seeking to exercise their rights under The Landlord and Tenant Act would be eligible. Indeed I go further than eligible, that it's intended that they be able to get this legal aid.

Well, Mr. Chairman, is not the Landlords' Association in the same position? If you'll provide legal fees for people who are fighting the tenants' issues should not their be a provision of legal fees for those people who are fighting the landlords' issues which the landlords regard just as valid as the tenants do theirs? Mr. Chairman, I'm not suggesting that you give it to both; I'm suggesting emphatically that you give it to neither. Groups who are pursuing these kinds of objectives, if they are strongly enough motivated and if their cause is right, will be able to do one of two things; they will be able to raise funds for their objective and/or they will be able to get counsel to pursue them. I have no doubt that has occurred and I'm able to speak in that regard from personal and practical experience.

But the dangers in the Act are that it gives to somebody, and somebody who is appointed by the government and that is not an entirely accidental or yet clinical type of appointment; I have never pretended that it was and I smile at those who do so pretend that the government's point of view is reflected and the legal aid will go to those groups that have a particular direction, and against those who have another direction. I say, Mr. Chairman, that although in the short run that looks cosy when you're in control, that ultimately it is not cozy; ultimately it hurts most those who propose it; that under such systems which ultimately - and I'm certain this is the direction that will be taken, that the government will start financing political parties. Ultimately those groups who had, in their origin, the kind of spirit and drive that enabled the advancement of parties like the New Democratic Party, will not be able to advance because the other parties will be publicly financed and they will be ineligible under the rules that will be stated; that is, the kind of rule that has taken place in the Province of Quebec where all the entire public has to finance the estab-

lishment parties because the other parties do not get a vote.

Now, Mr. Chairman, that is what is being done with this type of legislation and I regret that some people perhaps do not have as much foresight as is necessary to see that is what is here.

Mr. Chairman, I have no objection - I've heard it suggested that this is to enable the consumer to appear before committees like the Utilities Committee when the gas prices are being set. I don't think that should be legal aid. I think that the government should appoint the best team of lawyers and accountants and economists to the Department of Consumer Affairs to be there and that that should be part of the Estimates of the Department of Consumer Affairs. That's not a position that I'm taking today; that's a position that I have taken consistently and that the former Member for Burrows took consistently. It was never achieved but certainly if you want to do that, that is something that is a very, very legitimate thing. It could be done before the Milk Control Board; it could be done before the Utility Board; or it could be done before any other agency that is considering the protection of the consumer. But that's not the responsibility of an ad hoc group and which one do you pick; that's the responsibility of the elected representatives of the people and of the administration itself.

Now, Mr. Chairman, that is my submission; I'd be very willing to answer any questions that arise from it.

MR. CHAIRMAN: Are there any questions for Mr. Green?

Mr. Enns.

MR. H. ENNS: Yes, thank you, Mr. Chairman. One of the problems that I have with the bill before us Mr. Green, are that - and you touched on it just latterly in your last comments - was that, by and large, certainly in the experience that governments of all description have faced in recent times, has been this kind of action raised by interested groups against or opposed to governmental action or their agencies. I, of course, speak of some experience dating back to the time that you will recall, 1969, when a government agency, in fact, paid for and employed advocates to oppose Crown Corporation's actions at that particular time.

Do you foresee, in this legislation, the Government, or the Legal Aid Commission paying for a civil action against a private concern or against Safeway or Dominion, for their practices in the distribution of groceries and foods, or?

MR. S. GREEN: Well it says "any consumer or environmental issue" and I am certain that a group that felt that Safeway is not doing proper jobs, in terms of advertising, will say that the Combines Investigations Branch, which is responsible for prosecutions under misleading advertising, etc., is not doing a good job and they will apply for legal aid and Legal Aid will say, certainly they're not doing a good job, you go ahead and do it. What you do is set up what has been very prevalent in the United States, that is, a whole series of class action type of things which are there largely because of the separation of powers in the constitution. But if you'll go specifically to what you're referring to, the Churchill River Diversion is a very good example. In 1973 there was a Northern Flood Committee that wanted legal aid from the Province of Manitoba and they wanted Legal Aid from the Province of Manitoba to stop the Province of Manitoba in what the people of this province thought was a very important project. We said to them if you wish to sue the province you go ahead but we do not recognize the obligation of the province to finance your suit against us.

So what happened is that the Federal Government financed a suit by a group of people in the Province of Manitoba, styled themselves as the Northern Flood Committee, and the kind of thing they financed was letters sent by children to me from Cross Lake. Every child in the class was told that if this project proceeds the playgrounds in Cross Lake would be flooded; that was financed by the Federal Government against the Province of Manitoba. It was an outright lie, it was paid for by the Federal Government; and when they made the settlement they expected the province to reimburse the Federal Government. On that issue there was a governmental crisis and we didn't finance that committee.

MR. H. ENNS: In a roundabout way you answer that question in the first instance. Class actions are made because governments are not responding, either through Combines Legislation or what have you, against the issue that was originally raised. My concern with this bill is that, and I expressed it at Second Reading of the bill, there's a presumption inherent in the amendment to the bill that says that those pieces of machinery put in place, whether it is the Public Utilities Committee, whether it is other tribunals of appeal to hopefully - I say hopefully because they don't always act in the interests of the citizens of this province - get a fair hearing. I'm disturbed that we have to pay high-priced lawyers like yourself or the Attorney-General, to make the average citizen heard when he has a legitimate case of complaint against his or her government.

MR. S. GREEN: Well, Mr. Enns, I did say - and I still am of the opinion - that before things, such as, the Public Utility Board, which you say is there to protect, that is true and it has a hearing, but up until several years ago the hearing was a very one-sided hearing. The gas company would come in with their economists, their lawyers and present the position; and I have every sympathy for the fact that the Department of Consumer Affairs should sit down, get the information, hire their lawyers and their economists and also appear before the Board and make a position. I don't say that this responsibility should be abdicated to so-called citizen groups. The citizens are represented by their elected representative.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Green, you're aware that organizations, bodies, such as the Public Utilities Board now has within its Statutes the authority to appoint that kind of legal assistance, accounting assistance, expert assistance to represent consumer views at such hearings.

MR. S. GREEN: Mr. Enns, it as been my observation

of regulatory agencies that they become regulated by the people that they're supposed to regulate and not vice versa. Therefore, it is my opinion that the Department of Consumer Affairs should be the watchdog for the citizen and not the regulatory agency itself. Therefore, I have absolutely no objection, indeed I think it is valuable for that department to appoint whatever expertise is necessary to make sure that the Board has input from both sides.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: If I may be permitted a comment, Mr. Green said that the citizens are represented by their elected representatives and I want to use that as a case in point, as I did in the House. That is that the citizens who are affected very severely by expropriations in connection with the Core Initiative Program, their right to an inquiry was waived by their elected representatives, the last government, such that they were not to be heard at all. That was thought to be wrong by this government.

The question arose as to their being represented in an inquiry which it was thought advisable to hold, and I think properly so, because there are conflicting views as to what should happen in an area where people live, have lived in many cases for much of their lives. The group formed their own group because government, their elected representatives, had said, you shall not be heard and the Department of Consumer Affairs said, in effect, you shall not be heard - that is of the former government - formed their own group. Then we came to question inevitably, how were they to finance themselves in making adequate representations and Mr. Green is quite right. The regulatory agencies or inquiry commissions can be captured by the experts. They needed more than legal representation; they needed some assistance with respect to architects and planners and so on and they obtained it. But a question would arise, how are they to finance themselves in this situation.

I am simply saying, and that's what this bill is saying in part, that we would rather do it with public funds than by having them run bingo games because we're looking at really something that is a matter of broader public concern. The knowledge that is reflected incidentally in a very extensive analysis in the last issue of the Canadian Bar Review called "Financing Public Participation in Environmental Decision-Making," the public really demands that substantial groups who are otherwise unrepresented or disenfranchised be heard because it improves the quality and acceptance of the decision-making process. That's what this is about.

Secondly, and to conclude these remarks because I didn't want to go on, actually Mr. Green talks about foresight and he talks about what might happen. Foresight is good if you have that kind of a crystal ball. I don't pretend to, although Mr. Green in quite right in anticipating that there may be all kinds of applications. The fact is that all we are doing here is regularizing what has taken place for 10 years. One might, I think usefully as well, have looked, not speculatively but actually, as to what in fact took place.

Group certificates have been granted, the last one of which was the Logan Community Committee of which I've already spoken, but to the Society of Seniors to fight gas rates successfully, to the Associated Tenants' Action Committee to fight hydro rates. In fact, this is an example because that action was very successful and cost the government $11 million, while saving consumers $11 million; this is an example which I think argues against the position taken by Mr. Green that is, that Legal Aid, being the board being appointed by government, would necessarily reflect the interest of Government. In fact, it was just the opposite in this case as it was in other cases - to the Health Action Committee on milk prices; to the Anti-Sniff Coalition on anti-glue sniffing; to Rossbrook House on the Sherbrook-McGregor Overpass. These are real examples; the hypotheticals are speculative only.

Finally, I think Mr. Green has missed something in the bill and I'm sorry that he has, because he says, well if you gave it to tenants, why wouldn't you give it landlords. First of all, because the aim is to help the disadvantaged, that's what Legal Aid was about right from the beginning and remains - to help the disadvantaged; those who cannot afford legal assistance on their own. The point that is missed by Mr. Green is the eligibility of groups in 10.1(2) which attempts, perhaps not as successfully as it might - I think it does - but attempts, nevertheless to restrict the granting of such certificates to low-income groups. When Mr. Green speaks of his and my personal example with the Winnipeg Film Society, the Winnipeg Film Society was a group of middle-class people with middle-class incomes and middle-class knowledge of the legal system. We're talking about the residents of Logan; we're talking about the low-income tenants; we're talking about those kinds of people who are primarily the aim of this kind of legislation.

MR. CHAIRMAN: The Attorney-General's commentary may perhaps loosely be construed as a question, if you'd like to respond.

MR. S. GREEN: I must regard it as a question, Mr. Chairman, otherwise I will have no right to speak and I certainly want to answer what has been suggested.

Mr. Chairman, what I suggested is exactly what the Attorney-General has just confirmed, that legal aid will be made available subjectively to those people that the government thinks need it and that are in line with what it wants —(Interjection)— well, Mr. Chairman, let me finish.

My learned friend says that it will be given to tenants but not to landlords. What if landlords are disadvantaged? What if you have a group of disadvantaged landlords and they exclude from their membership, which they have a right to do, any landlord that's making money is out. That might be only a very few landlords now, by the way, and they come as a group of disadvantaged landlords and they ask for legal aid to put them in the position whereby they will be advantaged again.

Now what the Attorney-General is saying is that we know in this government, who are the groups that are entitled. The Winnipeg Film Society - my friend says that they were a middle-class group of people. They were a group of people who were not much different than who were part of those people fighting the

Sherbrook-McGregor Overpass. Let's see these disadvantaged people who are fighting the Sherbrook-McGregor Overpass - the Member for Wellington, Lloyd Axworthy, the Minister of - what is he the Minister of now? Carl Ridd, the professor at the University of Winnipeg; Sister McNamara, a middle-class person. These were the people who were fighting the Sherbrook-McGregor Overpass; they were granted legal aid. So it's not the people who are involved, it's the question of the issue and who you are sensibly helping.

Now let's take the expropriation of Logan Avenue. I think that's a cruel thing that is happening. My friend says that the government waived the provision granting them a hearing. That provision is now on the legislation; Mr. Chairman, that provision is now in the legislation, it is part of this government's program. If this government felt that a provision waiving a hearing, before expropriation takes place, should not be there why have they not repealed it from the Act? The reason they have not repealed it, Mr. Chairman, is that every public authority knows, and that's why it was enacted that way and it was carefully thought out, every public authority knows that if you're going to have expropriation that you cannot permit a hearing which will not have an ultimate effect on whether you're going to expropriate or not because otherwise you're fooling the people.

If you're saying that the hearing need not result in the elimination of the expropriation, that it will just result in recommendations, then don't have the hearing. And, indeed, Mr. Kostyra, when he announced that there would be a hearing taking place, when he announced the appointment of the Shapiro Commission, he said "it's to let the people get it off their chests, we are probably going ahead with the expropriation."

Now, Mr. Chairman, that is the cruelest type of hearing; that's the kind of hearing that my friend the Member for Lakeside conducted with respect to South Indian Lake when he said they were going to have a hearing, and after the hearing we're going to go ahead and flood the lake, and it doesn't matter what the hearing says.

Mr. Chairman, the fact is that an announcement of that type was made when the authority was appointed but, in any event, let's assume that it was not, and if it was not I would not like to leave it on the record. If Mr. Kostyra tells me that he didn't say that, I wouldn't pursue that he did. But the fact is that it is still the law in the Province of Manitoba that before you expropriate you can waive a hearing, or you can have a hearing; that law is being administered by this government. This government has not seen fit to change that law and, in my view, they will not change it because it would be very stupid to change that law. Mind you, that does not mean that this government will not change it. I take that back. The fact is that is not a good thing to do, to make expropriation subject to a hearing which can stop the expropriation. By the hearing making that decision would be unacceptable; that is not the present law. When my friend says that people should be given public funds, they shouldn't have to hold bingo games. Mr. Chairman, from what I read in the legislation the way you'll get public funds now is through bingo games, so it's going to be six of one or half-a-dozen of the other.

The fact is that this legislation, Mr. Chairman, is designed to abdicate responsibility on the part of the Department of Consumer and Corporate Affairs. My friend says that they were the ones who saw to it that there was a saving of $11 million. If that's the case, then it should have been the department that did so; it can still be the department that does so. You do not have to wait for a group to do it, that's the responsibility of the elected representatives of the people.

I hope that I've been able to go through this dissertation without once referring to the Attorney-General's balderdash as balderdash.

MR. CHAIRMAN: Mr. Driedger.

MR. A. DRIEDGER: Thank you, Mr. Chairman. The question that I have to Mr. Green is that, in your opinion, if this bill gets passed would people like the Red River Flood Prevention Coalition, incidentally who feel that the operation of the floodway and the operation of the flood gates are creating flood damage upstream every time that the gates are being operated, would these people be in a position where they would qualify for assistance under Legal Aid, because this is an operation that basically is a volunteer group and are always operating in the red?

MR. S. GREEN: In my view, Mr. Driedger, they would qualify but my prediction is that the government will look, not at their operation as a group, but will see that there are some farmers there and that one of them owns 400 acres of land, which might be worth, on the market at $500,000 and they'll say we're going to give legal aid to a farmer that has land worth $500,000.00? Absolutely not. So the legal aid is being made a weapon of society, as against the haves and the have-nots and this is going to be the provision of legal aid.

MR. A. DRIEDGER: A further question then, if they throw the farmers out of their organization that own 400 acres, and basically have those that own 10 acres and they then applied, in your opinion, would they then be able to qualify?

MR. S. GREEN: That's consistent with the present law. I would suggest, Mr. Driedger, that if those farmers really wish to get legal aid they shouldn't have 10 acres, they should divest themselves of everything they own, they should walk to the Legal Aid offices, put their pockets outside, show that there's nothing in them, cross their hearts and spit and beg for money because that's apparently what is being suggested as the way in which you get legal aid.

MR. A. DRIEDGER: Mr. Chairman, then to Mr. Green. What Mr. Green is suggesting that if it is somebody that has a personal view, concern, if it's a meaningful thing where a man is worth any substance at all, or has a concern at all, as a group they would not qualify under this bill, or is this bill just made for certain individual people, in your opinion?

MR. S. GREEN: Mr. Chairman, I've indicated my opinion. I can tell the member that there is another aspect of legal aid which is not part of the bill which, therefore, I won't dwell on; that it is the law in the Province

of Manitoba that if you have a man who is just above the legal aid line and a man just below, the province will finance the guy below to sue the man that's above. The man that's above will have to pay his own legal costs, the guy that's below will not and you will be doing what we used to refer to in law as champerty, you will be financing a citizen to sue another citizen. In my view, if you're going to finance one side of a legal case, for whatever reason, that the only fair way is to finance both sides because you can drive a middle-class person, who is just above the line, into poverty by the legal case.

MR. A. DRIEDGER: Then in my opinion, Mr. Chairman, this bill should not be passed.

MR. S. GREEN: Well, this has got nothing to do with the bill. That doesn't mean that I don't agree with your opinion.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Thank you, Mr. Chairman. Regarding Consumer Affairs, you said you'd like to beef up the Department of Consumer Affairs, Mr. Green. Can you see, putting yourself back a few years, if there is a case which the government was not in favour of, can you see you, as a member of the government, pushing the funding or pushing the Consumer Affairs or even preventing Consumer Affairs into taking a case on which you, as a leading member of the Government of the Day, did not want to see that case pursued?

MR. S. GREEN: Mr. Chairman, I don't understand the question. If there was a case involving a consumer who had an argument against a company then my tendency would be to let them fight it out themselves. If we are talking about the question of whether the consumers should be represented by their elected representatives before Boards which are determining these types of issues, I could see myself suggesting that be done.

MR. CHAIRMAN: Are there any further questions?

MR. D. SCOTT: Mr. Green, also what I'm attempting to get through on is that the government, say in taking a case with Hydro for instance, which may be going or asking for rate increases and there they would have, through the present system or through the proposed system, a group of not necessarily tenants but consumers could have access to Legal Aid assistance in protesting that rate increase. Yet the government, on the other hand, was to be the benefactor in a way in that the government Crown corporation is to be the benefactor of the increases. I would be very surprised if at least some governments and some individuals perhaps in those governments would be willing to see their own department fight another wing of the government or another agency or a Crown corporation owned by the government.

MR. S. GREEN: Mr. Chairman, I can tell the honourable member that, when I was a member of Cabinet, this very issue came up and if it will make him feel better, as far as I am concerned, there was no reason to have the Manitoba Hydro have its rates argued before a Public Utilities Committee. If you wish to campaign to the world on that question, my position is clear, there is no reason for it. The elected representatives of the people, including the Cabinet, should see to it that rate increase does not hurt their constituents and that's what I was there for.

MR. D. SCOTT: We had another case with, say, the Environmental Council. The Environmental Council, which was started up under, I think, your tutelage as Minister at the time, really never got sufficient funding or sufficient aid by the government to ever take any kind of cases forward or even present cases very strongly. As a matter of fact, if I can recollect correctly, when they were started, you told them that their comments would be welcome but they certainly would not necessarily be listened to. So, I think that is . . .

MR. S. GREEN: I'm sorry, I never said they would not be listened to, I said they might not, they would not necessarily be accepted. They were always listened to and, as far as the Environmental Council is concerned, again, I have absolutely no sensitivity about saying that what was intended by the government and by the Opposition - it was unanimous - was that we provide seed money to a group of citizens to get them started in taking an interest in environmental questions, to provide them with the staff, but not to finance them. They were to have sufficient strength of their position, if they wanted to take a position which was contrary to the government - and not one of them will say that I ever tried to inhibit them, as the President of the Environmental Council. He told a group of women, you better watch what you're doing because you're hurting the government. Nobody on the Environmental Council will ever say that I made that kind of a statement to them. Yet he, who was the President, and had much criticism to make about the way they were being treated, was certainly never treated in that way.

MR. D. SCOTT: Mr. Chairman, they may not have had a restriction on what they could say, but certainly when the limit of funding was so low that it took them a year to two years to get out their even very minor reports, I certainly don't think that they have ever been used to the capacity which they could possibly use.

MR. S. GREEN: Mr. Chairman, the fact is that the Environmental Council was set up under the aegis of the Government of the Province of Manitoba, but we told them, and I tell you this, that I consider the Minister of Environmental Control to be the ultimate protector of the rights of the citizens with regard to the environment. That is his job. If he doesn't do that properly, don't blame it on the Environmental Council.

MR. CHAIRMAN: Are there any further questions for Mr. Green?
Mr. Enns.

MR. H. ENNS: Mr. Green, I don't know why you avoided answering that question, but I would like to persist on this particular one issue that I again raised at Second Reading of the bill. There is virtually in

every aspect of government, various appeal bodies that have been set up to make access to government or to make redress to government or to bureaucratic decisions more understandable and acceptable by its citizens. In the Department of Highways and Transportation, we take and give drivers' licences to our citizens, but there is a Licence Suspension Appeal Board that deals with those issues, composed of ordinary citizens, we hope, where citizens can redress their problems. In the question of allocation of Crown lands is a Crown Lands Allocation Board set up. Within Autopac, there is an appeal board set up that can accept the citizen's complaint about the manner and way in which that large corporation deals with its citizens.

My problem with this kind of legislation is that even if I would buy the need for this kind of expenditure on the part of the taxpayers, on the part of the public, through the Legal Aid system to approach government for redress of what individual groups or individuals assumed to be a wrong, then surely we should question ourselves as to whether or not the need for all these various appeal bodies are necessary.

MR. S. GREEN: Mr. Chairman, there is a legitimate difference of opinion as to how best you secure the rights and privileges of citizens of the Province of Manitoba. I will concede that this is one of those opinions. I will not refer to it as balderdash. I don't happen to agree with it.

I think that it results in less protection to the citizen and, in fact, a danger of the debate on these questions being taken out of the hands of the elected representatives and put into the hands of lawyers. This is a great bill for lawyers. Does this committee know that the position is already advertised? All the lawyers have been convassed now with an advertisement that there is going to be, under the Department of the Legal Aid staff, a public affairs lawyer that's going to be changed every 18 months so that you don't have the same person doing it. I assume that there is some validity in that, so that it won't become a hardened position, but that position has already been advertised.

I am not here to try to cast aspersions on those people who feel that this is the way of doing it. I am here to suggest that, in my respectful submission, it's wrong. By the way, when you talk about the Boards, I am not satisfied with the treatment that I always get, but that's one of the things that you have to accept in life. You have to fight.

MR. CHAIRMAN: If there are no further questions then, I would like to thank you for your presentation, Mr. Green.

MR. S. GREEN: Thank you very much. You've been very courteous, Mr. Chairman.

BILL NO. 27 - AN ACT TO AMEND THE SUMMARY CONVICTIONS ACT

MR. CHAIRMAN: The next person is Mr. Norman Rosenbaum, presenting a brief on Bill No. 27. Would you like to wait until a copy of the brief is circulated?

MR. CHAIRMAN: You may proceed, Mr. Rosenbaum.

MR. N. ROSENBAUM: Yes. The Manitoba Association for Rights and Liberties is dedicated to the preservation and enhancement of civil rights and liberties in the Province of Manitoba. From time to time, we take the opportunity to comment upon legislation proposed to be passed in this House. We wish today to comment upon certain provisions of Bill 27 which we feel raise certain serious considerations.

Section 9 of Bill 27 amends The Summary Convictions Act by adding Section 11.1(2). Section 11.1(2) provides for the mechanism of default conviction. Where a person is served with a summons and does not voluntarily pay the amount of the fine and costs set out in the offence notice, appear before a justice or enter a not guilty plea within 15 days or such further period as is specified in the offence notice and arrange for a trial date for hearing of the matter, a justice may convict the person, enter a default conviction and impose the amount of the fine and costs set out in the offence notice and in default of payment of the fine and costs, impose a term of imprisonment.

It should be noted that the mechanism of default conviction removes the traditional burden upon the Crown to prove the offence. The section suggests in fact trial in absentia. It is phrased: "a justice may convict the person, enter a default conviction . . ." The Crown need not prove its case, even by way of ex parte hearing, and the entire concept of due process appears to be discounted for the sake of expedience.

The section refers to "service" upon the accused of the summons. It is unclear whether service must be personal. Indeed, by way of comparison the proposed Section 11.1(3) states that "Where a default conviction is entered against a person, the court shall send to the convicted person by mail a written notice." Hence the term "service" in Section 11.1 (2) by not being defined is not entirely clear. If it is interpreted to merely require service of the summons by mail, the accused may never actually have the summons brought to his attention. He may through inadvertence become subject to default conviction and fine and to arrest and imprisonment.

Section 11.1(3) provides that where a default conviction is entered the court shall send by mail a written notice "stating that if the convicted person fails to pay the fine and costs imposed upon him on or before a specified date or within such time as may be allowed under Section 10.1, a warrant may issue for the arrest and detention of the convicted person." Again, it should be emphasized that the section refers to mail service, not personal service. A warrant may issue for the arrest of the person, and we therefore submit that the person ought at least to be personally served with the notice to pay the fine.

Section 11.1(3) specifies that the written notice shall state certain matters as referred to above. The amendment does not, however, require that the notice specify the accused's right to file a request for a hearing de novo, which right is set out in Section 11.1(5). As Section 11.1(5) sets out that the person against whom is registered the default conviction may "not later than 7 days immediately preceding the date specified in the notice for payment of the fine and costs, request a hearing de novo," we would submit that the notice also specify the person's right to file the request. A right is not likely to be exercised if it

is not known.

Further, Section 11.I(5) does not make provision for court discretion in the filing of a request later than the specified seven days. We suggest that there should be a discretion to meet unusual cases where, for example, the deadline is missed through inadvertance.

Section 11.3(1): This section deems the owner of a vehicle to be guilty of an offence automatically and without judicial intervention of any sort whatever, even by a justice, where a summons has been left by a peace officer and no person has voluntarily paid the amount of the fine set out in the summons, entered a plea of not guilty within the 15 days specified in the summons or arranged for a trial date for the hearing of the matter. Given the automatic nature of this provision, a number of absurdities are conceivable.

For example, X, the owner of a motor vehicle, discovers that it has been stolen from him. He cannot locate it. He searches frantically for it, but in the meantime the thief has committed a parking violation without the owner's knowledge. The owner is unable to locate the vehicle for several days and in any event, well beyond the 15 days mentioned in the summons on the car's windshield. The owner, under the proposed section, finds himself convicted of the offence which the Crown has not been required to prove, the conviction having issued automatically.

While the proposed Section 11.3(2) provides that where a default conviction is entered against and a fine imposed upon an owner under Subsection (1), the court shall by mail send the owner a notice in writing stating that a default conviction has been entered against and the fine imposed upon the owner, the provision is for mail service. Thus, the owner might not receive actual notice of the conviction. His address might, for example, recently have changed, he might be away on vacation, the notice might be lost in the mail, and so on. Nor does there appear to be any requirement that the notice set out the owner's right to file a request for a hearing de novo.

Section 11.3(4) states that "Upon receipt of a notice sent under Subsection (2), the owner may, within 15 days of the mailing of the notice, file a request for a hearing de novo." There is a conflict in this wording between the words "receipt" and "mailing." A letter might be lost in the mail for a number of months, yet the owner may only file the request within 15 days of the mailing, notwithstanding that receipt has been delayed for several months.

Section 11.5: Section 11.5 provides that where a person is convicted of more than one offence and a prison term is imposed with respect to each of the offences in default of the payment of the fine, "the prison terms shall run consecutively unless the court otherwise orders."

This provision imposes a potentially drastic punishment greatly in excess of what might be expected given the nature of the offence. Criminal Code procedures in fact would appear to be less stringent, sentences of imprisonment being presumed to run concurrently unless otherwise ordered by the Court.

Submitted that for the reasons earlier discussed, we believe that this bill should be given further consideration prior to passing.

MR. CHAIRMAN: Are there any questions for Mr. Rosenbaum?

Mr. Penner.

HON. R. PENNER: Just a brief comment. As I said in an aside this morning, I wish I had an opportunity to have received the brief earlier. I've been looking at it since receiving a copy this morning and there are a couple of amendments which we have already in mind and a couple of more which we are prepared to bring in clause-by-clause that will deal with some of the concerns expressed in the brief.

I just wanted to make a general comment with respect to the concern about the traditional burden upon the Crown and the suggestion that this bill is in some way restricting the rights of accused individuals. In fact, as I said in the House, it's my view that rather than restrict the rights of individuals, this bill is expanding the rights of individuals. I think one has to look at what takes place now.

There are several hundred ex parte hearings a month. The total cost to the taxpayer of these ex parte hearings is in the order of about $200,000 a year. I call it the $200,000 farce because they invariably end up in a conviction. If there is a conviction and then the accused is notified - as the accused must be no longer an accused, but now a convicted person - the only right that the accused has is an appeal to the County Court, which almost invariably requires a lawyer at considerable expense to that person.

Under these procedures which are being proposed, first of all, the person has a right to avoid the expense and problem of going down to traffic court entirely, because we're considering mainly traffic offences and can deal with the matter by mail, instead of having to go down.

Secondly, even by mail he can plead not guilty and by mail be found not guilty; but where the person just doesn't show - and that's a major problem for the administration of justice - instead of the ex parte, there will be a default conviction. But now, under this legislation, that person instead of having to appeal to the County Court, get a lawyer and all of that, can have a simple trial de novo, that is, a new trial, but in the ordinary traffic court, which as you know is open at nighttime; most people go unrepresented and have their hearing. It's an expansion of rights, not a restriction of rights, to a very considerable extent. Not only that, it's a saving to the taxpayer at the same time of $200,000 and yet —(Interjection)— yes, but at the same time I'm emphasizing - I don't think I needed that particular aside, you can have your turn to speak if you want it - I'm emphasizing that the rights of the persons are being expanded. I don't care if it would cost us half-a-million dollars. If we were restricting the rights of accused persons, then I would be opposed to it and that is simply not what is happening.

Indeed, as a result of some suggestions that have been made, amendments will be brought at clause-by-clause stage to make sure, as has been suggested in the MARL brief, that persons who may have missed some of the notices are told explicitly about their right to the new trial in traffic court, to make sure that these things happen.

Finally and by way of comment with respect to the consecutive, rather than concurrent sentences; we have cases, all too many of them, of the flagrant viola-

tors who may accumulate - some have accumulated 40 or 50 traffic violations. They are simply saying that this law isn't for me. I can go ahead and park at will, contrary to the law and to heck with authority and to heck with the rights of other people to have a traffic stall when they need one. It just doesn't seem proper that these people should have to pay, for example, just $5 for the one offence and all of the other convictions to run concurrently. They should pay for each one of their violations, it seems to me. I'm sure, and I'll even put this as a question to you Mr. Rosenbaum. Would you not think that's proper? We're talking about the flagrant violator in these cases, or persons who have accumulated a number of moving offence tickets and have not done anything about it. Should they pay the one fine or should there be fines on each one of the . . .

MR. N. ROSENBAUM: Well, with respect, the section in fact refers to consecutive terms of imprisonment, rather than simply a fine. I believe that my learned colleague misses the point when the section does, in fact, deal with imprisonment rather than a mere fine. It is dealing with consecutive imprisonment rather than, for example, consecutive or multiple fine or whatever. It would appear to tend to conflict with the trend in other areas of criminal law.

Upon the matter of the expansion of the rights of the accused we appreciate that number of other amendments to expedite the accused right of appeal in review. However, it does remain that this central issue of default conviction does remain. Surely there must be another method of bringing the accused to court, for example, the issue for the warrant for the accused to appear, rather than to have a default conviction issued, in fact, under one of the sections with regard to traffic offences for a default conviction without intervention of a justice.

MR. CHAIRMAN: I might remind members of the Committee that the purpose of these hearings is to receive Briefs and presentations from the public and as such, we ought not to be arguing with them but merely asking questions to clarify their position.

Are there any further questions for Mr. Rosenbaum? Mr. Santos.

MR. C. SANTOS: Thank you, Mr. Chairman.

Mr. Rosenbaum, do you see any merit in limiting default conviction to include only convictions punishable by fine but not by imprisonment?

MR. N. ROSENBAUM: I'm uncomfortable with the concept of default conviction but if half a loaf is better than none, certainly the sense of default conviction where the liberty of a subject is involved, I would say that is a much more pressing concern, for example, than default conviction involving fine. The concept and the difficulty with the concept of default conviction remains; however, when it is a case of the liberty of the subject, then it's a much more drastic remedy for the Crown to have a default conviction.

MR. CHAIRMAN: Mr. Santos.

MR. C. SANTOS: That's all, Mr. Chairman.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Well, Mr. Chairman, Mr. Santos has brought up a rather interesting point, wherein he suggests that possibly a default conviction should only be registered in such offences as carry only a fine, hence eliminating the possibility of the courts deciding whether consecutive imprisonment should be imposed as it's part of, I believe, Section 11.5. But is it not my understanding, and maybe Mr. Rosenbaum or the Attorney-General could clarify this. I believe Section 11.1(2) makes all default convictions subject to imprisonment, whether it be a parking fine, running a red light, failing to pay a speeding ticket.

MR. N. ROSENBAUM: I believe that the section of The Summary Convictions Act would itself tend to restrict and would not include all manner of summary conviction offences. However, I don't have a copy of the Act itself before me and I'm not prepared, I'm not able to answer that particular question.

MR. D. ORCHARD: Mr. Chairman, Mr. Rosenbaum you mentioned a concern - and it's one that is shared by a number of people - in that notice, according to the amendments to The Summary Convictions Act, shall be by mail and there's no specification as to whether it's registered mail, certified mail. It's deemed to be ordinary mail and with not wishing to cast any particular offence on the current mail system, that can be something of a hazardous method of delivering a default conviction and, indeed, for the accused to register with the proper authorities. Well, I'll find the section - a reason why he explains extenuating circumstances, so that the accusation may be modified by a judge or a magistrate. All of those depend on the mails only and they can present some problems. Just because you mail an item in today's mail service doesn't necessarily guarantee delivery to the individual it's mailed to. Would you have a suggestion as to how The Summary Convictions Act may be amended to properly use the mails to delivery summonses, default convictions, etc.?

MR. N. ROSENBAUM: Yes, I'm uncomfortable with having a possible default conviction register after service through the mail. In fact, I think it's an inherent difficulty with mail service. For example, in civil proceedings, by reference to the Queen's Bench rules, the provision is for personal service unless otherwise specified and there are elaborate procedures in terms of civil procedures. In fact, it's necessary to apply to the court for an order of substitutional service if it's wished, for example, to proceed. In fact, to register a defaults judgment in the Queen's Bench, you have to file an affidavit of service in the court indicating that person's service or substitutional service by order of the court has been accomplished. Those particular sequences are not incorporated in this Act. I suggest that at least some thought should be given as to the mechanics of at least ensuring that, if there is to be mail service that it is with an amount of certainty, especially where default conviction is under.

MR. D. ORCHARD: Now, you expressed some concern about Section 11.5 on the consecutive nature of

prison terms. Would I interpret your concern in that, let's take a situation of successive parking violations which can be registered as a default conviction, a number of them accumulate, each with a consecutive prison term involved, would you be suggesting that where you have the ability under this Summary Convictions Act to cause consecutive prison terms to be the final conviction to the offender? Would you suggest in those cases that personal service be triggered in some manner so that you don't have all of this coming about because of lack of mail service, failure to receive the mail, for instance, the individual could be away on a six-week holiday which is not uncommon even in the senior levels of the Civil Service nowadays.

MR. N. ROSENBAUM: I tend to think that's where it reaches the stage of prison term, that's the ultimate situation. While it is difficult to conceive of mail services being at fault for that inability, the possibility does remain in the legislation. It is our position that possibility should be precluded by not allowing for it in the legislation.

MR. D. ORCHARD: I have no further questions.

MR. CHAIRMAN: Are there any further questions? Mr. Enns.

MR. H. ENNS: Mr. Rosenbaum, I appreciate that the Government of Manitoba is not breaking new ground in this instance. I understand that there are several jurisdictions in Canada that have enacted similar measures in this respect, Ontario, principally the one that comes to mind. Also, I must indicate to the committee and to you, Sir, that this proposal has been kicking around in the bureaucracy for at least four years and possibly longer, except that governments of that day didn't succumb to that kind of bureaucratic pressure.

My simple question to you, Mr. Rosenbaum, are you surprised that this government and this Attorney-General brings in these kinds of measures at this time?

MR. N. ROSENBAUM: I can't comment on that question. I really can't.

MR. CHAIRMAN: Any further questions?

Seeing none, I would like to thank you, Mr. Rosenbaum, for your brief.

BILL NO. 51 - AN ACT TO AMEND THE CHILD WELFARE ACT

MR. CHAIRMAN: On Bill No. 51, we have Ms Vicki Laiman.

MS S. SHACK: Mr. Chairman, I am obviously not Ms Vicki Laiman.

MR. CHAIRMAN: Could you identify yourself for the committee?

MS. S. SHACK: This is an instance that illustrates the difficulties that volunteer organizations tend to have. Our volunteers are not always free to arrive at the time that they hoped they would arrive at, so I am pinch-hitting. My name is Sybil Shack and I am a member of the Manitoba Association for Rights and Liberties which, as you know, is an organization dedicated to the preservation and enhancement of civil rights and liberties in the Province of Manitoba. From time to time, we take the opportunity offered to us to comment upon legislation proposed to be passed in this House. Today, we are commenting upon certain provisions of Bill 51, An Act to amend The Child Welfare Act.

I am afraid that I must apologize twice because I am not as knowledgeable in this matter, of course, as Ms Laiman was who worked on the bill and prepared this paper.

The amendments of Bill 51, which concern us particularly, affect the organization of Child Welfare agencies, protective guardianship, children of unmarried parents and adoption. While MARL applauds the widening of notice of provisions, such as found in Section 7 of Bill 51 as being of benefit to those involved in hearings, there are concerns and potential conflicts which we would like to raise.

The first of these deals with Section 4 of the bill and Section 7, I think, of The Child Welfare Act. Previously, child welfare committees could be formed only in areas that were not served by children's aid societies. The new establishment of "Child Welfare Committees" consisting of "residents of an area interested in Child Welfare" may conflict with already existing child caring agencies. This is an ambiguous section as to the purpose for which the committees would be set up; in fact, there are several ambiguities, we believe, involved in this particular section.

One is an ambiguity in the purpose of these committees and the circumstances in which these committees would be set up and in how their function would be defined in relation to other "child caring agencies." We could see potential conflicts here between a child caring agency and a child welfare committee whose members will probably be drawn from the community. We can see also potential problems with confidentiality in such committees - confidentiality, the child caring agencies normally consider of great importance. We believe that if there were conflict between a child caring agency and the child welfare committee, that would certainly not be in the best interest of the children involved. Our concern, of course, is with the children.

What we are really suggesting is that the composition, the function, and the relationship of these child welfare committees should be more clearly defined in the Act, that these ambiguities should be, if possible and we think it's possible, eliminated.

We are also concerned that too much is left to be controlled by regulation in the new subsection. In the new Child Welfare Act, Subsection 7(3), it should be made clear - this is a minor point - but on reading this, I know Ms Laiman and I noticed this immediately, that the "director" spelled with a small "d" in that particular subsection could refer to any kind of director, the director of an agency, the director of the Child Welfare Committee. The word "director" should be more clearly defined as the Director of Child Welfare if that's the intent of the subsection; the intent

is not clear.

A second major concern is regarding the orders of the court for support by a putative father of a child of unmarried parents. We believe that it is a good move to make sure that mother is named as well as the child caring agency to receive support money for the child. This allows the mother to have a direct entitlement to the money for the child, but we believe that the judge should be able to have the money go directly to the single mother and not necessarily through "a designated officer as defined in Part IV of The Family Maintenance Act" for disbursement by such a designated officer; that is, we think the judge should have the right to pass the money on directly to the mother.

A third major concern is in Section 19 of Bill 51. It would appear to give too much discretion to the child caring agency to extend the times for the making of an application for an order of adoption. It's ambiguous as to who, within the child caring agency or which child caring agency, would have the direct authority to make adoptions or to extend the time in which adoptions can become firm. Further, the judges usually have the prerogative to extend times and applications to them as this would be - that is, there has to be an application to a judge for the extension of time for firming up an adoption and then it usually lies within the discretion of the judge to set the limits or to extend the limits if necessary.

MS S. SHACK: We are concerned that some of the amendments in this bill then are ambiguous in their wording and might very well lead to litigation resulting in harmful effects to the children. This is an extremely important Act and it's really a very complex Act, The Child Welfare Act as a whole, because it deals with the lives of helpless children who in many cases can't speak for themselves. We believe that there should be more opportunity for interested persons and organizations to study its implications and that it should not be passed in haste without consideration to the implications of the Act.

MR. CHAIRMAN: Are there any questions for Ms Shack?

Mr. Graham.

MR. H. GRAHAM: Thank you very much, Mr. Chairman, through you to you Ms Shack. I could get down to a personal note which I will not do. On your last concern where you say it should not be passed in haste, would it then be assumed that the position of the Manitoba Association for Rights and Liberties would be one that this Act should be referred to in intersessional committee?

MS S. SHACK: Well, not necessarily to another committee but it certainly should have more attention in the House. We believe that there should be more opportunity for those people who are directly affected by it to make presentations regarding it.

MR. H. GRAHAM: Well, given the fact that this Assembly may very well end its business in the next day or two or possibly three, would you consider that to be haste?

MS S. SHACK: The suggestions we make are not a matter of life and death, as you notice, but they try to wipe out ambiguities which, I think, could be corrected and perhaps more sweeping amendments could come in the next Session. On the other hand, I don't think that MARL would be disturbed if this bill were laid over for the next Session with some greater attention paid to these areas that we have drawn to your attention.

MR. H. GRAHAM: Thank you very much, Mr. Chairman.

MR. B. CORRIN: In respect to Section 14 of the bill Ms Shack, I wanted to try and obtain your understanding of the effect of the amendment and the revision to the legislation. Perhaps before I ask you what your understanding is in detail, I'll tell you what I thought when I read the provision and we'll see if there's any consonancy between our opinions. I thought that it was simply put in the Act, in the legislation, to facilitate the collection of the maintenance monies from the putative father in order to expedite the collection and remittance of that money and to assure the custodial parent that in the event that the monies were not remitted that the enforcement provisions in that part of The Family Maintenance Act could be invoked.

So what I thought, perhaps I'm wrong, that it was simply an expedient measure to assure that the custodial parent wouldn't be put to bother as a result of payments not coming in an efficient in a timely manner. So I thought it was basically an enhancing provision that would make the receipt of these monies more efficient and consistent with the provisions which are now utilized with respect to other maintenance orders emanating from the family courts. Now, what is your understanding of that because you seem to have a different point of view?

MR. CHAIRMAN: Ms Shack.

MS S. SHACK: Well, my understanding was that the section as a whole was a good section. The only part of the section to which we are addressing ourselves is that which suggests that the payment should go through a designated officer as defined in Part IV of The Family Maintenance Act for disbursement instead of going directly on the judge's order to the mother. But otherwise we are in sympathy with that section and I think I would agree with your interpretation of it.

MR. CHAIRMAN: Mr. Evans.

HON. L. EVANS: I'd like to ask Ms Shack whether in her comment on the child welfare committees and the fact that there . . .

MS S. SHACK: I'm sorry, Mr. Evans, I have a hearing disability and I can't hear you.

HON. L. EVANS: Yes, I'll speak up. With regard to Item 1 in your presentation in reference to the new establishment of child welfare committees consisting of residents in an area interested in child welfare, you say this may conflict with already existing child caring agencies. You are aware, of course, that there have

already been some child welfare committees, if I can use that general phrase, begun primarily with the Dakota Ojibway Family and Child Service in Southwestern Manitoba. So are you aware of the signing of the Tripartite Agreement with the Federal Government and the Four Nations Confederacy and the signing thereto of subsequent subsidiary agreements whereby we may now turn over to various reserves who agree to the conditions, the right to act in effect as a child caring committee or a child welfare committee.

MS S. SHACK: As I understood it in the Act as it exists now, these child welfare committees are set up only in areas where there are not child caring agencies operating. Our concern is that there might be conflict in interest and administration between the child welfare committee. We're not opposed to the idea of a child welfare committee but we are just concerned that the legislation may be ambiguous as to the powers of the committee, of the child welfare committee, and it's relationship with a child caring agency, if one exists in the area.

What we're suggesting is simply that the powers be spelt out and that the relationship between the two groups be spelt out, so that these ambiguities don't develop and that the conflicts don't develop in the matter of child custody because, if they do develop, it's the child that suffers.

MR. CHAIRMAN: Mr. Evans.

HON. L. EVANS: Yes, well again, I would like to ask the delegate if she has had any discussion with some of the child caring organizations, because the Children's Aid Societies involved are very much aware of the fact that we are in the process of delegating to various Tribal Councils the power and authority to act as a child caring agency on those specific Reserves. For example, in the Dakota Ojibway Tribal Council Agreement they have, as of a year ago, established a Family and Child Caring Service in the Westman area of Manitoba, essentially, where there is already existing, of course, the Children's Aid Society of Western Manitoba.

MS S. SHACK: Yes, I realize that. I, again, must apologize to you for my inability to answer some of these questions because, as I said, I came ill-prepared, not expecting to speak to this topic. I just looked to see whether the presenter, who was supposed to be doing this job has shown up and she hasn't. I take your point, Mr. Evans and, as I said, we are not objecting, by any means, to child welfare committees; we think that the idea is a good one. We are suggesting, however, that though it may work now when it's new - and there is no legislation really setting up the relationship between the two - but what happens six months from now, or three years from now if there is nothing to set forth the exact relationship of one organization to the other. That is our point, I think.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: Yes, I'm still looking Ms Shack, at the provisions of 14, which we discussed earlier and having heard your concern and I've been looking at it and studying the present Act. I must admit that I'm now concerned about this, too, because I think that the wording is ambiguous. So your concern that it may be necessary that a single mother or an agency turn the money over to the designated officer, seems to have some validity. I guess I was wondering, what would you think if we did something to the effect of adding, as a discretionary option, a third component; namely, the possibility that the money be forwarded to a designated officer? In other words, the judge could order the money payable to the single mother, or the child caring agency, or the designated officer, such as he or she deems fit.

MS S. SHACK: Yes, or to the single mother through the designated officer and we couldn't really see the point of that. The fact that a mother is a single mother doesn't necessarily mean that she's irresponsible. If she's irresponsible the judge wouldn't order the paying of the money to her; if she's responsible, then it shouldn't have to go through another step.

MR. B. CORRIN: I think the intent though is simply to ensure that, in the case where their payments aren't made or aren't regularly made, that there be an enforcement pickup that will hook in fairly automatically and would obviate the necessity of the mother having to get involved, which is something that has been done now with respect to maintenance orders, generally, under The Family Maintenance Act. But I have this concern because I think the language is ambiguous, so we'll look at it. I think there's general agreement that we're looking at it.

Thank you.

MR. CHAIRMAN: Mr. Harper.

MR. E. HARPER: Yes, Ms Shack, I would just like to make a few comments on the child welfare committees.

Where I come from, I guess in the north, we operate a number of child welfare committees on Reserves and part of the problem has been to obtain any authority or any powers. As you know on Reserves it's a Federal responsibility and where in the absence of any Federal Statute or any legislation that exists, we don't have any Federal Child Welfare Act. So there's a provision under The Indian Act, whereby the general laws of the province would apply on the Reserve and this is sort of a quasi jurisdiction that seems to confuse the Band members or Reserve people and also some of the people that are providing the service; namely, the Provincial Government that has jurisdiction for that responsibility and so the child welfare committees were able to resolve some of the issues. Like Mr. Evans said, establishing the Tripartite Agreement between the Federal and the Provincial and also the Tribal Councils, I think, is the proper way to deal with it because it gives some responsibility to the parents and also to the elected representatives on the Reserves.

MS S. SHACK: Thank you for clarifying that point. Let me repeat that we favour the idea of the child welfare committee; we're not opposed to the idea of the committee, we would just like to have some of its relation-

ships to other organizations more clearly spelled out.

MR. CHAIRMAN: Are there any further questions for Ms Shack?
Mr. Evans.

HON. L. EVANS: Yes, well I just wanted to make a comment that we welcome all the comments . . .

MS S. SHACK: I'm sorry, I can't hear.

HON. L. EVANS: We welcome all your comments, Ms Shack and I just might point out - I know we're only to ask questions and I guess I could ask it this way. Are you aware that this is meant to be, essentially, minor administrative changes in the Act and that there is a more substantive change proposed, either for next year, next Session, or possible the Session after, after the conclusion of a major review of this legislation? This is a minor series of essentially administrative and technical changes that was seen fit to proceed with at this time; some of which are designed to make these child caring agencies more effective, and another to actually make it easier to deal with the problems of payments ordered under Sections 64 and 65, where there was unnecessary burden being caused to the child caring agency, in regard to payments ordered.
Generally they're of a technical nature, but were you aware that we were going to bring in major changes next year.

MS S. SHACK: Yes, I understand that the whole Act is coming up for discussion and that other matters will be dealt with. This is why I didn't think that it was really necessary to refer this back to a committee, though we would have no objection if it were laid over until that larger overhaul, shall I say, took place because there are ambiguities that could be ironed out without too much difficulty, we think.

MR. CHAIRMAN: Any further questions? Seeing none, thank you Ms Shack.

MS S. SHACK: Thank you.

BILL NO. 53 - AN ACT TO AMEND THE BUILDERS' LIENS ACT

MR. CHAIRMAN: From this afternoon, we still have one presentation on Bill No. 53 left over, Mr. J.T. McJannet. There is an error; he's not appearing.
Are there any other people present who would like to make presentations on any of the bills considered by this Committee? Seeing none then, presentations are over and we will proceed clause by clause.
Mr. Penner.

HON. R. PENNER: Mr. Chairperson, on a point of order. I wonder, with the indulgence of the Committee, whether we could take The Builders' Liens Act, Bill No. 53, first. As announced in the House, I have here this evening Mr. David Newman who was one of the original draftspersons on the Act and has played a significant role with the bill. If technical questions arise, he would be in a better position in some instances - which really is a euphemism for all instances - dealing with them than I would.

MR. CHAIRMAN: Is it generally agreed then, we'll do Bill No. 53 first? (Agreed)
Bill No. 53. How shall we proceed, clause-by-clause, page-by-page?

HON. R. PENNER: Page-by-page.

MR. CHAIRMAN: Page-by-page, volume-by-volume, bill-by-bill. Page 1—pass.
Order please. There is a considerable amount of side conversation and the Hansard reporter is having trouble recording.
Page 1—pass; Page 1 (French version) - Mr. Filmon.

MR. G. FILMON: I wonder if, just so that we're aware of anything that might be happening coming up in the bill, if firstly I could ask if Mr. Newman has seen the letter presented by the Winnipeg Construction Association and if he has any comments or clarification to make on the specific points which they raised. Then, we could consider the rest of it clause-by-clause.

MR. CHAIRMAN: Mr. Newman.

MR. D. NEWMAN: Mr. Chairman, I have perused that letter from the Winnipeg Construction Association dated June 28, 1982, and I also received a telephone call from Gervin Greasley who is the full-time, I guess, Executive Secretary of that organization. With respect to the change they suggest from 17 days to 7 days on Page 2 of that submission, the Legislative Counsel has prepared an amendment to the proposed Bill 53 to accommodate that request to reduce 17 days to 7 days. The rationale for that 17 days was that it was required, according to some of the government architects, in order to have sufficient time to determine whether payment was justified, number 1; number 2, the standard form of Canadian Construction Association contract had 10 plus 7 days as the normal period for payment.
However, as I understand it, in order to accommodate the difficulties the construction industry is now experiencing with cash flow, it's a matter of determining should the pressure be on the architects to certify quickly or should contractors be put to a delay. The decision has been made tentatively to give the contractors the opportunity to get earlier payment so the reduction to 7 days is proposed by way of an amendment to the bill.
With respect to the comments of the Winnipeg Construction Association in connection with subsection 27(2) and 27(2.1), the problem with the old Act, which they suggest had some advantages over this one, was that the interpretation most commonly given to that subsection was that if liens had been registered then there could be no payout. Because that was the interpretation that was commonly given, the very evil that he felt would be cured by preserving the old concept, would be perpetuated.
So what has been suggested to him, and he now agrees with, is that the subsections which are in the new bill deal quite clearly with the problems that existed previousl and when explained to him, he agreed with that. It was also pointed out to him that,

under subsection 56(3), there was a procedure available to get payment out of court if someone was in need and justifiably entitled to payment. When that was pointed out, again, he felt on behalf of the organization that they would be satisfied with no amendments to 27(2) as drafted.

With respect to the two minor points on page 4 of the letter dealing with sections 47 and 48, those are minor drafting points and I would leave that up to the opinion of Mr. Tallin as to whether or not he feels that those would improve the legislation.

MR. G. FILMON: Mr. Chairman, I just wonder if Mr. Newman could address his concern about section 55(2) in which the word "contract" refers specifically to the document between the owner-agent and contractor and he thought, that is Mr. Greasely thought, would eliminate liens filed by subcontractors. Is that a correct interpretation on his part and, if so, should it be corrected?

MR. D. NEWMAN: Section?

MR. G. FILMON: It's the final two paragraphs on Page 3.

MR. D. NEWMAN: I think a careful reading of that subsection provides that the amount that would be paid in would not exceed the total amount of the claims for liens. So the result is that the maximum amount that would be paid in would be the amount claimed in any one of the liens, whether filed by subcontractors or the contractor. As a result, the maximum amount that could be paid in would be the amount of the registered liens. So it was intended to use the word "contract" there and the concern that he expressed in his letter in the second-last paragraph, I think, and he agreed with me. It was taken care of by the last two and one-half lines in Subsection 55(2).

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Thank you, Mr. Chairman. I think then we are prepared to proceed page-by-page, except where there are amendments being proposed.

MR. CHAIRMAN: Pages 2 to 6 (English and French versions) were each read and passed. Page 7, clause-by-clause, Clause 12—pass; Section 25(1)—pass.

HON. R. PENNER: 25(2), there's an amendment, I believe.

MR. CHAIRMAN: 25(2)(a) - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Clause 25(2)(a) of The Builders' Liens Act, as set out in Section 12 of Bill 53, be amended by striking out the word and figures "Section 46" in the 2nd line thereof and substituting therefor the words and figures "Subsection (5), (6) or (7)."

MR. CHAIRMAN: Any discussion on the proposed motion of Mr. Corrin?

Mr. Tallin.

MR. R. TALLIN: Could we be ready to make similar amendments to the French version that would be consistent with the English motions? We haven't the French version of the motions.

HON. R. PENNER: This was a drafting error, Mr. Filmon.

MR. G. FILMON: Thank you.

MR. CHAIRMAN: The proposed motion of Mr. Corrin—pass; 25(2)(a), as amended—pass; 25(2)(b)—pass; 25(2)(c)—pass. Page 7, as amended, and Page 8, (English and French versions) were each read and passed. Page 9, top of the page, (d)—pass.

25(5) - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Subsection 25(5) of The Builders' Liens Act as set in Section 12 of Bill 53 be amended by striking out the figures "17" in the 4th line thereof and substituting therefor the figure "7." Mr. Newman's already given a full explanation of this.

MR. CHAIRMAN: Any discussion on the proposed motion of Mr. Corrin? Pass. 25(5), as amended—pass.

25(6) - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Subsection 25(6) of The Builders' Liens Act as set out in Section 12 of Bill 53 be amended by striking out the figures "17" in the 4th line thereof and substituting therefor the figure "7."

MR. CHAIRMAN: Discussion—pass; 25(6), as amended—pass.

25(7) - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Subsection 25(7) of The Builders' Liens Act as set out in Section 12 of Bill 53 be amended by striking out the figures "17" in the 3rd line thereof and substituting therefor the figure "7."

MR. CHAIRMAN: Proposed amendment—pass; 25(7), as amended—pass; Page 9, as amended—pass; French version, Page 9—pass; Pages 10 to 12 (English and French versions) were each read and passed. Page 13 (English version), balance of Clause 45(2), top of Page 13—pass; Clause 18—pass.

Clause 19 - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Subsection 46(1) of The Builders' Liens Act as set out in Section 19 of Bill 53 be amended by striking out the figures "17" in the 4th line thereof and substituting therefor the figure "7."

MR. CHAIRMAN: Discussion, proposed amendment? Mr. Penner.

HON. R. PENNER: Wait. Yes, I'm sorry, why don't we do the amendments sequentially?

MR. CHAIRMAN: Which one do you want to do first? Section 19?

MR. B. CORRIN: I move,
THAT Section 19 of the English version of Bill 53 be amended by adding thereto, immediately after the figures "46" in the 1st line thereof, the word and figures "47 and 48."

MR. CHAIRMAN: The proposed motion passed, as amended, Section 19, now 46.
46(1) - Mr. Corrin.

MR. B. CORRIN: I move,
THAT the proposed Subsection 46(1) of The Builders' Liens Act as set out in Section 19 of Bill 53 be amended by striking out the figures "17" in the 4th line thereof and substituting therefor the figure "7."

MR. CHAIRMAN: Discussion on the proposed motion—pass; 46(1), as amended—pass.
46(2) - Mr. Corrin.

MR. B. CORRIN: I move,
THAT the proposed Subsection 46(2) of The Builders' Liens Act as set out in Section 19 of Bill 53 be amended by striking out the figures "17" in the 4th line thereof and substituting therefor the figure "7."

MR. CHAIRMAN: Proposed amendment—pass; 46(2), as amended—pass; Clause 46(3), bottom of Page 13—pass; French version, Page 13, as amended—pass. Page 14 (English and French version)—pass; Page 15, Clause 47.

MR. R. TALLIN: Mr. Green has suggested two improvements and I agree with both of them. Section 47, which the reference in the 2nd line should be to sub-contract rather than sub-contractor; and in the 4th line of 48 the word "mortgagee" should be "encumbrancer." Could we treat those as corrections without a formal amendment?

MR. CHAIRMAN: Clause 47, as semi-amended, I guess.
Mr. Filmon.

MR. G. FILMON: Encumbrancer of encumbrancee?

MR. R. TALLIN: No, it's the encumbrancer.

MR. G. FILMON: The encumbrancer.

MR. CHAIRMAN: 47, as corrected; 48, as corrected; balance of Page 15—pass. Does that mean a change in the French version? Page 15, as corrected (French version)—pass. Pages 16 to 19 (English and French versions) were each read and passed. Preamble (English and French versions)—pass; Title (English and French versions)—pass. Bill be reported in French as well. That completes Bill No. 53. Shall we revert to the standard order?
Mr. Penner.

HON. R. PENNER: There are two Ministers here who are not members of the committee or at least one of them is not and perhaps we might extend them the courtesy of doing Mr. Evans' Bill No. 51 and Mrs. Hemphill's Bill No. 43 and then the rest in order.

BILL NO. 43 - AN ACT TO AMEND THE PUBLIC SCHOOLS ACT

MR. CHAIRMAN: Bill 43 first, was it? How shall we proceed, Page-by-Page or Clause-by-Clause? Page-by-Page.
According to my records, we have already passed Page 1. We started consideration of this bill a few days ago and we passed the first page and then decided to wait for the Minister. Page 2 (English version)—pass; Page 2 (French version).
Mrs. Oleson.

MRS. C. OLESON: On Page 2, could I ask the Minister if the accumulated sick leave is portable from one school division to another?

MR. CHAIRMAN: Mrs. Hemphill.

HON. M. HEMPHILL: No, it is not.

MRS. C. OLESON: It is not?

HON. M. HEMPHILL: No.

MRS. C. OLESON: Thank you.

MR. CHAIRMAN: Page 2 (French version) and Pages 3 and 4 (English and French versions) were each read and passed; Preamble (English and French versions)-pass; Title (English and French versions)—pass; Bill be reported.
That completes Bill No. 43. Bill-by-bill. Batch-by-batch. The next, Bill No. 51. What is the will of the committee?

HON. R. PENNER: The Minister isn't here right now. He's coming. Go on to the next one.

BILL 31 - THE CHILD CUSTODY ENFORCEMENT ACT

MR. CHAIRMAN: Bill No. 31. Could we keep down the noise and we'll proceed in an orderly fashion? Page-by-Page on Bill No. 31.
Pages 1 to 6 (English and French Versions) were each read and passed; Page 7, Clause 12(1) (English version)—pass; Clause 12(2)—pass; Clause 13(1).
Mr. Corrin.

MR. B. CORRIN: THAT the proposed subsection 13(1) of The Child Custody Enforcement Act be amended by striking out the last four lines thereof and substituting therefor the following:
"In the records in the custody of the person or body within the knowledge of an individual and the person, body or individual shall give the court such particulars and the court may then give the particulars to such person or persons as the court considers appropriate."

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Is this the amendment proposed by Mr. Riley?

HON. R. PENNER: Yes.

MR. CHAIRMAN: Any further discussion? Proposed amendment—pass; Clause 13(1) as amended—pass; Clause 13(2)—pass; 13(3)—pass; remainder of Page 7 (English and French versions) as amended—pass; Page 8, Clause 14(1) (English version).

Mr. Corrin.

MR. B. CORRIN: THAT the proposed subsection 14(1) of the Act be amended by striking out the words "in addition to its powers in respect of contempt" in the 1st line thereof and that the subsection be further amended by striking out the word "willful" where it appears in the second line thereof.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Again, this responds to suggestions made by Mr. Riley in his brief on behalf of MARL.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: I was just clarifying that. That's fine. Thank you, Mr. Chairman.

MR. CHAIRMAN: Discussion on the proposed amendment? Proposed amendment—pass; 14(1) as amended—pass. Are there any further amendments on this page? Balance of Page 8 (English and French versions) as amended—pass; Page 9 (English and French versions)—pass; Preamble—pass; Preamble (English and French versions)—pass; Title (English and French versions)—pass; Bill be reported.

What about all these things at the back?

HON. R. PENNER: Bill No. 51, Mr. Chairman.

MR. CHAIRMAN: Mr. Driedger.

MR. A. DRIEDGER: Mr. Chairman, could we maybe deal with another bill and leave 51 just for a little while, please?

MR. CHAIRMAN: Are you waiting for Mr. Sherman.

MR. A. DRIEDGER: Yes, he's on his way.

BILL NO. 51 - AN ACT TO AMEND THE CHILD WELFARE ACT

MR. CHAIRMAN: All right. Bill No. 31 is finished. Bill No. 51. How shall we proceed? Page-by-Page?

Order please. Are there any proposed amendments in this bill? Page 5, Mr. Corrin says. Page 1 (English version)—pass.

Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, in Clause 1, I wanted to ask the Minister if he could explain the reason for the change in the definition of "child caring agency" to include a "child welfare committee" appointed under Section 7?

MR. CHAIRMAN: Mr. Evans.

HON. L. EVANS: Let me offer a brief explanation. The words "a child welfare committee" appointed under Section 7 are added to the definition of a child caring agency in order to enable the Committee to have all the rights and duties of a child caring agency under The Child Welfare Act. Without this particular change, a child welfare committee cannot, or could not apprehend children because according to Section 17 of the Act, only an officer of a child caring agency or a Family Court, or a peace officer may apprehend the children in Manitoba. And as I explained, Mr. Chairman, in the Legislature this is meant to give the power, the strength to the various Indian organizations, which are now getting the responsibility, obtaining the responsibility under The Tripartite Agreement and, of course, it is applicable also to the Dakota Ojibway Tribal Council and their child and family caring services.

MR. L. SHERMAN: Mr. Chairman, well I would ask the Minister whether the change is designed specifically to accommodate the Dakota Ojibway Child and Family Services Agency and the Churchill Health Centre? Can I put that question to the Minister? He has mentioned the tripartite arrangement, but . . .

HON. L. EVANS: Yes, and the South-East Tribal Council which just recently signed an agreement with us and indeed, other Tribal Councils in the future. Hopefully there will be several others in the near future.

MR. L. SHERMAN: Mr. Chairman, I'd ask the Minister why it's necessary to change the definition to accommodate child welfare committees of that kind? It's my understanding that under Section 7 of the Act, as it's presently written, the rights and powers that are vested in child care agencies can be vested in a child and family service, or a child welfare committee on the authority of the director, provided the particular committee has to meet with the supervisory requirements and the authority of the director. Is that not already a part of the existing legislation and would that not accommodate the particular agencies and centres and services that the Minister is concerned with?

HON. L. EVANS: Excuse me, I didn't hear the - there was some interruption here - I didn't hear the specific suggestion.

MR. L. SHERMAN: I'm wondering why the definition has to be changed, or should be changed at this time, when the current Statute, the current act, already provides in the existing Section 7; which we don't deal with until the next page of this Bill, for vesting the rights and authorities of a child caring agency, in a child welfare committee, on the approval of the director?

HON. L. EVANS: Well, the approval of the director is under the authority of the Minister, but from our experience, there was a concern that the Dakota Ojibway Tribal Council did not have full legal authority to carry out the intent of the agreement and that is, for it to have and rights and powers of a child caring agency such as the Children's Aid Society of Western Manitoba, or Children's Aid Society of Central, Eastern or

Winnipeg or, indeed, the Department of Community Services and Corrections.

As the member knows, the Department of Community Services and Corrections indeed, is the child caring agency for the vast part of the province - the entire northern part of the province including Dauphin and the Interlake regions.

MR. L. SHERMAN: But doesn't the existing section in the Bill provide that except where there is a Children's Aid Society in existence, a child welfare committee can have vested to it, the rights and authorities of an agency which would therefore give them the right to apprehend children in circumstances where apprehension was warranted. Doesn't that already exist under Section 7 of the existing Statute and that being the case, why is it necessary to broaden the definition?

HON. L. EVANS: We've obtained legal advice and also from experience we are told there could be a weakness in that delegation of authority. There was a case, I believe, in Portage la Prairie, which could have resulted - I believe it hasn't - but could have resulted in this deficiency being experienced. So we want to ensure that the various Tribal Councils will have the full rights and privileges and responsibilities of the Children's Aid Societies that we experience in the Province of Manitoba.

MR. L. SHERMAN: But could not that be achieved, Mr. Chairman, by specifying then, that those rights to which the Minister refers, be vested in Tribal Councils where circumstances warrant without opening up the definition as broadly as it is opened up here? The reason I raise the question, Mr. Chairman, is because with the opening of the definition to the broad parameters that are provided here linked with Section 7, and Section 1 has to be linked with Section 7 of the existing bill, or Section 4 of this new bill; there seems to me to be a very broad door opened, which could lead to considerable difficulty and conflict in apprehension situations in child protection situations, between groups that were designated by the Minister and existing agencies like the Children's Aid Society of Winnipeg, or the Children's Aid Society in any of the four regions in Manitoba in which it exists and operates.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: Just dealing with the general concern that's raised with respect to existing Section 7; existing Section 7 implies upon reading it, that the authority to delegate the power of a child caring agency to a local child welfare committee is designated to the director, subject, of course, to the approval of the Minister responsible for this particular Act.

I think the problem arose with respect to the director essentially being put in a position where he was delegating authority that was not accurately or adequately reposed in him by virtue of the legislation itself. So as I understand the Portage case, the court held that this particular section was insufficient, was deficient with respect to the directors being able to give full authority to a local child welfare committee. Therefore, we deem it necessary, as I understand it, to make the amendment which specifies that a child welfare committee appointed under Section 7 can, indeed, be constituted a child caring agency. That may be slightly vague but as I understand it, that's the substance of the case and the the effect of the decision, so that deals with the technical aspect of what you've raised and doesn't go to the other more conceptual aspect.

MR. L. SHERMAN: Well, Mr. Chairman, I appreciate Mr. Corrin's explanation and I understand what is required here under the legislation on the basis of the difficulty that was encountered in the Portage case and the difficulty the Minister says is encountered in other cases. My question, basically, is why could that difficulty not be addressed by amending the legislation to specify that when the director or the Minister - I have no objection to its being vested, specifically in the Minister, the Lieutenant-Governor-in-Council - when the director or the Lieutenant-Governor-in-Council designates a group as a child welfare committee that that provides that committee with the rights and authority that is vested in a child caring agency without opening up the definition of child caring agency to include any child welfare committee that is appointed under Section 7 which, in effect, means any child welfare committee that the Minister wishes to appoint.

HON. L. EVANS: I'm a little confused by what Mr. Sherman is commenting upon because Section 7 that he refers to is in the existing Act, which discusses the fact that a director may establish a child welfare committee by the appointment of local citizens known to be interested in child welfare, to be known as a child welfare committee of such-and-such and the director, subject to the approval of the Minister may grant to the committee such powers and impose such duties for the welfare and protection of children as he sees proper, etc., etc., etc. So I think you're addressing something that already exists, Mr. Chairman.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: I just wanted to embellish the point I was trying to make before, if it wasn't clear. The director does not have the power under this legislation to apprehend children, order the apprehension of children; it's not specific. So, as I understand it, it's the intention of the amendment to make it very clear that a local child welfare committee is designated a child caring agency because those bodies do have the power to do that under the authority of the legislation.

MR. L. SHERMAN: Mr. Chairman, just to go back to the Minister's point, that was precisely my point to begin with. My first question was, since it's already in Section 7 why do we need this amendment? When the Minister quotes from Section 7 of the existing Act he leaves out one very important and crucial phrase and that is the lead phrase in the section which says "where there is no Children's Aid Society" - I don't have the Act in front of me but it says: "where there is no Children's Aid Society the director may do such-and-such and such-and-such," and that's precisely my point. The definition as it is broadened under the

amendment in front of us opens it up for the Minister - and I don't care whether it's the Minister or the director - to appoint a child welfare committee anywhere to compete with Children's Aid Societies.

HON. L. EVANS: Mr. Chairman, before Mr. Sherman got here we were discussing this with one of the delegates and we pointed out to the delegate that the Children's Aid Societies in the province, including the Children's Aid Society of Western Manitoba where the Dakota Ojibway Tribe functions, is knowledgeable and is very co-operative and very willing to turn over this responsibility as it relates to the functions of that Indian Tribal Council on those specific Reserves named in the agreement and similarly in agreements that we're signing and have signed just recently with the Southeastern Tribal Council. The Children's Aid Societies have given us their full co-operation. It's not a matter of competition, it's a matter of co-operation.

MR. B. CORRIN: I just wanted to give Mr. Sherman an opportunity to peruse the section to which I referred before, it's Section 17(2), and talks about apprehension of children, it says "an officer of a child caring agency, or of a Family Court or of a peace officer on reasonable and probable grounds believes that a child is in need of protection, may apprehend the child without a warrant and take the child to a place of safety." That is the rationale for the amendment; you have to be able to designate the committee and agency in order to do this and the former legislation, or the legislation as it is now written, essentially delegates the responsibility to the director when the director is not in a position to further delegate such a responsibility. It's only a child caring agency that has that authority. It really is, in that respect, a fairly technical amendment but you have other points which you raise which are more philosophical in nature.

MR. L. SHERMAN: Thank you, Mr. Chairman, returning again to the Minister's last point and I acknowledge and appreciate Mr. Corrin's explanation again. The Minister placed some emphasis on the Tribal Council and/or the Indian Reserve vis-a-vis a Children's Aid Society, such as the Children's Aid Society of WestMan and advised the Committee that the CAS of WestMan is perfectly happy to have a Tribal Council designated as a child caring agency on a Reserve and I don't think anybody around this table would argue with that, Mr. Chairman, certainly I wouldn't. But what we're talking about in the case of many Children's Aid Societies, particularly the CAS of Winnipeg, is not a Reserve but a city and if the Minister wants to confine it to Reserves that's one thing and, in fact, I would have some suggestions with respect to Section 4 of the new Act which is Section 7 of the old Act when we get to it.

But before getting there I wanted to ask him about the rationale for the widening of this definition, because under the definition it doesn't restrict it to making arrangements, for example, where our Native population is concerned on Reserves. It permits the Minister to designate a child welfare committee anywhere, anytime among any group of people, five of us around this table if we could persuade the Minister that we were concerned about the welfare of children - not this Minister because he couldn't be that easily persuaded, but some Minister - we could be designated a child welfare committee and be in competition with the Children's Aid Society for the apprehension of children. I don't think that's either in the best interests of the children or of society or certainly of the Children's Aid Society.

HON. L. EVANS: Mr. Sherman expresses certain concerns, concerns that I don't have. I think that in the province we are living in a very fluid situation at the present time. I don't see any problem in respect of this definition as we have it. He may wish to read into this certain conclusions or ramifications which may or may not be valid and I think he's taking more of a philosophical position in it. I look upon it as essentially a technical change which is necessary because of the explanation we've given you earlier. I think that there's no question that sometime in the future there could be overlapping, at the moment you might say there's overlapping in the sense that the Department of Community Services is responsible for delivering programs for children's welfare in the bulk of the province in Northern Manitoba, the bulk of the geography of the province at least. You have designated in Churchill a Churchill Health Centre. At some time in the future, it may be in the interests of children of this province to have other committees designated, not necessarily to make the organization or the system unduly complicated, but to be more efficient and to be more effective and to be more meaningful to the people involved.

MR. CHAIRMAN: Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, I can accept the technical nature of the amendment in Section 1, but if it's tied to Section 4, which it has to be, in order words, tied to Section 7 of the existing Act, then I think this becomes a very important question in terms of the philosophy and direction of the Minister where the child welfare system is concerned.

There are three reviews going on right now of The Child Welfare Act. In addition to that, the Kimelman Task Force is still studying the whole question of Native adoptions; the Minister is awaiting recommendations from the Kimelman Task Force on that rather controversial subject. I suggest, at the very least, that he is prejudging the conclusions of the Kimelman Task Force by proceeding with an amendment to the Act of this kind right now. That is the kindest thing I can say about it. At the most, he is, wittingly or unwittingly, permitting a threat to the Children's Aid Societies of this province. He mentions the Churchill Health Centre - there is no Children's Aid Society in NorMan. So the problem that he's got could be very easily accommodated by dealing with the designation of groups like the Dakota Ojibway Child and Family Services Agency, the Churchill Health Centre, the Indian Bands and Councils that come under the aegis of The Tripartitite Agreement, Indian Reserves, etc., etc. This problem could be addressed that way.

He chooses to address it by opening the door to any child welfare committee to go out on the street tonight and apprehend children. That's what I have difficulty with.

HON. L. EVANS: Mr. Chairman, ultimately it is the government and the Minister of the day who, I suppose, has the power to designate any authority to a Children's Aid Society or, indeed, any other organization. I know some of them were established a long time ago, but ultimately the final responsibility lies in the department, in the Ministry, in the Department of Child Welfare, in that division of that department. The government takes the final responsibility and has therefore, the authority to affect the operations of Children's Aid Societies or indeed any other organization.

So the designating of authority to any committee is, in a way, no different than designating authority or allowing authority to be designated to a Children's Aid Society.

MR. L. SHERMAN: But why, Mr. Chairman, would the Minister take that authority while three reviews of The Child Welfare Act are under way and while the Kimelman Task Force is still at work? If those three reviews come in and the Kimelman Task Force comes in three months from now or six months from now with a number of pretty firm recommendations, there is no question in my mind that, at the next Session of the Legislature, we'll be looking at a proposed new child welfare Act, which doesn't bother me. Why are we tampering with the existing authority of Children's Aid Societies at this point in time, in this Session, when those reviews and that Task Force are still at work?

HON. L. EVANS: I think we have explained the need for this change. I'm not sure whether I have the same concerns that Mr. Sherman has. I think we are trying to accomplish something here and I don't read any great difficulty into this amendment.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: I think, getting down to the nitty-gritty, Mr. Chairman, through you to Mr. Sherman, we're really quibbling to some extent over "frivolous detail." As the Minister has tried to explain, ultimately the manner and the conduct in which apprehension takes place is within his responsibility. The Legislature has the right to delegate the responsibility to apprehend the children as it is set out in this legislation, to child caring agencies. There is provision in this piece of legislation to incorporate child caring agencies and there are several of those agencies in existence in the province today. The Minister has explained that this particular mechanism that has been proposed is being put in place in order to expedite the provisions of the Tripartite Agreement which has been negotiated between several Indian Bands, the provincial and the federal levels of government.

An alternative, I suppose, under the legislation would be to ask 12 people who are associated with these Bands to incorporate a child caring agency and the same purpose could be affected. It is really a question ultimately of who the government trusts in the sense that, in all cases, there's a delegation of authority and that authority must be exercised pursuant to the provisions and terms of the legislation.

So I appreciate the concern; I think probably most members appreciate the concern. But I don't think that it is an attempt necessarily to undercut the existing authority of the Children's Aid Society, but rather simply an effort to implement the provisions of a Tripartite Agreement which was negotiated by the former government and which, I believe, was negotiated subject to the approval of the Children's Aid Societies that are in existence in the province. I don't think that there have been any concerns raised by them, certainly not before Committee. Those agreements have been known and their contents have been known for some time.

So I think that, usefully, we might consider passage of these amendments as opposed to putting the affected people who have entered into the Tripartite Agreement to the trouble of having to go through the business of incorporating an agency pursuant to the child welfare legislation.

MR. L. SHERMAN: Mr. Chairman, I don't want to delay the Committee's work on the bill, but I can't accept the argument that's advanced for the change in the legislation because the fundamental change is the removal of the term "where there is no Children's Aid Society." That has been removed. The objectives that Mr. Corrin articulates and that the Minister has enunciated can be achieved by strengthening the legislation with an amendment, but not this amendment. This amendment linked to the one that comes up in Section 4 opens the door in a way that I've suggested which seems to me to be one that is going to create grave difficulties for Children's Aid Societies. However, I will make my suggestion as to how that should be handled when we come to Section 4, Mr. Chairman, having registered my difficulties with Clause 1.

MR. CHAIRMAN: Clause 1—pass. Mr. Sherman, if you have extensive comments to make, we could go clause-by-clause rather than page-by-page.

MR. L. SHERMAN: Thank you, Mr. Chairman, I really have no extensive comments to make other than on the ones I made on Page 1 and the ones that I'll be making on Page 2. After that, the amendments are all essentially housekeeping points and they're acceptable.

MR. CHAIRMAN: The remainder of Page 1—pass; Clause 3—pass.

Clause 4 - Mr. Sherman.

MR. L. SHERMAN: Thank you, Mr. Speaker, Clause 4 is the clause that deals with existing Section 7 or Clause 7 of the Act as it presently stands. As I've indicated, Mr. Chairman, it specifies that such and such an authority can be assigned or delegated or vested where there is no Children's Aid Society and that has been removed from the proposed new legislation which simply states that the Lieutenant-Governor-in-Council may establish, etc., etc. and then the Lieutenant-Governor-in-Council shall, by regulation, establish and then finally that a child welfare committee is subject to the supervision and authority of the Director.

I come back to the point that I was trying to make before, the difficulties that the Minister seems to feel he has where the Dakota Ojibway Council is con-

cerned and where the Churchill Health Centre is concerned and that he anticipates under the Tripartite Agreement can be addressed by dealing with this section and simply stipulating that where there is no Children's Aid Society or where the area is an Indian Reserve the Lieutenant-Governor-in-Council may establish a child welfare committee, etc., etc.

That would give him the authority to designate the Dakota Ojibway Tribal Council; they could have all the authority they wanted to apprehend children, same with the Churchill Health Centre, same with any Band or Tribal Council under the Tripartite Agreement because they'd be operating on Indian Reserves. It would preserve the integrity of the Children's Aid Society of Winnipeg and the Children's Aid Society in other urban centres who are the child caring agencies that have the apprehension rights at the present time.

MR. CHAIRMAN: Mr. Evans.

HON. L. EVANS: Mr. Chairman, I want to advise the honourable member that the wording of existing Section 7, which the Member for Fort Garry refers to with his initial reference to where there is no Children's Aid Society, is unworkable and from a legal point of view it's deficient, because what we're doing in effect when you set up the Dakota Ojibway Family and Child Service Agency, you're in effect working in an area of a province where you have a Children's Aid Society - although admittedly we're talking about delegating that to the Reserve. But, on the other hand, prior to that time the Children's Aid Society did from time to time function in problems that arose on a Reserve. So we're told be legal counsel that what we have here is vastly superior to what you have at the present time, that this definition from a legal, technical interpretation point of view is inadequate so we're improving the legal description. It makes it more workable.

MR. CHAIRMAN: Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, with respect, the present section or clause is only unworkable after the opening phrase. I would agree with the Minister that after the phrase "Where there is no Children's Aid Society" from then on, Section 7 of the existing legislation is ambiguous and probably as a consequence unworkable. That is the reason why he's proposing that it be replaced by Section 4 of the bill in front of us which provides for a new Section 7(1)(2)(3), but I don't endorse the removal of the qualifying phrase which says "where there is no Children's Aid Society." The Minister says that some difficulty would arise by virtue of the fact that some of these Tribal Councils operate in areas where there are Children's Aid Societies and I don't disagree with that, that's why the suggestion that I intend to make, or that we intend to make, accommodates that difficulty too.

What we suggest is that clause should begin with the words "Where there is no Children's Aid Society, or where the area is an Indian Reserve." That then accommodates the Tribal Councils in Westman, Eastman and Central where there are Children's Aid Societies. It would give them those rights and privileges on the Reserves, but it wouldn't interefere with the right of the Children's Aid Society operating in urban centres.

HON. L. EVANS: As I have explained earlier - the Member for Fort Garry does know, I'm sure but I'll remind him - that the vast bulk of the geography of the province is covered by the department not by the Children's Aid Society and furthermore . . .

MR. L. SHERMAN: They're covered, they're covered in the definition. You've already got them under Regional Office of department.

HON. L. EVANS: Mr. Chairman, we believe that this is a more workable definition and this is the legal advice we've got, so we're suggesting that there's an improvement here. It's indeed broad, but nevertheless the breadth of it makes it more efficient.

MR. L. SHERMAN: Mr. Chairman, the legality is not in question. It's perfectly legal for the Minister to disband the Children's Aid Society if he wants to bring in legislation to do it. I'm not challenging the legality, I'm asking him what his philosophy and his intent is and why would he take a step that is unnecessary? He could meet his difficulties with the amendments as they are laid out before us and by adding that initial phrase that I've referred to, protect the Children's Aid Societies. Why would he do otherwise when no conclusions have been reached yet with respect to any of the child welfare studies that are under way, not even those having to do with the Native adoption issue?

What will happen if a particular group - I'm not referring exclusively to the Native community, they have the same rights that we all have and I'm not challenging that, but so has the Children's Aid Society got rights - from any sector of society were designated a child welfare committee in Winnipeg? What then happens to the status and the authority of the Children's Aid Society when it comes to apprehension of a child? What would the Minister say in a dispute over the apprehension of that child between two different agencies?

HON. L. EVANS: Mr. Chairman, the member is posing a hypothetical situation that may never exist. I would assume whatever government is responsible, whatever Minister is responsible, that that Minister and his staff would want to ensure that the organization of child caring delivery, the programming, was such that you wouldn't have unnecessary duplication and conflict and that there wouldn't be unnecessary confusion. Certainly, this is not what you wish to occur.

Of course, I have to remind him, and I'm sure I don't have to but, the Children's Aid Societies are virtually funded by the Province of Manitoba 99.99 percent. They have to come to the government every year for budget approval; we have to approve the addition of staff; we have to approve the addition of expenditures that may be increased for whatever special reason. In other words, we take a very, very close look at what the Children's Aid Society is doing at any time during the year, not only at the end of the fiscal year, but also during the year. We are very, very concerned therefore that there not be unnecessary duplication, that there not be an unnecessary expenditure of money and an unnecessary complicated situation that you

have duplication and confusion. Certainly, that is not in the interests of any government, of any Minister, who has this responsibility.

So what I am suggesting, Mr. Chairman, is that ultimately the authority for child caring programs is vested in the Government of Manitoba with particular vesting in the Minister and his staff, not in any organization of Children's Aid Societies, even though some of them have been established a long time ago. The fact of control and responsibility, as outlined in the Act I believe, makes it quite clear that the final responsibility is with the Government of the Province of Manitoba.

MR. L. SHERMAN: Mr. Chairman, the Minister says that I am suggesting or posing the possibility that some time there might be some disagreement or there might be some dispute. There already is a disagreement; there already is a dispute. That's what the Kimelman Task Force is all about. Why is the Minister moving in this way before he's even got any answers from the Kimelman Task Force? I don't know who is right in that dispute and, as far as I know, Judge Kimelman hasn't determined yet who is right. As far as I know, the Minister certainly hasn't indicated to the Legislature as to who is right. There is a strong case that can be made on both sides of the argument and, presumably, the expert and compassionate minds that are being asked to evaluate and study this subject will come up with some humane and equitable answers. The answer may well be that there should not be a fragmentation of child apprehension authority in the City of Winnipeg.

In the meantime, the Minister is proceeding with an amendment that certainly permits it. One can only assume without being too cynical about it that if he's proceeding with an amendment that is going to permit it, there must be some intention to encourage it.

HON. L. EVANS: Mr. Chairman, we do have a problem right now, today; we've had a problem for many, many months. The legislation is deficient and we've got to do something now to correct the situation. The point is that these organizations, such as the Dakota Ojibway Child and Family Service as an agency designated by us, do not have the power to apprehend children and that is a major deficiency which we are trying to correct. It is a problem that's existed for many months and exists right here today, right here this evening. We're trying to correct it.

We don't have to wait for a Kimelman Committee. As we have said earlier, we've got the Kimelman Committee which is only limited to international placement of Indian children; it's rather restricted, but we have other reviews going on and we've got an internal review. There will be other reviews. Certainly, in a year or two, there will be more elaborate changes and improvements, hopefully, to this legislation, but this specific amendment is caused, initiated and recommended to us by legal authority because we have a problem right now.

MR. L. SHERMAN: Mr. Chairman, the Minister is solving his problem right now with the Dakota Ojibway Tribal Council. He is solving it right now with the amendments that he's brought forward. He is also going beyond the solution of the Dakota Ojibway Tribal Council and enshrining an incipient threat to the Children's Aid Society.

I will take him out of his quandary, Mr. Chairman, by moving an amendment, if I may. That is that I move, seconded by Mrs. Oleson

THAT Section 4 of Bill No. 51, An Act to amend The Child Welfare Act, be amended by inserting at the beginning of Subsection 7(1) Child Welfare Committee, the following words: "Where there is no Children's Aid Society or where the area is an Indian Reserve."

MR. CHAIRMAN: Is there any discussion on the proposed amendment by Mr. Sherman?

HON. L. EVANS: Mr. Chairman, the member previously indicated his concern and what his intent was and that is, presumably, to protect the existence of the Children's Aid Society, even though we have explained to him that the Children's Aid Societies are funded virtually 100 percent by the taxpayers of Manitoba and that the control of those societies is already vested in the Province of Manitoba, and I would refer him to Section 4(9) of the existing Act, where it says, "The Lieutenant-Governor-in-Council, namely the Cabinet, may by order dissolve a society" for various reasons. We can almost dissolve a Children's Aid Society every time the Cabinet meets, so the concern about whether a society exists or it can be protected, I say, you may have a philosophical concern, but at the moment the Government of Manitoba has the control, through the purse strings and legally. It can affect the existence or nonexistence of a Children's Aid Society.

Knowing, therefore, that the member has indicated this as his concern for this amendment, it is really not necessary. It won't do anything; it will do nothing to alleviate his concerns and, I suggest, will do nothing for the legislation.

Furthermore, Mr. Chairman, as I said earlier, the great part of the province is covered already directly by the Government of Manitoba. The Interlake region is delivered by the Province of Manitoba through our department; the Dauphin area is delivered through the Department of Community Services, etc.

MR. L. SHERMAN: Well, Mr. Chairman, with respect, the arguments raised by the Minister do not address the point at hand. The fact that there are great sections of the province covered by the department is totally irrelevant to the amendments to the bill. There is no change in the definition of a child caring agency where the department is concerned. The existing legislation specifies that a regional office of the department is considered a child caring agency; the new legislation specifies that. I'm not focusing on that point because there's no point to focus on.

But the new legislation says that also under the umbrella of child caring agencies are child welfare committees appointed under Section 7. The difference between Section 7 in this proposed legislation, and Section 7 in the existing legislation, substantively, except for the change from the director to the Lieutenant-Governor-in-Council - which is inconsequential - the difference substantially lies in the fact that the new legislation makes no reference to the

existing authority of Children's Aid Societies in those parts of Manitoba where they exist. We're not discussing the vast regions of the province where they don't exist.

The Minister said in the House and he said again tonight, that the purpose of the amendment is to eliminate confusion and ambiguity where organizations like the Dakota Ojibway Child and Family Services Agency are concerned; the Churchill Health Centre is concerned, and the Bands and Councils that will be covered under the Tripartite Agreement.

The proposed addition to his new clause that we have suggested, the proposed amendment, accommodates those groups and it says, in effect, that the Minister can designate those agencies, those Tribal Councils and Bands as child caring agencies with the right to apprehend. But in a specific geographic setting where there's a Children's Aid Society functioning, such as in the City of Winnipeg, in those instances there should not be this freedom to establish and designate additional child welfare committees.

If he can show me a year from now, after these reviews are completed and after the Kimelman Report recommendations come in that a case can be made for that sort of thing, then I'm willing to be shown. But he can't show me that tonight, because none of those things are concluded . . .

HON. L. EVANS: I'll show you right now.

Mr. Chairman, my point is that Mr. Sherman's amendment is totally pointless - totally pointless. It just adds unnecessary verbiage to the legislation - it does nothing. You know, he's saying, well, we must say where there is no Children's Aid Society, then the Lieutenant-Governor-in-Council, namely, the Cabinet, can go ahead. And I'm going to make sure, Mr. Sherman says, we're going to leave that in there. Well, the fact is, as I've expained, under Section 4, the Cabinet could come along and wipe out a Children's Aid Society, then your amendment which you want to protect the Children's Aid Society of a particular area from having no competition from another child caring agency, was wiped out. So I say it's pointless.

If the government of the day who has a responsbility for child welfare wants to do something under the existing Act, which we inherited, we can do it. The government of the day can do it and your amendment does nothing. If the government of the day wants to set up a new child caring agency other than a Children's Aid Society, under Section 4, we can eliminate, for instance, a Children's Aid, just using hypothetical case, Central, which is more or less the Portage la Prairie area, or Winnipeg, or Eastern, or any of them; we can eliminate it. So your amendment does nothing; it does nothing whatsoever.

So I say, Mr. Chairman, it's verbiage. That's what it amounts to, nothing substantive in legislation.

MR. L. SHERMAN: On the contrary, Mr. Chairman, our amendment does everything where the Children's Aid Society is concerned. The Minister just makes my point for me. What we want to know is where is he headed with Children's Aid Societies? He's suggested that the Cabinet could walk in any Wednesday and wipe out Children's Aid Societies.

HON. L. EVANS: Well there it is - it's here.

MR. L. SHERMAN: Exactly. Exactly, the power is already there. What I'm asking him by virtue of this amendment is to guarantee to this committee and this Legislature and the Children's Aid Society of Winnipeg, that it's integrity is being maintained and reinforced and that the various questions that have arisen in the past four months, as a consequence of controversies and other issues which the Minister has not addressed directly, have reached a point where they require some resolution for the sake of the Children's Aid Society, for the sake of the morale of the Children's Aid Society.

Incorporating this proposed amendment to the Minister's amendment, would make it very clear to the Children's Aid Society, that the Minister believed in it and the Minister was not concerned about some of the questions and issues that had been raised other than their requirement for a resolution; that he knew that the Children's Aid Society was doing an excellent job and that it was not going to be challenged in its status or in its job; that everyone working there could be reassured that their professionalism was appreciated and respected and that their futures were secured. That is the kind of statement we need from the Minister. We haven't had that through four months of legislative Session, in which a number of questions have come up about the Children's Aid Society and it's time for him to reinforce their morale. He could do so by incorporating this amendment into his amendment, because it would state clearly that he wanted the integrity of the Children's Aid Society maintained.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I was just going to suggest, Mr. Chairman, that in a half an hour of brilliant dialogue the guidelines have been drawn. Mr. Sherman has very carefully explained his concerns and Mr. Evans has responded. Why don't we put the question?

MR. CHAIRMAN: All in favour of putting the question on the proposed amendment of Mr. Sherman? Mr. Sherman.

MR. L. SHERMAN: Mr. Chairman, I certainly invite the Attorney-General to participate in what he described as the brilliant dialogue if he cares to. He appears to dismiss the concerns that I have raised on behalf of my colleagues in a somewhat cavalier fashion. I say to him that a number of failures by the Minister to respond to some kind of leadership where the difficulties facing the Children's Aid Society are concerned, have injured morale at that historic child caring agency. He can repair that by reinforcing the agency's position in this amendment.

If the Attorney-General wishes to dismiss that in light handed fashion, that's his business, but I would invite him to participate.

HON. R. PENNER: I'm far from being cavalier in my attitude towards the Children's Aid Society, or its concerns. I just don't think that this is the area to address that concern. I recall that on at least one, I think more than one occasion, the Minister of Com-

munity Services in response to questions by the Member for Fort Garry, assured him of his support for the Children's Aid in general terms.

In seeking to you as an amendment to a provision which has a very specific concern as a vehicle for, in a sense, forcing the Minister to the sticking point of using that to reinforce what he has already declared in the House, I don't think is the appropriate way of going about it. I've listened to the discussion with interest and I think it has been a good discussion. The Minister appears to be insisting that it's his advice, advice which he's accepted quite clearly, that the definition of a child caring agency to be precise legally requires the kind of definition which is given in 1(c) and that's carried forward in 7(1). So I think we have the issue, that's all I'm saying, why not vote on it?

MR. L. SHERMAN: Well, Mr. Chairman, I appreciate that the question has been called and I'll be very brief. I don't know whether the Attorney-General was here or not. My basic point through you, Mr. Chairman, to the Attorney-General is that the amendment removes a recognition of the Children's Aid Society from the existing statute. The new statute makes no reference to it. The new Section 7 makes no reference to it and when the Minister passes it off as an amendment to accommodate the Dakota Ojibway Tribal Council, etc., etc., he conveniently neglects to mention that the phrase acknowledging and recognizing the status of the Children's Aid Society is being taken out of the legislation. I think there is a valid reason for questioning that.

MR. CHAIRMAN: All those in favour of the proposed amendment by Mr. Sherman, say Aye. All those opposed? It's my opinion that the Nays have it.

MR. L. SHERMAN: Can we have a recorded vote on that, Mr. Chairman?

A COUNTED VOTE was taken, the results being as follows:

Yeas, 9; Nays, 12.

MR. CHAIRMAN: The motion is defeated.

Clause 4 - Mr. Sherman.

MR. L. SHERMAN: Well, Mr. Chairman, we would vote against Clause 4, because Clause 4 is the new Section 7, same division but it would be reversed?

MR. CHAIRMAN: Clause 4 is carried by the same division. Page 3—pass; Page 4—pass; Page 5, 59(1)—pass; Clause 12—pass; Clause 13—pass.

Clause 14 - Mr. Corrin.

MR. B. CORRIN: I move,

THAT the proposed Section 70 of The Child Welfare Act as set out in Section 14 of Bill 51 be amended by striking out the words "but shall" in the 5th line thereof and substituting therefor the words "and the judge may direct that the payments," the effect of that is to deal with the concern raised by Ms Shack about payments being made directly to the designated officer. Under this amendment the judge will in his or her discretion be able to decide whether or not the payments should be paid directly to the individual affected or through the designated officer. I should mention that the payments though in terms of how the check would be made out would still be made out in favour of the custodial parent.

MR. CHAIRMAN: Is there any discussion on the proposed amendment of Mr. Corrin? Clause 14, as amended—pass; remainder of Page 5—pass; Page 6—pass; Page 7—pass; Page 8—pass.

Preamble - Mr. Penner.

HON. R. PENNER: Something has been brought to my attention, just for my own clarification, apparently Ms Shack raised a question about the word "director" in 7(3) on Page 2, whether or not that should be capitalized. Was that explained? Is the word "director" capitalized in the Act?

HON. L. EVANS: It's defined.

HON. R. PENNER: It's not capitalized in the Act but defined in the Act, so it's clear that we're talking about the director?

MR. B. CORRIN: Actually interestingly the word "director" . . .

HON. L. EVANS: It's a definition.

MR. CHAIRMAN: Please, let's have some order.

Mr. Evans.

HON. L. EVANS: Okay, it is covered in the existing Act. There's a definition of director with a small "d" and it explains what the authority of a director is.

MR. CHAIRMAN: Preamble—pass; Title—pass. Bill be reported.

BILL NO. 60 - THE STATUTE LAW AMENDMENT ACT (1982)

MR. CHAIRMAN: Bill No. 60. What is the will of the committee, clause-by-clause or page-by-page? Page-by-page. Bill No. 60. (Pages 1 to 9 were each read and passed.)

Page 10 - Mr. Tallin.

MR. R. TALLIN: There's a typographical error on the Section 37 on Page 10, the last line, the word "federation" has the "e" left out so it's just a correction.

MR. CHAIRMAN: Page 10, as corrected—pass; Page 11—pass; Preamble—pass; Title—pass. Bill be reported.

BILL NO. 23 - THE LEGAL AID SERVICES SOCIETY OF MANITOBA ACT

MR. CHAIRMAN: Bill No. 23, what is the will of the committee?

HON. R. PENNER: There are some amendments. Could you just hold it, Mr. Chairperson?

MR. CHAIRMAN: Bill No. 23. Clause-by-clause. Clause 1—pass; Clause 2—pass; Clause 3.
Mr. Penner.

HON. R. PENNER: There is an amendment.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: That the proposed clause 3.1(2)(b) of The Legal Aid Services Society of Manitoba Act as set out in section 3 of Bill No. 23 be amended by striking out the word "concern" in the first line thereof and substituting therefor the word "interest."

HON. R. PENNER: There was some concern expressed both during Estimate review by the Member for St. Norbert and again in the House by the Member for Virden and the Leader of the Opposition, that the bill did not adequately reflect the concept of public interest. Although I took the view that public concern and public interest were almost exactly the same, for greater certainly, the amendment seeks to accommodate that concern by changing the words "public concern" to "public interest."

MR. CHAIRMAN: Any discussion on the proposed amendment?
Mr. Johnston.

MR. F. JOHNSTON: We are having a question on an amendment of 3.1(2) and I don't recall 3.1(1) being passed.

MR. CHAIRMAN: We were dealing with Clause 3 in general. If you want, I'll do these item by item. 3.1(1)—pass.
Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I believe there is concern expressed by members of the Opposition as well as delegations to this Committee on this bill to the widening scope that this section gives to the Legal Aid Society to provide financial assistance via legal aid to various groups in the province. Those concerns, in our opinion, have not been adequately addressed by the amendment of changing in Clause 3.1(2) "concern" to "interest." Before you pass this, I think it, at the least, would have to be passed on division.

MR. CHAIRMAN: Clause 3.1(1) on division. All those in favour, please signify by saying aye. Opposed, say nay. It is my opinion that the ayes have it.
3.1(2) on division as amended. Mr. Penner.

HON. R. PENNER: So that the record can be clear, there was an amendment that was not voted on because Mr. Johnston raised his question. I think we should proceed to 3.1(2)(a) on division and 3.1(2)(b) the amendment and so forth.

MR. CHAIRMAN: 3.1(2)(a) on division. All those in favour, say Aye. Opposed, say Nay. It is my opinion the ayes have it.
3.1(2)(b), as amended. All those in favour, so signify by saying Aye. Opposed, say Nay. It is my opinion that the Ayes have it.
3.1(2), as amended—pass.

HON. R. PENNER: Can we take the same division throughout? Some of the changes just deal with changes having to do with the question of gender. I don't know if the members of the Opposition want to oppose those changes.

MR. CHAIRMAN: Order please, order please.

HON. R. PENNER: Same division all the way then.

MR. CHAIRMAN: 3.1(3) on the same division—pass; Clause 4.

HON. R. PENNER: Well, there's another amendment. The balance of Page 2 on division.

MR. CHAIRMAN: The remainder of Page 2—pass; Page 3, Clause 9—pass on division; Clause 10.1(1)—pass; Clause 10.1(2).
Mr. Corrin.

MR. B. CORRIN: THAT the proposed subsection 10.1(2) of The Legal Aid Services Society of Manitoba Act as set out in section 9 of Bill No. 23 be amended by striking out the words "in its absolute discretion" in the 3rd and 4th lines thereof.

HON. R. PENNER: Again, this is in response to a concern raised by the Member for St. Norbert during Estimate review and again, was touched on in the House. This makes it clear that the Society must determine in accordance with the criteria in (a) and (b) and has no absolute discretion.

MR. CHAIRMAN: Mr. Filmon.

MR. G. FILMON: Mr. Chairman, if the absolute discretion is removed, then to whom is a decision of the society appealable?

HON. R. PENNER: The decision of the society is appealable, in any event, where someone feels aggrieved and has a cause of action to a court of superior jurisdiction which has the general overview of lesser bodies. If it's found that, in a particular instance, the board is acting in a quasi-judicial fashion, that is, determining the rights of a group, let's say, and the group has applied and been denied - I could hardly think that a group that applied and was accorded a certificate would appeal - then the usual administrative law criteria, it could apply to the Court of Queens Bench if it alleged that the board acted without jurisdiction or by denying jurisdiction or by denying due process.

MR. G. FILMON: So, Mr. Chairman, by removing the phrase "in its absolute discretion," we are limiting its determination to the criteria as set out in (a) and (b) and presumably an appeal would be considered on the basis that it did not limit its determination to those criteria.

HON. R. PENNER: I think that's substantially correct.

MR. CHAIRMAN: Any further discussion on the proposed amendment? On the amendment then, pass? Pass. On division, same division as previously 10(1)(2), as amended—pass; balance of Page 3, as amended—pass. (Pages 4 to 7 were each read and passed.) Preamble—pass; Title—pass. Bill be reported?

HON. R. PENNER: Yeas and Nays.

MR. CHAIRMAN: Yeas and Nays, on division. All those in favour, please signify by saying Aye. Those opposed? In my opinion, the Ayes have it. Bill be reported.

BILL NO. 27 - THE SUMMARY CONVICTIONS ACT (Cont'd)

MR. CHAIRMAN: Bill 27, page-by-page? Clause 1—pass;
Clause 2 - Mr. Orchard.

MR. D. ORCHARD: It's Section 4 that I would like some clarification, Mr. Chairman.

MR. CHAIRMAN: Balance of Page 1—pass,

HON. R. PENNER: Mr. Chairperson, have the amendments been distributed?

MR. CHAIRMAN: Yes. There are still some amendments to come, Mr. Orchard.
Order please, order please.
Page 2 - Mr. Orchard.

MR. D. ORCHARD: How did we get past Page 1? I said there was Section 4, I wanted a clarification on, Section 4, as amended. Mr. Chairman, if I can ask the Attorney-General what the rationale for (b) by striking out the words "one month" and substituting therefor "three months." What's the justification for increasing the term of imprisonment by 300 percent?

HON. R. PENNER: All it's doing is increasing the maximums and, as the Member for Pembina probably knows, the maximums are only used in the most extraordinary of cases. Generally, the provincial judges under the leadership of Judge Gyles develop sentencing criteria which are, in terms of the ordinary case, far below the maximums. But I think we have to remember that some of the offences that we're dealing with under The Summary Convictions Act, in some instances, some of the moving offences on the highway are ones that overlap the criminal code that could be laid as charges of criminal negligence under the Criminal Code where the maximum would be - what's the maximum for criminal negligence - I believe it's 14 years. That is the type of person who doesn't merely exceed the speed limit by a marginal amount but the person who exceeds the speed limit excessively and commits other violations of the rules of the road. There are sometimes as a matter of prosecutorial discretion, sometimes as a result of plea bargaining, the charges brought under The Summary Convictions Act in some instances where as serious as the behaviour might be, it is decided that the person should not be fixed with a criminal record.

Yet it seems, in given behaviour of that kind, that the fine of $100 is far too nominal and that where a fine is given should be more substantial particularly given what has happened as a result of inflation, and the sentence is almost always an equivalent to the fine. The sentence that is almost always given in these cases, one could almost say invariably given, is a fine and a sentence equivalent in lieu. I should point out that one has to read this bill as a whole and note that there is the Fine Option Program that goes along with it, so that where the maximum or close to the maximum fine is levied, there is the Fine Option Program to keep the person out of jail.

MR. D. ORCHARD: What fine option does one use when he has been sentenced now to a maximum of three months?

HON. R. PENNER: Well, there is no fine option. If the person has in fact been sentenced to jail, the fine option by its very name is an option to a fine, not an option to jail; that is, the person, instead of going to jail, where he hasn't the money, has a chance to do community work.

MR. D. ORCHARD: Well, that deals with raising the maximum fine level from $100 to $500, but it really hasn't justified why you're raising the maximum jail sentence from one month to three months. The argument that the Attorney-General has used in terms of some serious moving offences under The Highway Traffic Act that the offence borders on criminal negligence which would be subject to the Criminal Code. The Attorney-General is using that rationale in justifying going to three months here in that if it was a Criminal Code offence for criminal negligence the convicted person would be subject to a maximum of 14 years in jail.

That's all fine and dandy, but would the Attorney-General not concede that often the lesser charge of dangerous driving or careless driving in that case is the one written up by the arresting officer because it is just plain too hard to prove criminal negligence and the lesser offence is chosen because the arresting officer is more likely to get a conviction. With this amendment, the Attorney-General is allowing a 300 percent increase in the maximum jail term, which I find somewhat offensive.

HON. R. PENNER: The point made by Mr. Orchard is a good one up to the last conclusion which he drew, namely, that an experienced police officer will come across very, very reckless behaviour and could write it up and report and recommend a charge of criminal negligence under the Code, but realizes that to prove criminal negligence under the Code you have to, in addition to proving the conduct, prove a certain state of mind, the guilty mind, the wanton and reckless disregard for the lives and safety of others, and come to the conclusion that is not only going to be a lengthy and expensive proceeding, but that the evidence would have to be an inference from conduct and might not be easily proven unless he has obtained a voluntary statement from the accused in which the accused said, yeah, I didn't give a damn. Then, of course, he would have, by the accused's own state-

ment, a confession as to the state of mind. So the police officer writes up careless driving under The Highway Traffic Act and an offence notice is given.

Let me say, in addition, that the general provisions which are included in Section 4 only apply where an Act does not set out a specific penalty. The Highway Traffic Act, as far as I'm aware, has a specific penalty for everything in The Highway Traffic Act. About 90 percent of the matters that would be dealt with, under the provisions of The Summary Convictions Act as amended, will be Highway Traffic Act matters.

MR. D. ORCHARD: Then just one point to clarify, the present Highway Traffic Act does not have either a minimum or a maximum term of imprisonment specified as penalty now?

HON. R. PENNER: For certain offences.

MR. D. ORCHARD: In the example that the Attorney-General had used, namely, that of careless driving, under The Highway Traffic Act right now, does that not presently have specified in the Act a maximum prison term that could be imposed?

HON. R. PENNER: Yes.

MR. D. ORCHARD: So then, is it fair to say that that particular example was not applicable to triggering this maximum three month term?

HON. R. PENNER: That's true. I was just using it as an example where you get the overlapping kind of behaviour which comes close to criminal behaviour, but there are very few provincial summary conviction offences that don't have a specific penalty.

MR. D. ORCHARD: Then could the Attorney-General just poll a type of offence for which this Clause (b) would be triggered then?

HON. R. PENNER: I am advised that there are a very substantial number of provincial Statutes which require, as a duty, to report something; the citizen has a duty to report the existence of a communicable disease - I will just use that as an example - or something of that kind or there are provisions under The Elections Act where you are required to report, where no specific penalty is set so that, where no specific penalty is set, it then falls under the general penalty section of The Summary Convictions Act.

MR. D. ORCHARD: Let's take an example of a parking ticket. Under The Highway Traffic Act right now, there is no imposition of a jail sentence for failure to pay a parking ticket.

HON. R. PENNER: No, but there's a specific penalty.

MR. D. ORCHARD: Right. Under this amendment to The Summary Convictions Act, would it not now trigger up to a three month jail sentence?

HON. R. PENNER: No. Only where there is no specific penalty.

MR. D. ORCHARD: So, in other words, there is a specific fine penalty and removal of driver's licence and now, with further amendments in this Act, the removal of registration for failure to pay parking tickets, but it will not trigger, later on in the bill, a section which would impose arrest, detention and imprisonment.

HON. R. PENNER: That is right.

MR. D. ORCHARD: I have no further comment except that I don't believe that the Attorney-General, with the examples given, has justified the need to expand the maximum jail sentence from one month to three months. He is justified, and I can understand, raising the fine from $100 to $500.00. That probably fits in well with rising costs and what really $100 fine means to a convicted person, but to have the discretion expanded to go to three months' imprisonment, I don't believe the Attorney-General has adequately justified the need. Even though it's discretionary, it's there; it's placed there for a purpose; it can be exercised in individual cases with this amendment and I don't believe it has been adequately justified to be there.

HON. R. PENNER: I have no further comment.

MR. CHAIRMAN: Clause 2—pass; Page 2. Mr. Orchard.

MR. D. ORCHARD: Under the Collection of costs, this amendment for the first time brings an ad valorem aspect to the collection of court costs. I know the Attorney-General wasn't part of the Opposition when we brought in the ad valorem road tax for diesel fuel and gasoline, but that met with very considerable outcry from the Opposition of the day. They thought that was a very unjust thing to do and here, in the collection of court costs, we have the Attorney-General and this government now bringing in, in effect, an ad valorem aspect to the collection of court costs.

If, in the case of the maximum fine limit that is given by passage of section 2 of this bill to $500, that allows the courts to assess $100 court costs and possibly, depending on the regulations, $125 court costs which is, once again, a substantial increase to the public of Manitoba who might come afoul of the law and is indeed an indirect method of taxation.

HON. R. PENNER: First of all it's not, strictly speaking, in my view ad valorem in the same way that the gas tax was. The gas tax was ad valorem in the sense that it was a fixed percentage in a situation where it was known that the gas prices were going to go up and so having tacked on the percentage to what was known to be a rising year-by-year - or was it twice a year under the National Energy Program that it was known that the price of gas would go up. It was already determined in advance that the amount garnered by taxation would be increased automatically. So there is a difference to that extent. I think I'd just like to provide the Committee with a little bit of information.

It's our estimate that the cost of administering criminal justice at the summary conviction level attributable to provincial offences may exceed $15 million. The

amount that will be realized in fines will be approximately $5 million; at 20 percent, the amount the offenders will contribute to the cost of the institution, if you will, will be about $1 million, that is, about one-fifteenth. It doesn't seem to me to be unjust that those who have offended and have burdened society with the cost to that extent should pay some little bit of that cost. It seems to me to make good sense and to be something that I think most people would find reasonably just. The taxpayer has to pay all of that $15 million. The taxpayer who in most instances will be a law-abiding person I think is entitled to say, well, why shouldn't those people pay, say, one-fifteenth of the total cost. I think there's some sound reasoning behind that approach.

MR. CHAIRMAN, J. Storie: Mr. Orchard.

MR. D. ORCHARD: Two questions to the Attorney-General. In most offences, do not the judges or the magistrates have a range of fines that they can assess, in other words, a minimum and a maximum on fines? And secondly, under this amendment there may be $1 million collected in court costs. What presently is the collection of court costs on those $5 million of fines?

HON. R. PENNER: The present scale of costs, I think it incorporates the cost provisions of the summary convictions section of the Code, they have $2.50 for this an $3.25 for that, and the amount that is collected is really negligible in costs.

MR. D. ORCHARD: 100,000, 200,000?

HON. R. PENNER: Not more than 100,000.

MR. D. ORCHARD: Then, Mr. Chairman, in answer to the first question as to whether there is a range, a magistrate or a judge can choose a suitable fine for an offender.

HON. R. PENNER: Yes, but the fine is punishment and, as I mentioned to the member previously, the chief judge issues sentencing guidelines which meet the median type of case, the average type of case. This is adopted by the judges under The Fisheries Act, the Parklands Regulations and the other Statutes which the provincial judges administer in the course of administering criminal justice. The departure from the norm only takes place where the judge feels that a greater punishment is required and the provincial judges do not administer or sentence by fine simply in order to recover costs. A sentence in order to reflect their view of the seriousness of the offence and the costs, which in fact have been part of the summary convictions proceedings for a considerable period of time, are a scale that was set 20, 30, 40 years ago, whenever it was and, as I say, a couple of dollars here and a couple of dollars there and don't adequately reflect the cost of administering the machine.

MR. D. ORCHARD: I guess two points I'd like to make then, Mr. Chairman. When the judge does have a range of fine options and he uses his discretion to determine whether it's the lower end or the higher end of the range that, indeed, is ad valorem taxation on costs, because surely the precise costs of hearing a case in which a $10 fine is assessed and he has the option of going to a $50 fine is the same, but in the case of the $50 fine, there are substantially more costs than in the $10 fine.

The other point I'd like to make is that we have got a circumstance here where the collection of court costs will increase by a multiple of approximately 10 by the Attorney-General's estimation of not more than $100,000 being currently collected. If the objective is to recoup more of the costs of operating the courts, are we to assume that the government is going to move more rapidly to a user-pay concept in the court system?

HON. R. PENNER: No, not a user-pay concept and I don't think this is a user-pay concept. The user-pay concept is usually talking about people who are legitimately using a service that is delivered by the government lawfully to people who are receiving it lawfully, and that's what the user-pay concept here is. The users are offenders in this case; it's a very particular group of individuals in society.

MR. D. ORCHARD: One final question on this. Does this assessment of either 20 or 25 percent costs apply to most of the highway traffic offences?

HON. R. PENNER: Yes.

MR. D. ORCHARD: Also to parking tickets?

HON. R. PENNER: No.

MR. CHAIRMAN: Section 3—pass; Section 4—pass; Section 5.

Mr. Corrin.

MR. B. CORRIN: THAT 5.1(9)1.1 of the Act is amended by adding thereto immediately after the word "applied" in the 2nd line thereof the words and figures "in Section 772 of the Criminal Code does not apply."

HON. R. PENNER: Yes, this is merely consequential on the passage of Section 3 of the bill and it merely takes out the costs which are provided in the Code. Those now having been replaced by the costs which are delineated in the bill.

MR. CHAIRMAN: Section 5 as amended—pass; Section 6-pass.

Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, Section 6 of the bill, this brings in the default conviction ability of this Act. In appreciating the rationale that the Attorney-General has used in bringing default conviction to the Province of Manitoba, I believe the MARL had some concerns about the advent of "guilty until proven innocent" becoming part of the justice system of Manitoba. Does the Attorney-General really believe that this is the necessary route to go to resolve some of the obvious problems that have been there, particularly with some of the parking offences, etc., etc., in order to streamline the administration of justice for particularly traffic ticket offenders?

HON. R. PENNER: First of all, if I might be permitted a brief comment on the notion of the presumption of innocence, which I think is a good one, but is often I think misunderstood.

When a police officer arrests or gives an appearance notice, the police officer has made a judgment which, in fact, is contrary to the presumption of innocence. The police officer has said, "I think you're guilty of something and I'm charging you." The presumption of innocence only operates at trial and it tells us two things: one is that in every instance the Crown must prove the guilt of the accused beyond a reasonable doubt. It tell us two things: one, is that the onus is on the Crown; and secondly, it tells us the weight of evidence that must be adduced for the Crown to satisfy that onus - that's what the presumption of innocence means.

What we're dealing with here are people who have been charged and who have not responded to the charge. They're not before the court; they haven't pleaded not guilty. They have, well, in some jurisdictions - not in ours - the failure of appearance would necessarily in even serious offences lead to a presumption of guilt, but these are people who have simply not responded. They have been given the appearance notice; they're not there.

Now something has to happen. As I said, in the House - I don't think the member was there when I spoke to the bill in response to his comments and others - obviously, one could just ignore that situation. Well, no one is proposing that. Right now we deal with it by the ex parte process and that, as I pointed out, is an exceptionally costly way and has a price tag of about $200,000 of arriving at what is, in effect, the default conviction. —(Interjection)— I was saying, Mr. Orchard, that you're paying $200,000, or the taxpayers are paying $200,000, for arriving at what is essentially default conviction.

This mechanism which we're proposing here and I did point out it's been adopted in Ontario - that doesn't mean it's either good or bad necessarily - has an advantage for the accused. That is, in the two situations where you have the ex parte conviction that you now have and the accused must be notified, because now that conviction is going to have to be enforced, the accused might say - or now the convicted person - well, hold on, I really wasn't guilty. I wanted to go to trial but I forgot about it, or the offence notice was lost in the garbage, I thought it was two weeks later and so on. Now that person has only one remedy, that is, to appeal to the County Court. To appeal to the County Court, which is at the federal court level, you virtually need a lawyer - for all of the kinds of the papers that have to be filed and that sort of problem.

Under the default conviction mechanism, given the same scenario, the person now convicted has what is called a trial de novo; that is, just simply a new trial, doesn't have to appeal, doesn't need a laywer, can go as he might have gone in the first instance to the Traffic Court, can go before Judge McTavish at nighttime to suit his working convenience and still has that remedy available to him or her.

MR. CHAIRMAN: Section 6, 11(2.1)—pass; 11(2.2)—pass; 11(2.3)—pass; 11(2.4)—pass.

The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, there was some concern each time notice by mail has been a requirement of these amendments. I notice that Section 11(2.5) does have an amendment and I'm not sure whether it deals with the mail notice, but there is a legitimate problem with notice by mail, by ordinary mail, which is all that is specified here. You can very conceivably run into a circumstance where either the 14-day or the 7-day notice or the return notice by the accused can get lost in the mail, undelivered, etc., etc. I think MARL adequately presented that as a potential problem and I don't recognize where it may be in the amendment that will be next presented at (2.5).

Is there not a mechanism by which the mails can be used, because I can understand the use of the mails being necessary? You can't have people running around serving these in person, that's what you're trying to avoid. But there is a legitimate problem with ordinary mail. There is also a legitimate problem sometimes with registered mail, because people won't accept it after a while if they know what it's for.

My concern, and I think the Attorney-General will share it, that the mails can lead to a default conviction without a person knowing that it's actually happened to him because of failure to deliver papers to him that he might have reacted to had he received them. I don't see where that has been addressed in the amendment and still remains a flaw in the bill. I'd just like the Attorney-General to maybe comment as to whether he's up against a dead end in overcoming that kind of a problem.

HON. R. PENNER: It's almost an intractable problem, I will admit. One can only hope, now that the post office is a Crown Corporation, that all of the great things which were promised will be fulfilled or at least some of them.

We've attempted, in a number of ways, there are later amendments to strengthen the fail-safe provisions. The first three sections or the ones that we dealt with, 11(2.3) and 11(2.4), those two deal with the accused mailing in his or her response to the summons. So the problem may arise, what if that letter doesn't reach the court? It's true, if the letter doesn't reach the court, the accused may have thought that he satisfactorily dealt with the matter and indeed has not. The next thing that the accused may know is that he gets a letter back from the Justice, under 11(2.5), telling him that there's been a default conviction.

Now at that point, of course, it's open to the accused to say, well, no, I was going to plead not guilty and he can still do that, and he has his trial as if he had pleaded not guilty to begin with. So there's a level of protection that's built in at that point. It may be that you've now - in some I would imagine, negligible number of cases, but still one must consider them - the situation where the accused wrote in, the letter didn't arrive and the Justice, in effect, wrote back, sending a notice that there's a default conviction and the accused never received it. That would be quite extraordinary to have that combination of circumstances and yet, if one tried to think of a way of avoiding even those negligible number of cases, given the fact, Mr. Orchard, that we are dealing literally with tens of thousands of these things a year, one should begin to, let's say, build in the concept of registration.

Not only have you upped the ante enormously in terms of costs, but you probably haven't done very much if anything to vitiate or to deal with that particular problem. A lot of people don't respond to registered notices or, again, there are instances in which registered notices are simply not delivered.

MR. D. ORCHARD: Mr. Chairman, I appreciate the Attorney-General's problem here and maybe I'm wrong. But could we end up with a scenario where an accused has dealt with a conviction or dealt with an offence via the mails and believes that he has properly discharged his obligation. The mails have failed to deliver that and his driver's licence has been suspended. Could the circumstance develop where the person is driving with no driver's licence, hence no insurance portion on the driver's licence, and get himself into a real jackpot if he's ever involved in an accident because the mails have failed?

HON. R. PENNER: First of all, it is not the intention of this legislation and, I believe, the legislation does not change the general procedure with respect to suspensions. As Mr. Corrin has been pointing out while I was talking to Mr. Goodman, the actual suspensions are mailed by the Registrar. There still has to be a suspension that is mailed, so you have now another mailing route. I imagine you've probably had this experience, Mr. Orchard, when you were administering the department that a number - one hopes not too large a number - of the suspension notices simply don't reach the suspendee - we have the suspendor and the suspendee - and driving around as a blithe spirit, innocently, and they're stopped. What happens now when that takes place? What happens now is, I suppose, the person says, but I didn't know I was suspended and if he is able to demonstrate that, will be found not guilty of any charge of driving while suspended.

MR. CHAIRMAN, P. Eyler: Mr. Orchard.

MR. D. ORCHARD: And we would hope to assume that, say, there was an accident involved that none of his benefits under the insurance he thought he had would be suspended either.

HON. R. PENNER: Yes, that's right.

MR. D. ORCHARD: Mr. Chairman, I can see that the Attorney-General is bent on passing this, so no further discussion on this page would be fruitful at this hour.

MR. CHAIRMAN: Page 3 - Mr. Penner.

HON. R. PENNER: No, there's an amendment to 11(2.5) to strengthen the precautions against the lost mail type of thing.

MR. CHAIRMAN: Mr. Corrin.

MR. B. CORRIN: This deals with that point you raised a moment or two ago.

THAT the proposed subsection 11(2.5) of The Summary Convictions Act as set out in Section 6 of Bill No. 27 be amended by adding thereto immediately after the word "he" in the third line thereof, the words and figures "shall send to the accused by mail a written notice that he is satisfied that the explanation does not constitute a valid defence and that unless the accused provides a further explanation in accordance with subsection (2.3) within fifteen (15) days after the date on which the notice is mailed, a default conviction will be entered against the accused and if no further explanation is received within that period, a justice" and that of course goes on in the 3rd line to the word "may."

HON. R. PENNER: What that introduces is that it may be that a person has received an offence notice, let's say, an alleged moving offence on the highway and is familiarized with the proceedings, because there will be notices, and sends a letter to the court office saying something in mitigation or I don't think I'm guilty and assumes that explanation is a good explanation. As 11(2.5) is presently worded, the next thing that would happen, if the justice didn't accept the explanation, would be a default conviction.

Now, the justice has to write that person and say, well, your explanation is not accepted. The person can still then plead not guilty and have a regular trial.

MR. CHAIRMAN: Any discussion on the proposed amendment?

MR. D. ORCHARD: Just to get it straight then, Mr. Attorney-General, what this amendment will do is add one more fail-safe in the process for the accused. If he has written reasons why he should be innocent of the offence, the judge or the magistrate receiving that explanation and not accepting it must respond to him telling him so. Then the process of summary conviction may follow.

HON. R. PENNER: That's right.

MR. CHAIRMAN: On the proposed amendment—pass; Page 3 as amended—pass; Page 4.

Mr. Orchard.

MR. D. ORCHARD: Just hold it here now. Mr. Chairman, under the default conviction provisions at the bottom of Page 4, 11.1(2), if the person does not either pay the fine, appear before the justice and explain circumstances that prove his innocence, or enter a plea of not guilty and arrange for a trial, if none of those three circumstances have been pursued by the accused, then the default conviction can be entered. If the fine isn't paid as a result of that default conviction, a term of imprisonment can be imposed. Now, does this get us back to Clause 1 where it can be up to three months?

HON. R. PENNER: Only in those relatively few instances where there is no specific penalty that is attached to the offence. As was pointed out, with respect to most of the offences with which we're concerned, the ones under The Highway Traffic Act, they do have a specific.

MR. D. ORCHARD: Then are parking convictions

part of the summary convictions which may trigger a term of imprisonment?

HON. R. PENNER: No.

MR. D. ORCHARD: Okay. The present Highway Traffic Act then may have the penalty for failure to pay fine and cost as a term of imprisonment? This is not adding a new penalty in any of the . . .

HON. R. PENNER: No, there's no new penalty.

MR. D. ORCHARD: So that imprisonment is part of the present Highway Traffic Act?

HON. R. PENNER: Where in certain instances - I'm not sure if it's in all instances - the penalty provision attached to a specific section or to a group of sections says that there shall be a fine or, in lieu of payment of the fine, a term of imprisonment, that remains as is.

MR. D. ORCHARD: Where there is a provision which only presently provides for a fine, does this clause also add a term of imprisonment for failure to pay that fine where none existed before.

HON. R. PENNER: I'm advised in answer to your question that the present 11.2 of The Summary Convictions Act on Page 6 would deal with the question that you raised.

MR. D. ORCHARD: Okay, that's for Highway Traffic Act offences. Then the question, in as simple terms as I can make it on Section 11.1(2), are there circumstances where presently there is only imposition of a fine and now this section adds the additional penalty on failure to pay that fine of potential term of imprisonment.

HON. R. PENNER: Legislative counsel advises me that if you have a statute which sets a fine only and doesn't say a fine or in lieu thereof imprisonment or fine and/or imprisonment and the person does not pay the fine then the court, given its powers to punish by contempt for a court order, may nevertheless for nonpayment of a fine find a person in contempt of a court order and sentence that person to some term of imprisonment for nonpayment of the fine in that way. So it doesn't add anything new.

MR. D. ORCHARD: Okay, if it doesn't add anything new, does it just make it simpler now under those types of fines, which only had a fine and no provision for imprisonment, to now trigger imprisonment simply by finding them in default of paying a fine and triggering the term of imprisonment as provided in this section?

HON. R. PENNER: Yes, I think that's probably right that where, in fact, the court has ordered the payment of a fine and the accused, now convicted, has not paid the fine, the court would have to take one further step in order to, in effect, translate that fine or the nonpayment of the fine into contempt and a jail sentence for contempt.

MR. D. ORCHARD: That's under the existing provisions, but with this provision now, the accused does not have to be found in contempt of court now. Simply the magistrate or the justice of the peace or the judge may trigger Section 11.1(2) and impose imprisonment without finding the person in contempt of court.

HON. R. PENNER: My answer is yes.

MR. D. ORCHARD: That is a significant toughening of the law.

HON. R. PENNER: It is, but the number of instances in which there is a fine only and not a fine and some term of imprisonment in lieu are so few as not to amount to a very significant part of the law.

MR. D. ORCHARD: Mr. Chairman, I have no argument with the Attorney-General on that point but because they are so few, I think it would be safe to assume they would be in the scale of offences, relatively minor ones, and now this amendment does provide for those formerly deemed minor offences - if such a term can be used for any breach of the law. It now allows the courts to, with relative ease, impose a prison sentence for failure to pay a fine on a relative minor offence.

HON. R. PENNER: Again, let met just make the general response that I've made from time to time in the discussions that we've had on this bill, which I think on the whole have been good; that is, the thrust of the bill really is to reduce the number of people who go to jail for summary conviction offences. One always must bear in the back of one's mind in looking at the sections individually and their effect, the Fine Option Program which is contained in Page 8 and following where someone is unable to pay the fine imposed would have the option of some community service. If it's a relatively small amount and the person elects the fine option, we're talking about one or two days of community work in order to satisfy the requirements of the law in order to pay the fine.

MR. D. ORCHARD: I have no further comments on this section, this . . . section.

MR. CHAIRMAN: Page 4—pass.
11.1(3) - Mr. Orchard.

MR. D. ORCHARD: My only comment on 11.1(3) and 11.1(7) or once again, they have in them, and I assume the circumstances to trigger them are the same as in 11.1(2), arrest, detention and imposing a term of imprisonment.

My same concerns hold on these amendments as well.

MR. CHAIRMAN: 11.1(3)—pass.
11.1(4)- Mr. Corrin.

MR. B. CORRIN: On amendment,

THAT proposed new 11.1(4) to The Summary Convictions Act set out in Section 9 of Bill 27 be amended by striking out the figures "15" in the 3rd line thereof and substituting therefor the figures "45."

MR. CHAIRMAN: Any discussion on the proposed amendment?

MR. B. CORRIN: So there wouldn't be any warrant until 45 days, as I understand it, had passed after the issuance of the order and notice.

HON. R. PENNER: Yes.

MR. CHAIRMAN: Proposed amendment—pass.

HON. R. PENNER: This is just to reflect the government's concern that no one should go to jail under these proceedings.

MR. D. ORCHARD: I think that's coming a long way and possibly before the evening is over the Attorney-General might consider additional leniency here.

HON. R. PENNER: By the time the evening's over, I'm going to be ready to confer an honourary law degree on you.

MR. D. ORCHARD: Thank you. I'm not so sure that would serve the clan well, though.

MR. CHAIRMAN: Order please. On the proposed motion—pass; 11.1(4), as amended—pass; balance of Page 5—pass.

Page 6 - Mr. Orchard.

MR. D. ORCHARD: Thank you, Mr. Chairman. In 11.2(1) I note in here that the Registrar is required on notice of suspension of a driver's licence that he must use prepaid, registered or certified mail. This brings in the discussion we just had about the mailing of convictions and basically the Attorney-General doesn't want to use that in all cases because of costs and, secondly, because it doesn't necessarily guarantee delivery in any case.

HON. R. PENNER: I think the point here is this, that once we are moving to the level of driver suspension with all of the consequences that might entail, which the former Minister of Highways is familiar with, it's thought again out of an abundance of caution that even though there is a cost element, nevertheless this is the kind of situation in which the extra precaution of sending out the notice by registered mail should be sent.

One of the reasons, I suppose, for that is that certainly if the system works such that it follows up whether or not registered mail is being picked up, it has some way of noting whether or not the convicted driver has in fact been informed of the suspension.

MR. D. ORCHARD: No further question, Mr. Chairman.

MR. CHAIRMAN: Page 6—pass; Page 7—pass; Page 8 - Mr. Corrin.

MR. B. CORRIN: There's an addition after 11.3(7) if we can get down to there.

MR. D. ORCHARD: Well, 11.3(7) is to be amended?

HON. R. PENNER: Yes.

MR. B. CORRIN: No, there'll be a new subsection after that, subsection (8).

MR. D. ORCHARD: Well, that's the section my questions are on, so possibly the amendment could come forward and we could have a full discussion.

MR. B. CORRIN: I presume then that everything's passed to this point.

THAT Bill No. 27 be amended by adding thereto immediately after proposed new subsection 11.3(7) as set out in section 10 thereof the following subsection;

"Notices to state right of person to hearing de novo. 11.3(8) The notices referred to in subsection 11.1(3), 11.2(1) and 11.3(2) shall advise the person of his right to request a hearing de novo in accordance with the procedure set out in subsection 11.1(5)."

And that addresses the MARL concern tonight. People would have notice of the fact that they are entitled to a right of appeal. They wouldn't be deprived of . . .

MR. D. ORCHARD: Mr. Chairman, I have some difficulty with 11.3(7) where, with the accumulation of 10 unpaid parking offences, the Registrar can not only remove the person's right to drive, but remove from him the registration of all his vehicles, so that not even his wife can take him to work because she won't have a registered vehicle to drive. That is a fairly onerous new provision to the collection of parking fines. I think, with the advent of the right to remove a person's driver's licence for failure to pay parking fines, I believe substantially improved the collection of unpaid parking fines. I really question whether the Attorney-General needs to bring in this section which has penalty powers beyond the individual's.

You can realistically run into a circumstance when you can remove all the registrations from all the vehicles owned by that individual who has not paid 10 parking fines; you can essentially ground that man from his ability to be gainfully employed if a vehicle is necessary in his job or to get to and from work. But the point is, everybody's saying, well, why doesn't he pay the fines. You know, he's already had his driver's licence removed. Do you need this? How many cases have you got where a person still doesn't pay his fines once his driver's licence is removed?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: As again explained in the House, we are dealing here with a person who is really a flagrant violator. I think I explained it in Committee earlier today in response to one of the delegations. He simply says, the law is not for me, I'm above the law. It may seem a little hard, but where we're dealing with someone who has ignored 10 parking tickets, I don't know if it's too tough. I am inclined to think it isn't.

MR. D. ORCHARD: How many instances have you got where a person has accumulated 10 parking offences, has had his driver's licence removed and still hasn't paid the fines?

HON. R. PENNER: I am advised - or my department, more accurately - has been advised by the City of Winnipeg Police that it is a problem; that they have a substantial number of people who are in that category - not substantial, but a number of people. This section is designed to deal with that number. I can get the information for the member and hope to have it before report stage.

MR. D. ORCHARD: Well, that would be most useful, Mr. Chairman, but once again, we have helped the city out in removing a person's driver's licence. You know, surely the city, once a person has accumulated 10 tickets, had his driver's licence removed, might be able to, as I mentioned earlier, use a device that other cities have used, namely, the boot to immobilize the person's car, rather than to go to this kind of an amendment and adding additional powers under this Act.

HON. R. PENNER: We'll, first of all, get the information. I think we might look at that suggestion of putting the boot to the car. What this really deals with is the situation in which the person has failed to pay 10 or more of these convictions, has gotten to the point where the driver's licence has been suspended and is just ornery and cantankerous and stubborn and makes arrangements for someone else in the house to drive him to and from his place of fun, worship or work as the case may be. The law is a little tough and I think it should be in this case.

MR. D. ORCHARD: It sure is. No further questions.

MR. CHAIRMAN: Can we perhaps get - Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, what would happen in a case where a person, supposing he didn't even have a driver's licence but he owned 10 cars and he was in the courier business, where they picked up tickets maybe four or five times a day and those tickets are not turned in to him by the drivers. Do you put the guy out of business? Because it was not fault of his.

HON. R. PENNER: No, that's right. This, let me point out, is not something that happens through the computer. It is triggered manually by the police in those cases which are flagrant, and it's discretionary, may cancel the registration. I think it's a weapon of last resort; I would hope so.

MR. CHAIRMAN: Can we perhaps get back to the proposed amendment of Mr. Corrin for 11.3(8)—pass. Page 8 as amended.

MR. PENNER: On division.

MR. CHAIRMAN: Page 8 on division.

HON. R. PENNER: Just on division.

MR. CHAIRMAN: On division—pass; Page 9-pass; Page 10—pass; Preamble—pass; Title—pass. Bill be reported.

BILL NO. 52 - AN ACT TO AMEND THE LIQUOR CONTROL ACT

HON. R. PENNER: What is the will of the committee with respect to The Liquor Control . . . ?

MR. CHAIRMAN: Bill No. 52, Page 1, any discussion on Page 1? (Pages 1 to 7 were each read and passed.)
Page 8 - Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, I had raised some questions with the Attorney-General dealing with interdicts on the self-service in hotel rooms. Has the Attorney-General had time to consider the problem that might occur with interdicts?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: I have and I'm satisfied that there is no problem created by this proposal with respect to the interdict of persons.

MR. CHAIRMAN: Mrs. Oleson.

MRS. C. OLESON: Through you, Mr. Chairman, to Mr. Penner, this self-service unit in hotel rooms, was this put in on request of hotels?

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Almost all of the amendments were raised with me by the Chief Executive Officer of the Commission, Mr. Emerson, and I have discussed them at some length with him and then with members of the Commission itself. Yes, these meet with the approval of the Hotelkeepers' Association. I don't know how many of you have experienced these devices, they're really quite handy sort of things. They're in the hotel room, they're like a slot machine. You have to trigger something and you get the little small bottle of booze as a nightcap and it appears on your bill in the morning. —(Interjection)— Yes, they also have juice and snacks.

MRS. C. OLESON: I guess I haven't travelled in the right circles, I haven't . . .

HON. R. PENNER: They have Nevada tickets, as well.

MR. CHAIRMAN: Any further discussion on Page 8? Page 8—pass; Page 9—pass.
Page 10 - Mr. Graham.

MR. H. GRAHAM: Mr. Chairman, when you come to Section 37, I would ask the Attorney-General if this has been brought to the hotelmen and if it has their approval?

HON. R. PENNER: Yes, it's their suggestion and it's a good one. The law was archaic and I agreed with their suggestion.

MR. H. GRAHAM: It has passed the Fire Inspectors' Code as well?

HON. R. PENNER: It in no way infringes any of the

fire safety regulations.

MR. H. GRAHAM: Proceed.

MR. CHAIRMAN: Any further discussion on Page 10? Page 10—pass; Page 11—pass; Page 12—pass; Preamble—pass; Title—pass. Bill be reported.

Committee rise.