Fourth Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

ECONOMIC DEVELOPMENT

42 Elizabeth II

Chairperson
Mr. Jack Reimer
Constituency of Niakwa

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

Tuesday, July 13, 1993

TIME — 7 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRPERSON — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Driedger, Gilleshammer, Orchard

Ms. Barrett, Messrs. Edwards, Martindale, Pallister, Penner, Reid, Reimer, Mrs. Render

APPEARING:

Reg Alcock, MLA for Osborne

Avis Gray, MLA for Crescentwood

WITNESSES:

Bill 33—The Provincial Railways and Consequential Amendment Act

Don Tennant, United Transportation Union

Bill 30—The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act

Bill Martin - Canadian Mental Health Association

Allistar Gunson - Association for Community Living, Manitoba

Theresa Ducharme - People in Equal Participation Inc. (PEP)

Rod Lauder - Private Citizen

Zana Lutfiyya - Private Citizen

Barbara Bird - River East Advocacy Coalition for the Handicapped Inc.

Roger Kiendl and Carl Stephens - St. Amant Society

Jean Smith and Debbie Doherty - Transcona-Springfield Association for Special Needs Inc.

Ann Zebrowski - Private Citizen

Bill 31—The Health Services Insurance Amendment Act

Anna Desilets - Alliance for Life

Audrhea Lande - Private Citizen

Amanda Le Rougetel - Coalition for Reproductive Choice

Lori Johnson - Morgentaler Clinic

Robbie Mahood - Private Citizen

Cynthia Byers - Private Citizen

MATTERS UNDER DISCUSSION:

Bill 30—The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act

Bill 31—The Health Services Insurance Amendment Act

Bill 33—The Provincial Railways and Consequential Amendments Act

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Mr. Chairperson: Will the committee on Economic Development please come to order. The committee will proceed with public presentations on Bill 30, The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act; Bill 31, The Health Services Insurance Amendment Act; and Bill 33, The Provincial Railways and Consequential Amendment Act.

I have a list of persons wishing to appear before this committee. For the committee's benefit, copies of the presenters list have been distributed. Also for the public's benefit, a board outside the committee room has been set up with a list of presenters that have preregistered. I will not read the list since members of the committee have copies.

Should anyone present wish to appear before this committee who has not already preregistered, please advise the Chamber staff at the back of the room and your name will be added to the list.

At this time, I would like to ask if there is anyone in the audience who has a written text to accompany their presentation. If so, I would ask that you forward your copies to the Page and the Clerk at the back of the room at this time.

Before we proceed, is it the will of the committee to apply time limits to the public presentations?

Hon. Donald Orchard (Minister of Health): Mr. Chairperson, I wonder, my list shows two presenters to Bill 33. If there were not other presenters to Bill 33, I wonder, as a convenience to those individuals, if committee might consider having them present first and then revert to the numerical order of the bills, so that those individuals would not wait for considerable lengths of time.

Mr. Chairperson: I would just point out that there is one more, so there are actually three presenters for Bill 33, which has the lowest amount of presenters on it.

Is is the will of the committee then to listen to presenters on Bill 33 first?

Mr. Daryl Reid (Transcona): Mr. Chairperson, that we will be going through clause by clause on the bill immediately after the presenters as well?

Mr. Chairperson: No, we will list through all presenters on all bills first.

Bill 33—The Provincial Railways and Consequential Amendment Act

Mr. Chairperson: We will proceed then with Bill 33, and I will call on the three names who are presenters from Bill 33, Mr. Allan Ludkiewicz for C.P. Rail, Barry Domino and Don Tennant. I will then call on Allan Ludkiewicz, please. I will call one other time for Mr. Allan Ludkiewicz with C.P. Rail System. No? Well, then I will call on Mr. Barry Domino, United Transportation Union, Local 351. I will call one other time for Mr. Barry Domino.

I will then proceed then to call on Mr. Don Tennant. We have your written presentation, Mr. Tennant. You may proceed, Mr. Tennant.

Mr. Don Tennant (United Transportation Union): Mr. Chairperson and members, it is indeed a pleasure for me to appear before you today to present our submission on behalf of the United Transportation Union, Canada.

As you may be aware, UTU Canada represents railway conductors, yard foremen, train and yard service employees on all railways in Canada. In addition, we represent locomotive engineers on some short-line railways and bus operators in several locations. We are also affiliated with UTU, U.S., which represents these same crafts employed by the U.S. carriers, including Amtrak. Our affiliates also represent a fairly large bus membership throughout United States. Our Canadian membership is approximately 14,000; the U.S. membership is approximately 160,000; our Manitoba membership is approximately 1,200. The Manitoba membership are employed on VIA, CN, CP, and Burlington Northern.

Issues of concern to the UTU

1. Consequential amendments to The Manitoba Labour Act, to section applicable by adding: Federal to provincial sale, with response to the sale of a business when

(a) before the sale, collective bargaining relating to the business by the predecessor is governed by the laws of Canada; and

(b) after the sale, collective bargaining relating to the business by the successor employer is governed by the laws of the province of Manitoba.

Please find attached, from Ontario, a page from the labour legislation marked apex #1.

2. Consequential amendments to the Manitoba Labour legislation or a special bill to provide protection; example, the New York dock labour protection conditions for mergers and takeovers.

Please find attached from Traffic World, June 14, 1993, marked apex #2 which states: The Interstate Commerce and Transport Commission approved the KCS takeover subject to the New York dock labour protection conditions that provide up to six years of wages and benefits for the employees affected by the rail mergers.

3. Regulations 48(1)(c) despite anything in this act or any other act providing for transitional arrangements in respect of a railway upon the first application of this act. The UTU concern is that there is no time frame formula in place.

4. Regulation 48(1)(n) governing the safe operations of railways and their operation, and 48(1)(o) governing the reporting of accidents.

The UTU recommends 48(1)(n) use the Railway Safety Act and for 48(1)(o), the Canadian Transportation Accident Investigation and Safety Board Act.

5.3. The handling of application where an opposition has been filed: (a) the review of statements; (b) the determination of economic viability.

5.4. Public interest

5.5. Time constraints on abandonment orders.

I do not have the bill in front of me, but there has been a heading left off the top, and that was under that section of the bill for there.

6. The UTU recommends that all federal operating and training requirements be required.

7. A provincial transportation advisory and oversee committee be set up to focus on the co-ordination of the policies at all levels of government and to deal with jurisdictional barriers.

All of the foregoing are respectfully submitted for your review and consideration on behalf of United Transportation Union - Canada. Don Tennant.

* (1910)

Mr. Chairperson: Thank you very much for your presentation, Mr. Tennant. Are there any questions?

Mr. Reid: Thank you very much for your presentation, Mr. Tennant. This legislation is something new that is coming into being in the province of Manitoba and, I believe, will have some serious consequences for us.

It is unfortunate, of course, that the government had to move in this direction, but I am sure it is as a result of pressures that were brought upon it by forces beyond its control, namely deregulation and free trade which have—

An Honourable Member: Free trade?

Mr. Reid: Yes. Well, I am sure if you understood the railway industry, you would know the impacts that free trade has had upon it. Unfortunately, you do not know. I will brief you at another time on this matter.

Mr. Tennant, can you give us, in your experience and in your estimation, the effect this legislation will have upon your membership that are currently employed within the railway industry of this province?

Mr. Tennant: The effect on the membership of the UTU basically we do not find will be very detrimental in our particular craft in the rail industry. The craft that will be affected greatly by this will be maintenance way more than anybody else, and clerical staff through our T&DW.

In most cases where you go to the shortline bill under the legislation, where the predecessors have mainly shortline railways in the U.S., you will find that the demand for the representation we represent, the locomotive engineers and train conductors and personnel like that, is still there.

A prime example would be here in Winnipeg. For example, even though we have people who are employed on CN, they share the employees with VIA and Burlington Northern because simply it would be unfeasible for most people to provide the training required to operate under the legislation and statutes under the federal regulation.

So we do not expect to be drastically hurt, but where we would expect to be hurt is if there was total abandonment and the feeder lines were not coming into the railway industries at all. That is per se our group of personnel.

Mr. Reid: Mr. Tennant, do you see any other deficiencies in this legislation you would like to point out to the members of this committee so we might consider them for incorporation in this legislation?

Mr. Tennant: At length, there are several concerns, but due to needing clarification on the legislation itself, that is why under No. 7 we are looking for an advisory committee, much similar, that is afforded to the people that are in place.

One of the things I commented on, which is very ambiguous, which was under 4 and the heading was missing but the terminology is the same thing, where the licence would be revoked or concerns of transfer of one of these railway trackages to a railway company, and then later, the railway company simply, for whatever reasons, just abandons it due to financial insolvency or things like that.

Mr. Reid: I take it then, Mr. Tennant, that the UTU and possibly yourself has had some experience in dealing with other shortline operations in other provinces of Canada. If you have that experience, could you relate to us what your experiences are with respect to shortlines and your membership?

Mr. Tennant: Well, examples I will use—and I will use the Stettler sub and also I will use some of the lines in the U.S. On the Stettler sub, the initial movement there for the Stettler was a lease arrangement that went to a special bill where Stettler Corporation then purchased the trackage for the figure of in excess of $2 million, of which about $101,900 was financed by Canadian National on a forgiveable loan with no interest. I

should not say forgiveable, but with a noninterest loan maturing in '97.

Where you really see where shortline railways come into state or provincial governments is in the U.S., and I will give you an example. The state of Massachusetts is right now—I guess for better terminology—being touched for the tune of $150 million of which only $14 million will be coming from Canadian National, CP and two other U.S. firms.

There are other shortline railways coming into place right now, concerns in the U.S., all across the States now, much similar to when we formed Canadian National out of all the shortline railways on record. They are on record now for going for 500-and-some million dollars.

So it is a concern that the feasibility of these companies, once they come into the provincial realm, that it becomes solely the provincial dollar they are going after.

For example, there are some concerns to the producers, for example, what is called a terminology, where you see a branchline but the branchline speeds are so low and the tonnage—and I will use for example, say 166. Pardon me, I will use 60 tonnes. It might be easier to explain. Due to the condition of the track, you might be able to haul 40 tonnes.

I think one of the ones agriculture sees being taken away from the Wheat Board is barley. Well, if you are on, say, Graysville or some place like that, what they call a dead weight tariff is actually the difference between like, say, 40 and 60.

If that protection is taken away, that shipper now—in which case, it would be the producer or the farmer—would have to pay on that 20 tonnes, even though he did not load that car because he could not load that car because of the trackage.

So all these considerations and financial presents will have to come out of the provincial coffers of the taxpayers of the province of Manitoba.

Mr. Reid: Speaking of money coming out of the taxpayers' pocket, in your experience with either the Stettler Central Western Railway, has that railway received any monies or any grants or any kind of funding support by that province? Do you see similar circumstances arising in the province of Manitoba in the future should this legislation pass?

Mr. Tennant: On the Stettler sub—and I do not have any documentation here with me to it—but initially in the concept of the leasing arrangement of that, Canadian National was to look after the trackage. Upon the sale that concluded Canadian National's responsibility other than to the equipment or things like that, and as far as we were aware the provincial government of Alberta, also in Getty's riding, had to come in for the tune of a few dollars for tie replacement that was bad on the subdivision.

What I am also aware of, and I would like to draw your attention to, is that running rights that we could conceivably—I am aware right now in the Ottawa valley, CN and CP are forming joint, what we call a terminal railway which is made up of CN and CP, and apparently there is going to be a trade-off in Manitoba to CP Rail from Canadian National in one of the lines here. So these things will get into running rights and things of that nature.

Under the short line, what you could do is have a short line at Graysville, a short line out of Portage somewhere up on the Gladstone and not one place but granted running rights. I will leave it up to you to figure that out. I mean, it is basically the same thing. It is just located in Portage la Prairie running down CN or CP's main line.

Mr. Reid: In your opinion, Mr. Tennant, do you think that there is any likelihood that either of the two main railways, CN or CP, could start short-line rail operations within the province, in other words, spin off a section of their trackage and register it under a different company name and proceed to operate under short-line business?

Mr. Tennant: Yes.

Mr. Reid: What consequences do you think that will have for your membership and the service that you would provide?

* (1920)

Mr. Tennant: The consequence on the membership would not be that significant. The concern is that now it is divested at an arm length's reach is the abandonment process or should there not be a buyer for that particular feeder. That is the concern that the access to this legislation that we have that would allow them.

Mr. Reid: Do you foresee any difficulties in service? I should ask instead, do you have or know of any difficulties in providing adequate levels of service for the customers that are along the

branch lines in our province at the current time? Are you aware of any shortcomings in service that might be provided to the grain elevators or to the communities?

Mr. Tennant: You are talking CN and CP now I take it in Manitoba. The service is there. Where they are willing to lock their fleet, that is about the only way I can put it. They get their orders from the Canadian Wheat Board under the Western Grain Stabilization Act and that is how it is done.

Mr. Reid: So on that then you think that the short lines will, in all likelihood, not provide any better level of service than what is currently provided through the operations that are currently provided through either CN or CP?

Mr. Tennant: I think, in some cases, that you could have the complete extreme where you would have failures and in some cases you would have the other extreme where you have better service. The one thing that has not been addressed is, for example, if Railtex or some corporation like that is coming in—I give an example of Truro-Sydney, you are talking a corporation like Railtex now who is considered short line, but is almost on the level of what you would call a national railway. So with a firm like that you have equity. With a firm who does not have equity, and I will give you an example. With the floods or things like that, if you had a bridge washed out, in some cases some of these bridges are $2 million, $3 million, where is the money going to come if that firm is borderline to go in there to begin with? Who is going to pick up the cost of that?

That is what you are looking at. I will give you a case in eastern Canada where VIA Rail operated on and CP wanted to abandon it. Because VIA Rail operated on it, it was maintained. A bridge was washed out, it cost $5 million. A year later CP Rail came off of there and it was abandoned. Now if we have a short line, where is the funding going to come from? I just mentioned the state of Massachusetts where $150 million is being floated by a bond issue out of the state of Massachusetts and $14 million is coming out of the railway. I mean, what is the province earmarked for? I do not care which government is in power. It is the same ticket.

Mr. Reid: Do you foresee any difficulties arising out of the safety factor with respect to short-line railways? It is my understanding that the national railways are regulated by certain federal acts that put in force certain provisions that would provide for the safe operation of railways. Do you foresee any difficulties with this legislation relating to safe railway operation on short-line railways?

Mr. Tennant: Mr. Chairperson, that was one of my concerns in the brief, under 48(1)(n)(o), that we would adopt a mechanism that is in place now, No. 1, being the national transportation accident investigation and The Railway Safety Act. That would circumvent a lot of things and the training and the operating rules that would have to be in place. Without those safeguards, we would go back to the early 1900s.

Mr. Reid: Thank you for your presentation here today, Mr. Tennant.

Hon. Albert Driedger (Minister of Highways and Transportation): Mr. Tennant, first of all, thank you for your suggestions that you brought forward.

You are aware, I am sure, by having read all the information that we have tried to provide, that this is enabling legislation. Basically my staff and very capable people have been working on this for two years, not in isolation, have been working very closely with the federal government, with the other provinces, who are all faced with the same potential dilemma that we are facing here.

What we have basically done is try to position ourselves with the legislation required to make provision for areas where a short line would be warranted. We certainly want to be very cautious in terms of who we allow to basically operate a short line so that we look at the feasibility of a line to be economically viable to do that.

Reference was made to bridges, to safety. These are all the things that for two years we have been working at very diligently, and I think some of the other provinces by and large are modelling after our legislation to some degree. You are aware that Saskatchewan had some short-line legislation in place and were making major changes to it in this last session apparently.

What we have done is to try and provide this kind of legislation to allow those who would be interested, either individuals, organizations, private companies, if they feel that they could viably operate a short line, that we have the safety provisions in place.

I just want to raise that, realizing that there might be things that we have to look at in a year's time

once we finally get into it to some degree to see whether there are further changes. Our professional people have spent an awful lot of time to try and address the safety end of it and the provisions that are in there.

So in view of the pending potential abandonment taking place, which we are opposing as best we can, but with the reality or rationalization taking place, we felt this kind of a thing would probably help, not only for service in the province, but also to complement the existing lines as the rationalization is taking place. We feel if we get successful shortlines operating, it would continue for your membership to continue to be operating. If they are totally abandoned, ultimately that feeder line is not in there and the effect would be more dramatic than if we have a shortline feeding into it.

A lot of thought and time has gone into this, and I think we have invited participation from all elements to feed into this thing as we develop this. I feel confident that with the people we have in place who have been working with this, when the legislation is passed, it does not have to necessarily be cast in stone. I think we are sort of almost the leaders in this in Manitoba at the present time.

I will repeat again, working with the other provinces, we are trying to have a uniform approach to the shortline railway act, which is required, because you have the national overriding legislation that is there for the main lines, and we hope we can work together with you people in terms of making this thing work.

I appreciate your comments. We will be looking through this when we are through with the presentations. Even if we go through this clause by clause, I am not adverse to having staff look very closely at your suggestions, and if required, I will be bringing forward amendments in third reading of this bill.

Mr. Tennant: One question I did not cover in my bill and I would like to ask of you is where the three bodies—like, say, three bodies are together, the regulatory bodies that are involved here. In your federal legislation, there is a provision under the National Transportation Act for conflict.

How do you perceive the provincial involvement, say, when the three parties are together and you have a regulation and you are in conflict? I notice it is not in this, but if you go to the national NTA, it is there.

* (1930)

Mr. Driedger: Mr. Tennant, I do not know whether I have precise information to deal with that. Where there is conflict between the federal legislation and the provincial legislation, I would think that we would set up a mechanism to deal with that, through a joint process.

These are things that—breaking new water, so to speak, on this issue, I think it appears in our developing of the legislation with the federal government and in conjunction with other provinces that these are mechanisms we will be developing and hopefully will be able to resolve.

Mr. Jack Penner (Emerson): Mr. Tennant, under the current provisions and agreements that are in place, there are some guarantees in place that will maintain some of the branchlines that we currently operate to the year 2000. After the year 2000, there are no guarantees that these branchlines will in fact remain in operation. Even if they do, we have no assurance as to how they would operate or how the facilities would be operated on those branchlines or what kind of services might be provided.

Is it your view that if some of the branchlines that have been proposed for abandonment would in fact be abandoned at say the year 2000, it would be in the interest of those people being served now by those railways that a shortline railway would be established and maintained and operated, maybe even in conjunction with—and that there be some agreements drawn between staff who is currently staffing the major rail lines and those who would be operating the shortline railways?

Is it your view that there might in fact be an element of service provided that might not otherwise be provided and that it might be more economically done than might be done under some other provisions such as trucking and/or other transportation modes?

Mr. Tennant: Right now, for the tonnage, the most economic and efficient way to move a large bulk commodity is by rail. One thing that everybody seems to deal with is shortline, and we are hoping it will go beyond just grain trackage, but you might see the establishment of new railways, whether it be a terminal railway or totally a solely new trackage or things like that to serve. There is that possibility to happen. In the U.S., this case has come about.

The concern you raised on the rationalization until the year 2000 is a concern that we have legally in here on when I was asking about the transitional period where there are no time frames on transition. Just where does this all come in if certain protection is not afforded, if an abandonment order was in process prior to the act, and now the act came into place, and it was a short line, what are the factors because of the lack of the wording and transition?

Mr. Penner: Mr. Chairperson, one of the major concerns that many, especially in the agricultural communities, have, especially in those areas that are in the so-called outlying areas that are only being served now and probably most economically being served, is by railway transportation of the agricultural products in to the export positions. The argument has been made in many areas that if those abandonments would in fact take place that have been proposed, that there would be significant additional cost posed to those, especially the agricultural producers, in providing transportation for their goods either via trucking and/or other, and which would of course provide a substantial initial additional cost to the province in maintaining and/or upgrading many of our highways and maybe even bridges and those kinds of things.

In light of that, we now currently hold or there are rail beds in place, whether they are in fact—Mr. Chairperson, I am sorry if my questions have been lengthly—

Mr. Chairperson: No, I thought you had asked a question. You may proceed, Mr. Penner.

Mr. Penner: In light of that, the rail beds currently being in place and maybe needing some upgrading in some instances, might in fact provide more economical services to those areas than might be provided in other circumstances, as I asked before. However, is it your view that we should pursue the matter of providing legislation that would in fact not only encourage the establishment of short-line railways, but would in fact provide the legal vehicle under which those rail lines might be established if there were those who wanted to invest in those kinds of facilities?

Mr. Tennant: Yes, and there should be financial resources made available from the province on those particular terms, and if a long-term economic future can be seen that it is going to be cost efficient—

Mr. Penner: In your view then, are there any provisions made under this act that would in fact encourage or provide that financial assistance that you speak about?

Mr. Tennant: Well, there are provisions, but they do not actually jump right out at you, if you know what I mean. So a lot is left to certain discretionary powers, from what I can see in here, and how a person would put the mechanism in place, and then if there was opposition to that mechanism, that is what I am getting at.

Mr. Penner: But the act itself, Mr. Chairperson, does not provide for funding of short-line railways through the provincial government.

Mr. Tennant: There is a section in there and I am sure the advisors could probably spell it out. There are some questions on it. Just what it says, that would have to be on the language, because there is provision to make regulations. What those regulations are going to be, that is another thing.

Mr. Penner: Mr. Chairperson, not for the actual funding through provincial provisional funding of those railways.

Mr. Tennant: I do not see it right now in there. I will stand corrected.

Mr. Penner: The fear that some might have in this province that it would be a financial burden to the province, which might be in fact deemed as being transferred from federal responsibility now to provincial is not enshrined in this legislation.

Mr. Tennant: It is a possibility.

Mr. Penner: I want to establish, in Mr. Tennant's view—I want an answer as to whether he thinks that there is in fact now provision under this legislation that would cause the province to pick up part of the cost of the operation of these short-line railways.

Mr. Tennant: I will go back again to the Stettler sub. Let me explain. I will have to get into that point, where a person comes in, picks up $2.7 million of trackage, $1.9 million is funded by a loan from Canadian National with no interest until 1997, the other $700,000, how much of it initially came out of the equity of the corporation in the event of a catastrophe on a minor scale—I will use the example of Oakville or something of a flood nature. Where is the funding going to come from? If the

person is becoming insolvent, not due to that there is certain business there at the present level that he can maintain it and still make a profit, but for some unforeseen event like a washout, which is quite common, whether it be beavers or rain, you name it, or anything of that nature or a legal involvement. Where is the funding going to come from?

Mr. Penner: Mr. Chairperson, I again ask the question of Mr. Tennant that under the act, as it is currently written, in your view are there any provisions or requirements for provincial funding of any part of the operation of the these short-line railways?

Mr. Tennant: I do not see any provision in there unless it be for a separate special act pertaining to one issue. That is the only thing I can see there.

Mr. Chairperson: Thank you very much for your presentation, Mr. Tennant.

I would like to call one more time Mr. Allan Ludkiewicz, Mr. Barry Domino.

That concludes public presentations on Bill 33.

Bill 30—The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act

Mr. Chairperson: We will now proceed with public presentations on Bill 30. I wonder if the minister could join me here at the table.

I will call upon the first presenter, Mr. Bill Martin. Mr. Martin, you have a presentation. The Page will get it from you, if you do not mind. Just give her a moment to distribute some of it and then we can start. You may begin, Mr. Martin.

Mr. Bill Martin (Canadian Mental Health Association): Mr. Chairperson, and members of the committee, I should first of all say that the handout to you is not my presentation. It is just a reference document to a point I wish to make in my presentation. [interjection]

Yes, in 1983. It might be interesting for historical terms to look at it in some other parts other than the one I want to refer to you. Anyhow I will get to that one in my presentation.

The Canadian Mental Health Association asked for the privilege of speaking to this legislation because of our historical interest in exploring this vehicle for the protection and support of people with mental illness.

* (1940)

In preparing my remarks I have raised three questions: No. 1, would the interests of a person with mental illness be better served by vulnerable persons legislation than they are presently served by The Mental Health Act and other related acts; No. 2, what features does this act have that could perhaps be introduced into mental health legislation; and No. 3, what is missing in this act, in our view?

I know that this act is directed towards not people who are mentally ill, but in order to make my comments I need to connect the two. I hope that is acceptable.

To the first question, would the interests of people with mental illness be better served by this act? Our present position is we are not sure, but we do not think so. Recent revisions to The Mental Health Act and the recent development of the advanced directives legislation have done much to protect the rights of people with mental illness. As it stands now, it is our preliminary opinion that this legislation appears to be more restrictive of people's freedom who are disabled by mental illness than the present mental health legislation, primarily I guess because it covers all of their lives, not just episodes, as mental health legislation does.

There is a possibility, however, that this legislation could apply to other disabilities, certainly people with senility or Alzheimer's. I know of cases personally where people have been very vulnerable and the legislation has not served to protect them very well. I will come back to that point later.

There are some features of this act which we think are very positive and could perhaps be introduced into mental health legislation. The statement of beliefs in the Preamble is an innovation I think, and it is a very positive one, the best interest clause in Section 75(2). We think it is really important and we commend the drafters of the legislation for undertaking to provide these broad policy statements. We believe that after we are all gone and this legislation is still standing, those broad statements are very helpful in telling the people who would be administering the legislation in the future the direction you as legislators wanted them to go. The concept of an individual plan I think is very positive.

Then our third question is, what do we feel is missing in this legislation. This act does not provide legislation for the operation of a system of care. We believe it is beneficial for the Legislature to ensure that there is, No. 1, a fixed point of responsibility for the design and delivery of services both regionally and provincially; No. 2, the planning process for service development is regionalized and community based; No. 3, a provincial board is in place to manage the administration of services. To that end, I refer you to this 1983 document on page six. There is a list of features of one example of legislation of this nature, the Lanterman Act in California, where it talks about the kinds of features that would be put in to that sort of legislation.

In mental health, there has been discussion by the Department of Health of a community mental health services act, and that is all there has been to this point. We would hope that that discussion could be renewed again and we think it would be relevant as well for administering services for other disabilities.

We note that provinces across Canada, as well as Manitoba, are moving to regionalized health care systems. We also note that in the recently released interim report of the primary health care task force, they talk about regionalization, regional boards, per capitation of funding and so on and so forth. We think that might be helpful to consider in this area and certainly in mental health.

Another piece that we feel is missing is the lack of advocacy services, independent autonomous advocacy services. We believe that advocacy services are essential to balance off the power of the caregiver. People with disabilities are not taken seriously. Time and again we hear in the mental health area where people have either been abused or have not received services, and they have made it known to the health-care provider, and they just say, oh, well, that person is disabled. What do you expect?

Having an advocate within the department just does not seem to work very well. We think that would be an important feature in the area being discussed tonight and also in the area of mental health.

So our concluding observations. First of all, we commend the government for the process used in developing this legislation. We think from all reports, although we were not involved in it, it was just excellent and should provide a model for future efforts of this nature. The legislation itself, we feel in general, is a step forward in the disability field. We have to qualify our comments and say that we are not specifically familiar with people who are disabled in this manner, so it should not be taken as a full-scale endorsation because of our lack of knowledge.

No. 2, because of the possible application of this concept to other disability areas, we recommend you legislate a mandatory review of the act within a period of one to three years. Some of the features may work and some may not. It is a new approach and we are really interested to see how well it works because of the effect it may have on the people we speak on behalf of.

Then, I guess our final recommendation, and we think it is relevant to this field as well as our own. We recommend that you as legislators, develop legislation that guides, directs and enables the operation of community-based mental health service systems for people with a mental disability as well as people who are disabled in the mental health area.

That concludes my comments, Mr. Chairperson.

Mr. Chairperson: Thank you for your presentation, Mr. Martin.

Mr. Doug Martindale (Burrows): Mr. Chairperson, a couple of questions, the first one on the role of advocates. In the discussion paper on possible changes to legislation, this topic of advocacy was discussed, and the committee reached the conclusion that a formal structured approach to advocacy would undermine much of the natural and informal advocacy which now exists, and which should be encouraged further.

I wonder if you could say again why you think there needs to be advocates, and why it needs to be part of the bill, and what their role would be?

Mr. Martin: I do not agree with the comment that you just quoted to me, Mr. Martindale. I think that we have had traditionally family members doing natural advocacy and friends doing natural advocacy, and it just has not served very well. It has certainly been worthwhile and something, but family members, certainly in the mental health area and I think probably in other disability areas, are sometimes worn out or tired. They are not skilled; they do not have the time to push through and

develop the routes that are necessary to do effective and efficient advocacy.

* (1950)

We have in our own association through private charitable funding provided the services of one advocate in the province of Manitoba, and find that it has been highly successful and very much in demand and very useful. Oftentimes, also I think it has actually saved money for the department, you know, where that sort of traditional kind of circumstance where you see a common-sense solution might be the best one, but because of all the rigours and structures of bureaucracy you cannot somehow implement a common-sense thing. Well, if there is an independent advocate, they can go ahead and push, and they are not going to be chastised by the deputy minister of their particular department, which is just a normal thing to do. I would do that if I were a deputy minister, so if I ever come to that position or whatever, I should have an advocate at arm's length from me.

Mr. Martindale: Well, I will not comment on that. About the mandatory review within a one- to three-year period after the bill becomes law, would you see members of the public participating in a mandatory review, or would it be only internal with the department and if it was members of the public, who should be on it? Would they represent different interest groups?

Mr. Martin: Mr. Chairperson, I absolutely believe that there should be some mechanism to ensure that the public has a chance to be informed about it and to be informed of the issues and some funds put into a prescribed process to get the information out and to get comment and to consolidate it and feed it back into the Legislature.

Hon. Harold Gilleshammer (Minister of Family Services): Mr. Martin, I thank you for your comments here tonight and I think implicit in your remarks the recognition that you and your organization really represent a different client group than the legislation is intended to address. I think that is important.

I am pleased to hear your comments on the process. I think we did take the time to hear many, many Manitobans on this issue. I am pleased to hear you characterize this as a step forward.

Finally, your comment on a mandated or incorporated review process within the legislation, while that is not there, I think I can assure you that this is the type of legislation, in my mind, that will be reviewed on an ongoing basis as we see how it works, as it applies to the people it is intended to serve. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Martin.

Mr. Martin: Thank you.

Mr. Chairperson: I will call on Dale Kendel and Allistar Gunson.

Mr. Allistar Gunson (Association for Community Living, Manitoba): Good evening, Mr. Chairperson, my name is Allistar Gunson, and I am the first vice-president of the Association for Community Living, Manitoba. I am on your list as a co-presenter with Dale Kendel, our executive director. Mr. Kendel is in the audience and I will be making the presentation. We will both be available to answer questions if there are any after the presentation.

I would also like to take this opportunity to acknowledge in the audience the presence of our President, Ms. Bev Penner to my right. Beside her is Ms. Moira Grahame, a past president of the association who is also a member of the review committee that I will be referring to in the course of our presentation. To my left is Mr. Kendel and Mr. Reg Malanchuk, who is the treasurer of the association.

I believe, Mr. Chairperson, that members of your committee have received a fairly lengthy written presentation. There is always a risk that when one presents the written presentation and then presents it orally that the audience will give in to the temptation of reading at a different pace and at different locations than the verbal presenter, so if anyone is so inclined, perhaps I should explain a couple of things.

At the beginning, there is a pink page which is the preface page or title page to the presentation I will be giving. I will vary in my verbal comments from time to time from the written presentation. Behind the green page is a copy of the review committee report. We were not certain whether members of this committee had all received a copy of that report, and, therefore, we have provided it to you in its entirety, with the exception of the appendices which were attached to the report. Those appendices I believe were lists of people who made written presentations, the 65 written presentations, as well as a list of pieces of

legislation identified by the review committee that might require consequential amendments.

Then lastly, behind the blue page is a document entitled "Minor Criticisms of Bill 30," which goes on for some four and a third pages. That will form part of the presentation, and for those members who so wish could form the basis of proposed amendments to the legislation.

Mr. Chairperson, the Association for Community Living is an organization representing people who live with a mental handicap, as well as their families and friends. We are a support group and provide supports, training, education and other resources to Manitobans across this province who may live with a mental handicap or who may be their family members or friends. ACL in Manitoba consists of 14 local associations spread across the province. Nationally, the Canadian Association for Community Living represents 400 local associations and 12 provincial and territorial associations, and our national organization is amongst the country's 10 largest charitable organizations.

Mr. Chairperson, it might be helpful at the outset to identify who it is we are talking about and who it is we are attempting to help through this legislation. We appreciate that like many fields, this one may be perceived as being so laden with jargon that some people may be confused.

Bill 30 is expressly applicable to people with a mental disability. In the ACL movement, we often use the term mental handicap. Previously, the term used was mental retardation. Other people use terms such as intellectual disability. The important point here is that we are referring only to those people who live with the condition which all of those terms I have outlined are attempting to describe.

Terminology acquires connotations, and over the years, society has been attempting to come up with a term which does not connote negative or demeaning values. It is most gratifying to see that the people who are leading the resistance to old fashioned and demeaning terms such as mental retardation are the very people to whom such labels have been applied. People living with a mental handicap are standing up and objecting to being labelled in ways that make them appear to be lesser human beings or appear to be incapable of caring for themselves. People living with a mental handicap are telling the rest of Canada that they want to be respected and valued as equal members of our society, and they are very much resisting labels such as mentally retarded. Therefore, this evening and for the purposes of this presentation, I will be using the terminology which has been adopted in Bill 30, which is that of mental disability.

(Mr. Jack Penner, Acting Chairperson, in the Chair)

So what is a mental disability? This term attempts to describe those people who need extra time to learn and who take extra time in making decisions. That is not to say that people with a mental disability cannot learn or cannot make decisions. Their ability to do so may be impaired in part so that they require extra time to perform these functions.

The risk of using a term like mental disability is that people who are called mentally disabled will be lumped together under one label and viewed as having the same limited level of ability regardless of their individual abilities. People living with a mental disability do not have all the same levels of ability or disability. Some live in institutions and some live in the community with supports, and many of them live in our community and are not even identified as being mentally disabled. Therefore, when we use the term mental disability, we must avoid the danger of applying certain presumptions as to ability or lack of ability to everyone who has been so labelled. We must be aware of the fact that the term covers a whole range of levels of ability and that we need to look at each individual to determine the extent of their abilities and their needs.

Mental disability is a condition. It is not an illness. Some people with a mental disability, like the rest of us, may also suffer from a physical illness or a mental illness. Some of them may also live with a physical disability, but physical or mental illness or physical disability has nothing to do with having a mental disability.

So what has changed that has brought on this new legislation? First, we have a different understanding of what constitutes a mental disability. Secondly, we have a society that now is more willing to accept people with a mental disability back into the community and insists that we provide the supports and opportunities to enable community living. Thirdly, we have the

Charter of Rights and Freedoms, which enshrines in our Constitution certain inalienable rights for all Canadians and which prohibits discrimination by governments on the basis of mental disability.

* (2000)

Let us understand, Mr. Acting Chairperson, exactly what we have been dealing with as our legislation in Manitoba until now. The legislation applying to people living with a mental disability is currently Part II of The Mental Health Act. Part II is basically The Mental Defectives Act of the 1930s. The Mental Defectives Act was, to a large extent, the adoption in this province of the Mental Defectives Act of 1913 of England.

In other words, our legislation today is not that much different than and in some cases is even identical to English legislation of 80 years ago. Much has changed in 80 years. Our medical sciences bear little resemblance to what was practised then. Our social services bear little resemblance to what was done then, and our understanding of mental disability and our dealings with people living with a mental disability bear little resemblance to what was the case 80 years ago.

But, and most unfortunately, our legislative framework for the rights of and the supports and services to people living with a mental disability have tremendous resemblance to the legislation of 80 years ago. That is why new legislation is far overdue.

In May 1991, the Minister of Family Services (Mr. Gilleshammer) established a review committee on legislation affecting Manitobans living with a mental disability as vulnerable persons. The membership of the committee consisted of Mrs. Gail Watson as chair, four representatives from the community appointed by the minister and four representatives of the government, two being from the Department of Family Services, one from of the office of the Public Trustee and one from the Executive Council office.

In December 1992, the review committee presented its report to the minister, setting forth 46 recommendations on what should happen to legislation in this province. The process by which the review committee arrived at its recommendations is an important one. First, the membership of the review committee represented a number of interests and concerns both in the community and within the government. It is important to note here that the review committee's report was unanimous.

Second, the review committee had the benefit of studies and legislative initiatives in a number of provinces and in the United States.

Thirdly, and most importantly, the review committee conducted a province-wide consultation on these issues. This consultation started with the publication by the committee of a discussion paper of which 1,500 copies were distributed across the province to interested parties. The review committee then conducted a live consultation session by satellite with groups in 21 centres spread across this province.

The committee then held public forums in Dauphin, Brandon, Portage la Prairie, Stonewall and Winnipeg to solicit comments and reactions. The committee also received and reviewed 65 written submissions. Therefore, once the review committee came to its unanimous, final report, it had completed an intensive consultation across the province and an intensive review of the state of thinking of this field in the country.

What the review committee recommended had already received substantial public support through the consultation process. The review committee's unanimity did not come easily. There are strongly felt and debated issues in the report, and unanimity could only be achieved with the compromise on the part of all concerned and their willingness to achieve what was recognized as a major breakthrough in attitude and in approach, which at the same time would be feasible for government implementation.

Mr. Acting Chairperson, I would like to list now what I consider to be the highlights of the review committee's report.

Firstly, the report identified at least 16 important criticisms of current legislation and recommended the repeal of the application of The Mental Health Act to persons living with a mental disability. Secondly, the report annunciated 10 basic principles by which any new legislation and the delivery of services would be guided.

The review committee believed these principles to be so important that it recommended they be incorporated into any new legislation affecting people living with a mental handicap and that such legislation provide that it be interpreted in accordance with these principles. In fact, I

consider these principles to be so important that they deserve to be read here, and I would read them as follows:

1. All adults have the right to self-determination as reflected in the Canadian Charter of Rights and Freedoms. Rights, freedoms and dignity shall be respected and protected under the laws of Manitoba. Every citizen of the province has the right to freedom of association, the right to life, liberty and the security of the person, and the right to equal protection and equal benefit, both before and under the law.

2. All adults are presumed to have the capacity to make all decisions affecting themselves unless clearly demonstrated otherwise.

3. All adults have the right to fundamental justice in all matters affecting their rights including access to all information, the right to a mode of communication appropriate to the adult, the right to be heard, the right to appear with advocates and counsel, the right to receive reasons for all decisions made, and the right to an unbiased decision-maker.

4. All adults should be enabled to make decisions. Where an adult requires personal support in making a decision, every reasonable effort shall be made to provide such support. The form of support can be the advice, advocacy, support and affection of family and friends chosen by the adult. All adults shall be given the opportunity to express themselves in an individual way and to the fullest extent possible.

5. Every effort should be made to determine the adult's decisions and to enhance individual choice with the support of family and friends chosen by the adult.

6. Any intervention by the law in the decision-making process of an adult shall be the least restrictive and intrusive form of support, assistance or protection and shall relate directly to the needs of the adult at that time;

7. Where support is necessary in making decisions, interdependent or supported decision making through the advice, support and affection of family and friends chosen by the adult shall be recognized and validated.

8. In order to respect and preserve the legal rights of adults, any legislative or legal response that establishes a substitute decision-making process shall be invoked only as a last resort and must be based on evidence that the current practice is no longer empowering the adult. The determination by a hearing panel of a person's need for a substitute decision-maker shall be personalized, comprehensive and involve those who are important to that adult's life.

9. A high priority of government shall be to provide adults in need with support and services which allow for independence, realization of capabilities and self-determination. Supports and services provided by government shall be arranged in a manner which minimizes legal interventions and upholds an adult's rights to self-determination and participation.

10. All adults have the right to privacy in the consideration of matters relating to their lives and lifestyles, except and only to the extent that disclosure to others is reasonably necessary for the operation of the lawful procedures provided for in the legislation.

Mr. Acting Chairperson, turning back to the highlights of the report, highlight No. 3. The report, consistent with the principles I have just read, provides for intervention into the lives of people living with a handicap only when required and only to the extent required. That is why the report and Bill 30 apply only to people living with a mental disability who are described as being vulnerable, that is, require supports to meet basic needs regarding their health care, personal care or property and financial affairs. If someone lives with a mental disability and does not require supports to meet these basic needs, then the law should not and need not apply.

Highlight 4. The report recognizes the existence and importance of supported decision making. Supported decision making is the process by which people who require some assistance in making decisions receive that assistance from those whom they trust and respect. This is to be sharply contrasted with the current law which proceeds on the approach that if one has some difficulty in making decisions, then all rights to make decisions should be taken away.

* (2010)

We all practise supported decision making. We all consult other people when we make decisions. The bigger the decision, the more we tend to consult. We will often consult our spouse, our other family members, our friends, and if

necessary, our professional advisers on many questions based upon the nature of the decision we have to make and the circumstances.

People living with a mental handicap are no different in this respect. Because many of them are not as good in making decisions as some of us are, they may rely more often on others for advice and support. This is a very natural process for all of us, and the review committee calls it "supported decision making."

I like to tell the story, Mr. Acting Chairperson, of when I go shopping for a car, and I will probably be doing that again very shortly. When I go shopping for a car, I take my brother with me, and I take him with me because he knows a lot more about cars than I do and he is also a lot better at dealing with car salesmen than I am. I have this temptation of walking onto the lot and buying the first thing that is coloured red, and he manages to dissuade me from that. But the fact that I rely upon my brother, I think, is very typical of how people make decisions, how we consult with others. I think it is very much the same for people who may have a mental disability.

Supported decision making also encompasses the issue of communication. Some people may understand the question and issue and have formulated a response but may have difficulty in expressing or verbalizing that response. People around such a person, like their friends and family, are often in the position to determine what that response is and to communicate it or verbalize it for that person. The taking away of the right to make decisions about oneself and giving that role to another person is called substitute decision making, where the decisions of one person are substituted for the decisions of another.

Substitute decision making is what The Mental Health Act currently provides for. The public trustee or private committee is appointed to make decisions on behalf of another who is deemed to be incapable of making those decisions.

The review committee was sufficiently concerned about the importance of supported decision making, and the importance of avoiding any possibility that supported decision making would be overlooked in favour of the more drastic substitute decision making, that it recommended a number of things.

Firstly, in recommendation No. 9 of its report, the review committee stated that supported decision making should be recognized in legislation and continued as a natural process for adults to make decisions, and that members of the support network be allowed and encouraged to participate in the development of the individual plans for services and in the mediation and appeal processes referred to in the report.

Secondly, in principle No. 8, the review committee stated that substitute decision making should be invoked only as a last resort and where there is evidence that the current practice is no longer empowering the adult.

Thirdly, Mr. Acting Chairperson, in its recommendation 19, the review committee again referred to substitute decision making as a last resort and set out a number of procedural requirements so as to ensure that it would, in fact, be a last resort. This includes the requirement for it to be shown that support networks and other less intrusive means are not working and that reasonable efforts have been made to try and make them work.

Highlight No. 5 of the report is its recognition for the need for protection of people living with a mental handicap and who are vulnerable to abuse and neglect by others. The committee recommends a method for dealing with these situations and the mandatory obligation on service providers and on government staff to report cases of abuse or neglect which they may be aware of.

Six, the report accepts the use of substitute decision making only as a last resort and in very well-defined circumstances. The process by which a substitute decision-maker can be appointed is much more user friendly by moving the hearing and appointment processes away from the courts and into the hands of hearing panels and a vulnerable persons' commissioner.

Lastly, Mr. Acting Chairperson, the report calls for the creation of the position of vulnerable persons' commissioner with the responsibility of not only administering the process of appointing substitute decision-makers, but also and importantly, the duty of promoting the statement of principles and ensuring that options for supported decision making and other alternatives have been fully explored.

Much reference is made in my presentation tonight to what is in the review committee's report. ACL supports the recommendations of the review committee because we have seen the process

which has given rise to them. We have seen the work and efforts of other jurisdictions. We have heard the words of support of many Manitobans for the direction which the committee took, and we recognize the process, negotiation and compromise which led to a report acceptable to all of its members and patently feasible for the provincial government to implement.

Let us now, Mr. Acting Chairperson, turn to Bill 30. ACL views Bill 30 with mixed emotions. We are pleased by the introduction of this bill because it represents a long overdue revamping of the legislation. We as a province can no longer get by with what is basically 80-year-old outdated British legislation, and any other field to utilize legislation of that vintage would be held up to public ridicule.

We recognize that the fact that this legislation has made it this far, and I refer to Bill 30, represents a commitment and a tremendous amount of effort on the part of the Minister of Family Services (Mr. Gilleshammer). We believe the minister deserves public credit for this.

On the other hand, we are disappointed that Bill 30 represents a missed opportunity. It is a missed opportunity because it only reflects part of the thrust and intent of the review committee's report. There are a number of important issues which are dealt with in the report but which are dealt with in an incomplete manner or not at all in Bill 30.

I would like now Mr. Acting Chairperson, to outline our major concerns with respect to Bill 30. Our first concern is that the statements of principles which the review committee considered to be so important and central is missing. There are some statements akin to some of the principles in the recitals of Bill 30. There has been a government policy statement issued referring to supported decision making, but there is nothing in the body of Bill 30 which is a statement of principles guiding the interpretation and administration of the act as the review committee recommended.

There are already precedents in Manitoba for the use of a statement of principles in legislation. The Child and Family Services Act begins with a declaration of 11 principles and states that the act is in furtherance of those principles. The Environment Act begins with Section 1(1), prior to the definitions section, which sets out the intent and purpose of that act.

The role of the statement of principles is central to any legislation directed to people living with a mental disability. The legislation contemplated by the review committee is intrusive into the lives of many Manitobans. It allows for that right of some Manitobans to make their own decisions to be taken away and to be given to another person.

It allows for the power of government officials to remove some Manitobans out of their homes to be placed elsewhere against their will. It allows the placement or imprisonment of some Manitobans in institutions. It is such a potentially scary abuse of basic human rights that it must clearly set out the strict parameters and guidelines within which these powers can be exercised and the removal of rights allowed.

That is why the review committee called for the statement of principles. In fact, the review committee went further and recommended, in addition, 10 operating principles applicable to core support services, as found in recommendation 12, four principles or requirements for individual plans, as found in recommendation 13, and seven operating principles for the provisions respecting protection from abuse or neglect, as found in recommendation 16.

These various principles will serve in legislation to protect vulnerable people. Let us never lose sight of the fact that Bill 30 will apply to people because they are vulnerable, because they are not necessarily as skilled or as capable or as articulate in recognizing and asserting their basic rights.

Legislation directed at these vulnerable people must be drafted with the greatest of caution and care so as to ensure that those who are less able to care for themselves and their rights are not unduly, unnecessarily or unfairly deprived of the right or ability to live and to live as members of our community.

The legislation contemplated by the review committee and the statement of principles are inseparable. Without the principles, the legislation is not what the review committee intended, and we are concerned about the dangers which may develop as a result of the omission.

Our second major concern, Mr. Acting Chairperson, is that in our view, the greatest achievement was the recognition, understanding and importance which it gave to the concept of supported decision making. As more recognition is

given to supported decision making, correspondingly, a lesser role is given to substitute decision making.

* (2020)

(Mr. Chairperson in the Chair)

Supported decision making is a natural process. It is consistent with the principles of self-determination, presumption of capacity and empowerment to make one's own decisions. That is why we are most pleased to be advised of the amendments to Sections 5.1, 48 and 83 of Bill 30 which are to proposed by the minister so as to give better recognition to the role of supported decision making and its role as being more desirable than substitute decision making.

Most regrettably, a person who reads Bill 30 without those proposed amendments would be given the strong impression that it is about substitute decision making. Of the 160 sections in the bill as it presently reads, other than consequential amendments, 130 deal with substitute decision making. In fact, Bill 30 could have been called the substitute decision making act.

Our third major concern, Mr. Chairperson, has to do with the application of The Mental Health Act. As I indicated earlier, the review committee recommended repeal of the application of The Mental Health Act to persons living with a mental disability. However, Bill 30 effectively preserves the application of The Mental Health Act. Section 3 grandfathers its application to persons in the psychiatric facility. Subsection 169(3) amends the definition of a mental disorder under The Mental Health Act to exclude a disorder due exclusively to a mental disability. In other words, if there is any element of mental illness, no matter how small, then The Mental Health Act will apply.

Subsection 169(8) excludes court-appointed committees under The Mental Health Act only where there again is no element of mental illness. If one views Bill 30 as a positive step for people with a mental disability, then it is unfortunate that Bill 30 has at the same time left the door open for people to attempt to utilize the provisions of The Mental Health Act which has less protection of rights and is not really appropriate or applicable. Therefore, Bill 30 establishes two separate legislative schemes affecting the mentally disabled—Bill 30 and The Mental Health Act. Unless good reason can be given otherwise, which we have not seen, Bill 30 should be the one that prevails.

Our fourth major concern, Mr. Chairperson, is that one of the criticisms which the review committee made of current legislation governing the provision of support services to people with a mental disability is that there is no right of appeal.

The review committee itself made three main points about support services—firstly, that they should be designed and implemented through an individual plan; secondly, that there should be provisions for mediation where disputes arise; and thirdly, there should be a right of appeal.

We are pleased that Bill 30 reflects the first two points, but it does not necessarily reflect an effective right of appeal. Section 15 of Bill 30 provides for appeals, and I quote, unless resolution of the dispute could involve an increased allocation of funds for support services or a change to regulations or policies.

Section 19 of the bill goes on to impose these same restrictions on the appeal board in the making of its decisions. In other words, what is important here is that the bill deals with the issue twice. It deals with it laterally, that the appeal board cannot make decisions that have certain impacts, i.e., that change policy or require an additional allocation of funds, but it firstly says that you cannot even file an appeal which could, and the word is "could," involve a change in policy or an increased allocation of funds.

If one were to concede for a moment that the appeal board should not have the ability to increase allocation of funds or to change policies, the problem is that Section 15 dealing with the right of application goes further. It is the use of the word "could," and I say that once again. It allows a member of the Department of Family Services to prevent appeals even being made because of the fact that there is a possibility that this might involve a change in policy or a possibility that it might involve an increased allocation of funds.

Mr. Chairperson, our fifth major concern is that unlike other provisions of Bill 30, Part 3 of the bill dealing with protection and emergency intervention has no provision for appeal. This is a serious omission because of the extent of the emergency powers available under Part 3.

Under Section 25 of the bill, if the executive director, that is, the department, believes on reasonable grounds that certain conditions exist, then the executive director can enter a person's home, use reasonable force, remove the person, require the police to help and maintain this emergency action for up to five days. There is nothing which appears to stop the executive director from repeating this emergency action again and again so as to extend it well beyond five days.

There is no right of appeal. A person who wishes to challenge the actions of the executive director must get around the privative provisions of Section 161 of the bill and show that the executive director did not act in good faith. The executive director may be wrong in determining that a particular individual is a vulnerable person at serious risk and in putting that person in an institution in Portage la Prairie for a series of five-day stays, but as long as the executive director is acting in good faith there is a good chance that there is nothing legally which can be done on behalf of the person, according to Bill 30. This is procedurally wrong, it is patently unfair, and I submit that it clearly contravenes Section 10 of the Charter of Rights and Freedoms.

The emergency provisions of Part 3 are important but without some provision for appeal and accountability they are outright dangerous.

There are in addition some 39 minor concerns which we have about Bill 30 and which are attached to the written presentation, and which I may touch on the highlights thereof at the end of my verbal presentation.

Mr. Chairperson, I turn now to ACL's position on Bill 30. ACL recognizes that many of its concerns are based on what the wording of Bill 30 is both capable of supporting and not capable of supporting. Because of this, ACL believes that instead of opposing this bill, Manitobans with a mental disability would be better served by its passage. This is not perfect legislation, and there are many issues that require review—monitoring, education and evaluating of the results of implementation.

We feel it is extremely important for the bill to provide for a formal review of its operation with a mechanism for such further amendments at that time as may be found to be necessary. A Manitoba precedent for such a provision may already be found in Section 56 of The Freedom of Information Act. A similar arrangement, in terms of a legislative review, was agreed to by the government of Ontario in connection with its legislative package respecting people with a mental disability, which included its advocacy act which was passed a year or so ago.

Without such a review provision, we must live with the prospect that our concerns about Bill 30 may come true, and we might have to wait another 80 years for change. A provision for formal review would at least give Manitobans with a mental disability and their families and friends some comfort.

We feel a sense of lost opportunity. There was, and still is, the opportunity for the government to achieve great things. The review committee's recommendations represent what is desirable and what is doable. The government, if it implements the necessary changes so as to comply with the review committee's work, will have a piece of legislation which will be at the leading edge in Canada. Such legislation would attract the attention of other groups who will want to seriously consider that the legislation apply to their constituencies as well.

* (2030)

Should our major concerns prove over time to be unsubstantiated, Bill 30 is a major leap forward towards respecting rights, ensuring dignity and providing supports where required to people who are vulnerable and who live with a mental disability in Manitoba. Thank you, Mr. Chairperson.

Oh, Mr. Chairperson, before I conclude, I guess I should turn to the end of the written presentation, just very quickly. I would draw attention—this is the last five pages of the written presentation following the second blue page. We have identified here a number of questions and concerns which have not been placed in the main body of the presentation. I think these are important matters which merit the attention of the committee.

The first one deals with the fact that if someone acquires a mental disability after age 18, under the review committee definition they were included as a vulnerable person. Under the definition in Bill 30, they are excluded.

Section 5 deals with a transitional feature with respect to people who are about to turn 18. What it does allow is for an order to be made on the basis

of a situation that is possibly up to 12 months old, before that person does turn 18.

Item 3 echoes a concern raised by Mr. Martin before me. There is no mention of a provision for advocates in the bill. In the written presentation, Mr. Chairperson, I quote recommendation 10 of the review committee's report which calls for the recognition of advocacy in legislation, and then I refer to recommendation 11 which goes on to call on the department to have the capacity either to arrange for or to contract for advocacy services. We have a problem that if the bill does not recognize advocates, why should the department?

Item 4 dealing with Section 10(1) deals with a little procedural problem with respect to individual plans.

Item 5 deals with the fact that there is no provision for any ongoing review or variation of individual plans, even though in recommendation 13 the review committee said that they should be assessed at least annually.

Item 6 deals with the role of members of support networks and advocates in the procedural processes under the act and the fact that they are not really referred to or provided for.

Item 7 deals with giving a written copy of an individual plan to the person in respect of whom that plan has been prepared, so that person can have a copy of it.

Item 8 deals with a procedural problem with respect to the mediation provision. The mediation provision does not seem to cover the refusal or failure of an executive director to come up with an individual plan.

Item 9 deals again with the issue of who can start the process, and I refer to recommendation 14 of the review committee's report.

Item 10 deals with the matter of appeal, and if I remember correctly, Mr. Chairperson, I believe that item 10 may be addressed by an amendment which I understand may be proposed by the minister and which I did not refer to in my remarks earlier, if I may stand corrected on that one.

Item 11 has to do with the ability of the executive director to limit documents which have to be put forward in respect to an appeal of the decision of the executive director.

Item 12 is an important one dealing with the mandatory obligation to report abuse or neglect. The review committee had recommended that the obligation of mandatory reporting be on both service providers and on government staff, because it will often be government staff who will be in the position to determine the state of affairs that would lead one to conclude that there was abuse or neglect. Bill 30 only refers to service providers. In discussing this point with departmental staff, they take the position that service providers includes government staff, and with respect, I am not sure I agree with that interpretation.

Item 13. It is possible for the executive director, when he or she proceeds under Section 21, I believe, with respect to abuse or neglect, to come to a decision without ever having looked at, met or interviewed the vulnerable person.

Section 24. There is an issue, Mr. Chairperson, of what happens if the department uncovers criminal abuse or neglect. The review committee recommended that the, quote, appropriate action, be taken, by which I understand the police should be told. If the Criminal Code has been violated, then the police should be told about it, but Section 24 would appear to make the matter discretionary on the part of the department.

Item 15, removal from a situation—this has to do with abuse or neglect. The sections, 25(1) and (2), twice refer to removal from an abusive or a neglect situation, which would lead one to a strong conclusion that this is the primary response. That is what the Legislature is saying. Where there is abuse and neglect, remove. It seems to me that if I am a vulnerable person living in my home, and a care worker who is hired to come in and take care of me is abusing me, remove the care worker. Do not remove me from my home, yet there is that implication in the wording of those sections.

Item 16 has to do with the issue of to whom does the vulnerable persons' commissioner report. Recommendation 25 of the review committee was that the commissioner should preferably be appointed to and responsible to the Legislature and in the alternative, appointed by the Lieutenant-Governor-in-Council, reporting to the Minister of Justice with an annual report to the Legislature. There is nothing on this, I believe, in the bill.

Item 17. We make the point, and it is not dealt with either expressly or otherwise in the bill, that it is important to us that the executive director and the

vulnerable persons' commissioner not be the same person, whether that happens through appointment or through delegation of authority.

Item 18. We point out that the role and authority of the commissioner under Section 29 is quite different from that which was contemplated by the review committee. The bill's version of the commissioner is an administrator of hearing panel processes who has the additional power to support substitute decision makers upon receipt of the panel's recommendations.

The review committee's version of a commissioner goes well beyond that and calls for an official who not only does the administrative functions, but also who will ensure that the process works fairly for all persons concerned. That is why I refer to recommendation 26, Mr. Chairperson, which lists 16 duties of the commissioner including the promotion and furthering of the statement of principles.

I refer in item 19 to a problem where it appears that the commissioner arrives at an opinion in respect to matters subjectively, not objectively.

Item 20 deals with the issue of evidence which is excluded by law as being irrelevant, inadmissible or unreliable yet appears to be acceptable for a hearing panel.

Item 21 deals with the problem of whether or not a vulnerable person who is present at a hearing panel where evidence will be heard and decisions made on whether or not a substitute decision-maker should be appointed, whether that vulnerable person is entitled, as of a right, to be able to understand the process. I had, I think, in my comments previously referred to a section of the Charter of Rights and Freedoms where that is assured by the Charter but is not necessarily assured by the bill.

* (2040)

I will skip over items 22, 23, 24. These are all procedural matters, Mr. Chairperson, which I believe are items that should be addressed when the bill is examined.

Again, in item 26, the process under the bill which follows basically the process identified by the review committee is that an application is made to the commissioner for the appointment of a substitute decision-maker. It is the job of the commissioner at that point to do a preliminary investigation.

The commissioner has the power of dismissing vexatious applications, sort of a screening process, and the commissioner also has an obligation to make certain inquiries and then make certain decisions, dismiss the application outright, dismiss the application but talk to the executive director, proceed with the application toward a hearing panel, and so on. Well, it would be nice if the person who is the subject of that application would know that he or she is being investigated and that steps may be taken toward the establishment of a hearing panel.

Item 27 on page "d" deals with matters which should be the subject of the preliminary investigation, none of which, I believe, are reflected in the bill. If the commissioner is going to make a preliminary determination as to whether or not this is an application that should go forward, perhaps it would be a good idea to make the commissioner address the issue of who is the support network, who is the family, who are the advocates for this person, and these other items which I have listed in No. 27.

As I am running down the page, Mr. Chairperson, there are sort of interesting points of procedure and process in law which I believe should be addressed and which I will not take up the committee's time going through in detail. Turning to the last page, I believe that those are all procedural items. So those conclude my comments with respect to the bill.

Again, in summary, ACL Manitoba believes the bill should be passed because it does represent an improvement of the law, but ACL Manitoba believes that changes are important and are needed for this bill to make it a better piece of legislation, and I have outlined in those major concerns I have listed the amendments that we think are vital. I have just gone through a number of the minor concerns, as well.

Thank you.

Mr. Chairperson: Thank you for your presentation, Mr. Gunson. Questions?

Mr. Martindale: Thank you very much, Mr. Gunson, for a lengthy and comprehensive brief on behalf of ACL.

I take it you feel very strongly, or your organization feels very strongly, about the review committee recommendations. Perhaps you could tell me why that is so. Is it because they were

unanimous and because there was a lot of public consultation? What is the reason that you put so much emphasis on the review committee recommendations?

Mr. Gunson: Mr. Chairperson, I could have come here tonight and given you my wish list on behalf of ACL of what we would really like in the ideal world, but I am realistic enough to know that firstly, the government would say, no, period. I am realistic enough to know that for major changes in the law, the government looks to see where there is public support or a mandate for those changes.

ACL is prepared to live with the review committee report, has lived with it and still supports it. That is because we believe that what the review committee report calls for is good. We believe that it is a process that works or will work, and we believe, quite frankly, that it is something this government could live with.

Mr. Martindale: Do you believe this bill would be improved if the statement of principles were a part of the bill, and if so, could you explain why and what the significance is?

Now I understand that it makes a difference in court, but I think you are a lawyer, and you could probably explain to me why that is important.

Mr. Gunson: Mr. Chairperson, I had spoken in the middle of my presentation to the fact that what the review committee report calls for, even though I do support it, is potentially dangerous and potentially abusive and potentially allows for the taking away of people's rights.

I had said that the system that the review committee calls for and the statement of principles are inseparable. Because the statement of principles tells us as members of the public, tells us as vulnerable persons, tells us as people who work with vulnerable persons, tells us as service providers, tells us as government employees and tells us as the courts that though this bill does allow for large, wide draconian powers, they have to be exercised with great care, with great discretion and only in very limited circumstances. That is why it is so important for us that that statement of principles be there as much as possible in the legislation, so that it is clear that the powers that are there can be only exercised in certain ways at certain times.

Mr. Martindale: Could you explain to me what difference that makes when you go to court, whether those principles are in the Preamble or the bill?

Mr. Gunson: Well, I guess my first concern, Mr. Chairperson, is that what is in the Preamble is only a part of the principles, and I would like to see all of the principles there. Secondly, I am concerned, though I am not a legislative draftsperson, that notwithstanding section whatever of The Interpretation Act, because certain principles appear in somewhat tentative language in the Preamble of an act that they just do not have the impact on the practice under the act in the interpretation of the act that they would have if they were in the body of the act. That is why, for example, in my presentation I referred to The Environment Act and to The Child and Family Services Act, both of which have the principles in the act.

Mr. Martindale: I believe it was one of your minor recommendations that the vulnerable person's commissioner report to the Legislature. Can you tell us what other advantages you see to that besides the one in your brief?

Mr. Gunson: Mr. Chairperson, I guess the role that we envision for the commissioner is a role that approaches almost that of an advocate, that this is a person who not only sees to the function of the system but sees to the function of the system in a fair and equitable manner and that in the recommendations in the review committee's report, there is a long list, as I indicated earlier, of all those duties that we saw the commissioner should be fulfilling. I am wondering if maybe I could just locate them quickly.

Recommendation No. 26 of the review committee report, and I will just read the beginning portion of it. That the major duties of the commissioner's office be as follows: to promote and further the statement of principles and operating principles of the legislation; to establish guidelines for the operation of the hearing panel—and moving along—to ensure an advocate is involved if the adult wishes; to ensure that appropriate and thorough attempts to ascertain the adult's wishes have been made; to investigate complaints, and so on.

So those are just some of the items, Mr. Chairperson, but, again, it is the role of the administrator. This is not just an administrator. What the review committee report contemplates is

not just an administrator. It is an administrator with a responsibility to ensure fairness and equity and that the system does function in accordance with the statement of principles.

* (2050)

So having that image, Mr. Chairperson, of what the role is of this commissioner, then the committee asks itself the question, well, who should the commissioner report to? If the commissioner reports to the Minister of Family Services, with respect to the minister and regardless of the incumbent of that office, it often will be to a certain extent the minister's department that is involved with the individual, and it is perhaps in some cases involved whether or not there is a support network in place or an advocate in place within the contemplation of the review committee.

It is felt that the commissioner, because of the extent of those duties and responsibilities, must have an accountability to someone other than the minister involved in this field. That is why the primary recommendation was, appointed by and reporting to the Legislature, which I believe is the requirement for the Ombudsman, and the sort of compromise that was suggested in the recommendation was that, if not that, then appointment by the Lieutenant-Governor-in-Council with a report to the Minister of Justice.

To my understanding, Mr. Chairperson, no negative reflection was intended for this or any future Minister of Family Services. It was just felt that in order for there to be fairness, not only fairness to be done but seen to be done, that there should be that sense of independence in terms of to whom the commissioner reports.

Ms. Avis Gray (Crescentwood): I do not have any questions. It is a very thorough brief and I would like to thank ACL for their excellent presentation and all the work that has been put into this. Thank you.

Mr. Gilleshammer: I too would like to thank Mr. Gunson for the contribution he has made to this process and to the committee here this evening. I thank him for acknowledging that this is a major step forward in the replacement of legislation which dates back to the beginning of the century.

I am pleased that while the presenter recognizes that there are divergent opinions on parts of the legislation, that the organization he represents is in support of the bill. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Gunson.

Mr. Gunson: Thank you, Mr. Chairperson.

Mr. Chairperson: I will now call upon Theresa Ducharme, please. Just before you start, I noticed you are also presenting or wanting to make representation on Bill 31. Did you want to do both presentations at this time? You can if you like.

Ms. Theresa Ducharme (People In Equal Participation Inc. (PEP)): I would appreciate it because they are complementary to one another.

Mr. Chairperson: Is it the will of the committee to proceed that way? [agreed]

Ms. Ducharme, you may begin.

Ms. Ducharme: Mr. Chairperson, committee members, ladies and gentlemen and all those present. Can you hear me? I do not want anyone to fall asleep, please.

People in Equal Participation Incorporated wish to present our comments and concerns to the committee regarding the report of the review committee examining legislation affecting adult Manitobans living with a mental disability and vulnerable persons dated November 29, 1991. Here we are July 13, 1993. Please document that in your records.

These are our concerns referring to page 10. Recommendation 4 emphatically states that this report be easily understandable to those to whom it is intended. They were not completely successful, Sir and ladies, because I do not understand it, and I am not here as a person who is not vulnerable, because I am vulnerable. I am also physically handicapped and I am mentally challenged.

I believe that every person in this room is in the same category as all of us discussing The Mental Health Act, are we not? Yes, we are. Are we all sleeping, because I cannot hear any person saying yes, no, maybe so. Can I have a comment back, please, because I would like to know if I am speaking to myself, and I like the smile of the Chair.

Please encourage me so I do not get disrupted with all the conversation previous to this because The Mental Health Act from 1913, to me, has not advanced any further than the day it was created on paper, the same paper that I am reading from today by the review committee, the professionals who were there, without consultation and without the input of those who it is, or will be, affected by it.

Principle No. 2 is unclear because the, quote, clearly demonstrated otherwise, is not specific enough as to who and what groups—family, community, professionals. This is not demonstrated. I do not understand it, sir and ladies.

Principle No. 3, mode of communication needs to be rephrased into a more understandable term; define as to the level of language presented such as simple English, grade level understanding, type of media used. I am not sure what you are speaking on, gentlemen and ladies. Whomever put this conglomeration together, I compliment them for spending their time and tax dollars. So it might be—to redefine it so we can understand it, because the first statement says it must be understandable.

Page 12, principle No. 4. No "should," use "must." Drop the whole conglomeration. It says, we shall, we should, we can, you may. Now, why are they frightened to use the word "must?" We must have this; we must have that. You know, I shall meet you today, I shall see you tomorrow, or I can come here or I can do this. I counted how many times throughout the whole review committee submission that the word "must" is only mentioned once where I could hardly barely find it. I said, well, is this not wonderful.

It says on Principle No. 4, use "must," do not leave loopholes. "Adults," the term needs to be defined as to whether it is chronological or mental age is intended. Throughout the whole submission, it mentions adults. We are not sure if you are talking about children, the elderly, the seniors, chronological or what are we talking about, gentlemen and ladies.

Principle No. 5. "Must" instead of "adults," and the definition needs completion. We want to know exactly what type of adult you are speaking on, okay.

No. 6 is the same way. "Must" must be used instead of "shall."

Principle No. 7. "Must" instead of "shall." By what method will this principle be implemented? I am giving you some homework to do, because I did not write everything down because it is very difficult for me to do. So you must read Principle No. 7 and redefine it, please.

Principle No. 8. "Must" instead of "shall." "Must" used here took guts, the only place in the whole presentation.

Principle No. 9. "Must" instead of "shall." Economically and realistically, how will these supports and services be provided and to what level? I am not understanding. You know, every place it says, we must, everyone has the right. I have the right to be here as long as I wish from midnight to two o'clock in the morning. I have the right, but do I have the ability, gentlemen and ladies? Do I have the support staff to assist me? I have the right to be any place and everywhere, but financially do I have that right?

Now, with the recession and everything else, we are not sure if we can even leave our home or whether I am able to go back to a home or whether the mentally handicapped will leave an institution or return to an institution or even have an institution.

Could you please explain it more emphatically and give them back their submission so they can do their homework properly or go back to school, start from Grade 1 and put it in the context that we can understand, please? Okay? I am not here to waste my energy or my time or my physical ability to the best of my vulnerable self. Please? Okay?

I am encouraging everyone of you to accept me because you must include me in The Mental Health Act, because I am mentally challenged and I am also vulnerably challenged and I am physically challenged, so I would like to know if I am included in that new health care act or The Mental Health Act? Because I am not sure what kind of act we are putting together, ladies and gentlemen. Okay?

It was nice of the presenters before me who are here standing up, able-bodied, paid to do so, and I am here as a volunteer, so my job is secure. That is right, that I will always be here, until death do us not, until you possibly see that you must remove me from my position, but there is no position, Sir, because I am here as a volunteer, supporting People for Equal Participation and those who have mental disabilities, those who are financially strapped, and support services are not there. So I thank you for moving me up because my energy and also my patience is running low.

Principle No. 10. Who will determine to what extent exposure to others is necessary? Are we going to call everybody in the family and say, hey, how much of this information is private. Are we

going to determine, or are we going to have everybody behind a desk talking about it and saying, hey, this is private, this is not private, this is for the principle of review, oh, let us go back and make another bill.

Sir, could you please assist my paper and turn it over, love, because I know you are a good man. Thank you. Now, that is how you get volunteers, and that is how you turn the recession and place it back in your lap. So I know you will be making a donation or contribution with every smile and energy that you possibly can, because I am here to acquire volunteers and I know you would love to spend some time with me voluntarily.

* (2100)

Now, Sharon Carstairs stated on June 29, 1993, in Question Period: It is therefore with some consternation that I do not find that statement of principles in the act itself. I understand that that was to be the framework by which all decisions and all authorities would be decided within Bill 30. Why the statement of principles is not framed within the legislation in this particular matter, I do not know.

I would like to answer Sharon Carstairs' question. It is because these principles are unclear, difficult to understand and are not stated strongly enough. Must needs to replace shall, should, may, can, could, would. I am in—I do not understand, please. All the professionals who put it together must come back and consult with those who will be affected by it and put it in my language, darling, because that is why I am here. I hope you do not mind me calling you something sweet like that, because it is very unlikely that I will call you anything else, to put up with, the patience that you have to now, right?

Recommendation No. 6. Now this one—I hope we are all awake—vulnerable person is not the best term. According to Bill 30, Mr. Orchard—I will wait until Mr. Orchard can attend to my needs because I would like his attention. Are we all listening? Like good boys and girls in school? Okay.

Vulnerable persons is not the best term, according to Bill 30. Amendment set by the Honourable Mr. Gilleshammer, vulnerable person means an adult living with a mental disability who would need assistance to meet his or her basic needs with regard to personal care or management of his or her property.

That is on page 6, so I am helping you do your homework.

According to Webster's New World Dictionary, vulnerable is defined as that can be wounded or injured, open to or easily hurt by criticism or attack, subject to increased penalties and bonuses.

Now, I would like to ask if any politician has never had a vulnerable moment. Are we not easily criticized, injured or hurt by comments or statements? We do not have to have a door fall on our head. We do not have to have people throw us around or mentally derange us or physically divert us, right?

Now, are we not all vulnerable? Well, are we all going to be included in the new vulnerable amendments act, please? Because I do not wish to discriminate against any person who has placed this new amendment act together that wishes to make one challenge, and most of all, strong recommendation to rephrase the word "vulnerable" to the mentally- and physically-challenged person so we can be combined together. Because the predecessor before me that spoke mentioned that.

As long as you are mentally retarded, you may only be walking, you are not physically in a wheelchair, you are not an elderly person, but, Sir, I am mentally challenged constantly by the lack of support services. I do not know if tomorrow I will be able to have a bedpan. I am not sure if I will wake up tomorrow or have somebody scratch my nose or physically assist me. So every day is a challenge to me, and I am not mentally handicapped yet, but I have been on a psychiatric ward with a nervous breakdown when I had an aneurysm.

I have had, and I still am in the context of having—and I do have a brother who is unable to go school for 45 years. I have lived with him all my life, and I do not understand how persons walking do not say that they do not have context or contact with people who are not somewhat—the terms used be "turned crazy" or "dumb," or "stupid," or "illiterate," not retarded. Not this not that, but we still use the word, well, you must be crazy. You did not hear me; you did not understand me. That is the opposition or that is possibly the party in office.

But they are all here tonight, do you understand? So we are very, very angry, especially PEP. We have beautiful members who are contributors to society. We have the greatest hearts in the world. Their heads are there. Some are in wheelchairs;

some are confined to institutions. Our PEP members deserve a right and also encouragement. But, economically speaking, we are not sure what the health care bill holds or whether we are going to have everything removed from us.

Because right now I am mentally challenged. My husband is very ill. He is very, very sick. He is unable to care for me. Since February 20 I was to receive 24-hour care from Home Care, but they have not arranged it. So I have had my dog, my little puppy dog, sitting there, and he is still waiting there to press 911 or push the medical alert button. That is how far advanced Home Care has come, because we do not have 24-hour care. I am only able to stay at home as long as my husband, who was physically and emotionally unable to care for me, but he had five bypasses, and the doctor said—and he will not give up his wife because he loves her dearly.

And he says, honey, you go there and you tell every politician I used to be a bus driver, and now I cannot help it. The politicians are saying, oh, how dare you? Do what you can, because we both fall into the category of The Mental Health Act as well as the other act, the health insurance act, because every one of you who do not understand, we are not asking for handouts, we are not asking for change, but you put all this garbage on paper and think you are doing a good job. You are not, because you people who are in office, you are there until the people re-elect another party member. I am not condeming the work you are doing, because every person right now is petrified whether you are mentally or not, because we are all challenged right now by the recession and by the economic restraints.

We are not sure. The doctor last week was changing my trachea tube, and said, Theresa, do it yourself, because I do not want this job no more. But my arms do not work, my legs do not work. The only thing that does work is my mouth, and that is the weapon I am going to use to push everybody aside that I—do I ask you people, they are the ones that will be speaking further.

We have a right to live in the community, but most of all, we have a right, but do we have the ability? Do we have the support services? Do we have the staff? Are any one of you willing to come out and wipe my ass free of charge and do anything without asking for payment in return? You cannot find a person out there that wants to volunteer their services except to come here and make the speech to say, hey, the Assembly, everybody wants to have their committee and their organization stay alive. They want to stay because the government has been free, giving out grants. What is happening to us, ladies and gentlemen?

We had 10 years for the Decade of the Disabled. The Mental Health Act has been sitting on the desk for two years being reviewed, reviewed for what? Use it for ass-wipe, because it is not any further than 1913. Do you know that, that we are going right back to where we were in the first place. Mr. Orchard, I hope I am your roommate one day so that I can lay down next to you, and we can discuss the politics of how you are going to help me—

Floor Comment: Clean up your language first.

Ms. Ducharme: Well, I am sorry, darling, but excuse me, please. Retract that from the Hansard, please. I do not want it mentioned, because I am a lady.

But I am telling you that it has been very hard. I have been sitting here in this building since 2:30 this afternoon waiting to speak tonight to save on transportation. It has been very painful for me. I have to go back to my hubby and say to him, I am your wife, I am able-bodied, the best I can. I cannot breathe, I cannot walk, I cannot do nothing for you, hon, but I have a right to be here as long as I am physically able and emotionally strong. I know you people have a difficult time. I am offering my services, my experience, my volunteer self to help create any changes, but if this Mental Health Act gets passed, using the word "vulnerable," every one of you will have to find room for me in that act, because we are all vulnerable, and the whole act states as mentioned, I do not understand it and neither do our PEP members.

* (2110)

The first phrase itself says, it must be easily comprehensible for those who are affected, and the most embarrassing statement of all, it does not have any statistics except for the gentlemen that said, oh, well, we have this, members, we have that, members, but do they know how many mentally challenged people are out there that this act will or has affected? Does anybody have those statistics? It does not mention any statistics. It does not mention anything, and it is painful to me to say that people have done their homework, but they have not canvassed the whole province, but

when we were having an election, we all know where each person is, that we all know where their address is and how old they are and why they are there and please give me your vote so I can be here.

It is very painful to me that I have to come here and struggle so hard. I asked other members to come and they said, Theresa, they will not listen to you anyway. Why do you waste your time? I said, that is my offer and for all the care that I have received in the past from Home Care, any kind of care, that I am thankful to be alive. I cannot receive the services and return them right now. I have asked over and over again to have a private session with Mr. Orchard, but he cannot meet with me until the House is adjourned. Well, I do not understand, because we do not have 10, 15 minutes. He can meet with the media. He can meet with this, but why can he not meet with a constituent or a member of society that requests that? So if I have to—it is painful to me because there are many questions that I would like to ask that pertain to why it says right here, the mentally handicapped have the right to have independent individual plans. But why? It does not mention a name.

I have a prime caregiver. I cannot stay in the community unless I have a prime caregiver, but the mentally handicapped are supposed to have a case worker. I do not understand the difference from being mentally challenged or physically challenged and why the government holds all of us. Why do the mentally challenged even want to be reporting to Family Services? Why do they not just keep them in a closet because they do not really care? Why do they have to go backwards instead of forwards? We have got a police system. We have got the criminal system. We have got every other system. Why do we need a commissioner? We have an Ombudsman. We have got the government in place. There are so many easy loopholes, and it took four years to put this conglomeration together. I do not understand it, people, and I am not an illiterate person. I am mentally challenged. I am vulnerable because I hurt very easy from criticism of others, and I really am physically challenged myself.

I ask that Bill 31 be rerecognized because at the same time that you support the fact that Morgentaler receives the same recognition that the housekeeping right now also is receiving. Because right now homemakers have been removed. What is the difference if you pay medicare, for people like yourselves to pay for our homemakers and receive medicare in return, because what is the difference if you remove or clean somebody's womb out and you pay Morgentaler to do that yet? You let him get free insurance to do this and pay for his abortions. It does not make sense, ladies and gentlemen.

Could you please reverse so that we can respect the government? We know you are under pressure. We know the challenges that you have to cope with, and we know everything that you are faced with, but you want to be on the right track, you want to most of all be—and the fact that you want to stay in office. You want to get re-elected. You want to do your best, and you are doing the best with what we have right now, but you can do much better. How you do better is by humbling yourself.

I am taking names down tonight, and I would like to know how many of you have volunteered four hours of your precious time to help a mentally-challenged or physically-challenged person? That is my challenge to you. So I will be taking names so that you can come, and I have the names of people who are waiting. It could be housekeeping. It could be anything that we ask because we cannot manage without the fellow helping hands of those who really care. That is why you gave me this opportunity to be here today, and I thank God I had the strength to be here for the vulnerable and, most of all, the mentally challenged person that I am and all the anger that is going on out there with people saying, why are you doing this? They are asking me to phone the unions to see why the unions are charging $28, whether you work eight hours or whether you work 88 hours. Why are the unions causing this? Why is the government causing this?

I am only a human being, gentlemen and ladies. I am not the Lord himself, but I ask that each and every one of you make the right decision upon this act, act 30, and act 31, because they are one and the same. I trust you will make the right judgment.

I thank you for the this opportunity and God bless each and everyone of you. Please stand up so I can see how tall you all are because I feel like standing up after sitting here for 18—see? So there you go. I thank you.

Mr. Chairperson: And we thank you, Ms. Ducharme, for your presentation. Are there any questions of Ms. Ducharme? Thank you very much, Ms. Ducharme, for your presentation.

Ms. Ducharme: Why are there no questions?

Mr. Chairperson: I am just the Chairperson.

Ms. Ducharme: Well, you are supposed to give me your names for volunteer services. Nobody wants to volunteer? Nobody wants to help? Well, I do not know, we are going to have a hell of an election upcoming soon.

Mr. Chairperson: Thank you very much.

Ms. Ducharme: Well, I will ask one while I am here. That is just like the government shoving something in your mouth when you do not want it there, but anyway, I love each and everyone of you and I thank you again. I hope I did not put you to sleep.

Mr. Chairperson: No, not you, Theresa. Thank you very much.

Ms. Ducharme: I will be seeking office in the next provincial election, so watch out for me, love.

Mr. Chairperson: Again, thank you very much for your presentation.

I will now call on Mr. Rod Lauder. Did you have a written presentation, Mr. Lauder?

Mr. Rod Lauder (Private Citizen): No.

Mr. Chairperson: No. Okay, then, you may begin.

Mr. Lauder: Well, it is a pretty tough situation to be in to be following Allistar Gunson and Theresa Ducharme. I think we have kind of both ends of the spectrum.

I want to start by saying that I think prior to addressing comments I would like to make about the act, I want to make just a couple of comments in terms of the dissemination of this act. You know, as far as I can make out from the list of presenters tonight, Theresa, indeed, may be the only person who in the parlance of people with disabilities would represent consumer interests, and that certainly nobody who would be deemed a recipient of services by the Department of Family Services now is going to be making a presentation. I think there is something to be drawn from that and the way this act has been put forward and the job that the department has done in letting people know about it.

* (2120)

I am also concerned because of the cost of someone just to obtain a copy of this act. I went over this afternoon and had to pay $12.45 plus GST for the act. Most people with mental handicaps in this province are on welfare or are very poor, and most people with mental handicaps in this province, if they wanted to go after a copy of this act, would have to go to their income security counsellor and ask for this to be part of their special needs allowance for the year. I do not think that is right.

I do not think that is right when I phone the government department that is responsible for this, and they tell me that all the supervisors within Family Services have received copies of this act and that the supervisors, in turn, are free to make copies of this at government expense for any of the workers in their department. So it seems to me that it is a little unfair that a person with a mental handicap could not get a copy of this for free and would have to go out and use their special needs money for it perhaps, whereas civil servants who are making $40,000, $50,000 and $60,000 a year can get copies of this for free.

I am concerned that at the point this act gets passed, and the assumption is that some form of this act will be passed, that at this point it would appear, in conversation that I had with at least one civil servant, that the primary effort will be indeed an abridged version of this. The assumption will be that people cannot understand the act as it is written or that people, again, would not be given copies of the act as it is written. I think that that seems to represent a peculiar situation.

Then finally, the curious note that Theresa started on was of course referring to the committee's final recommendations in November of '91, I think it was, and the oddity for me was hearing her talk about that, because when I phoned the government officer responsible for answering questions about this act and said could I get a copy of that, I was told no. I had been contemplating today putting in a freedom of information request and was assuming that I would be given an answer no back to that freedom of information request on the grounds that those recommendations would be considered a part of policy under consideration. There seems to be some confusion at least about that. I can certainly tell you the name of the person who told me that I could not get a copy of them.

Having said that, I will do kind of the reverse of what Allistar said and start with kind of some short points. I could only come up with 11, instead of 39, and I kind of refer to these in the parlance of Bill Guest and the old Reach for the Top days of the short snappers.

On page 6, in the act there is a definition of volunteers as being service providers. It seems to me that volunteers ought not to be seen as service providers. It also seems to me that volunteers may include advocates or friends to people and that friends and advocates ought not to be seen as service providers.

On page 10, Section 12, it is a section that relates to a mediation process, but it does not spell out any way that there might be a way to ensure that there would be impartiality about this. How do we know that the person who gets appointed will be impartial?

On page 17, Section 29, it says in three parts of Section 29, (b), (c) and (d)—and, unfortunately, this table is so small it is kind of hard to balance everything out here. But on each of those parts it says that the commissioner need only provide information upon request to people. It seems to me that this should be required, that people ought to get that information. When I was down in Massachusetts recently, you could not walk into a nursing home, you could not walk into an institution without seeing plastered in elevators and in prominent places, these are your rights. This is what you can do if you want to, for example, access a substitute decision-maker.

The way the act reads now it is something that will only happen if somebody has the foresight and knowledge to ask for it. The obvious thing there might be to say that it ought not to be upon request, but there ought to be some sort of provision to build it in, that people will be informed about this in the places that they work and in the places that they live.

On page 18 and in Section 32(4), I would call the Henderson Directory for con artists clause. It is a clause that allows people to pay a fee and receive a copy of the registry. Part of that registry is a list of vulnerable people. If I am a con artist, I think that is a great way to go about getting a list of all the vulnerable people in this province. That is the way I read that act because it says that the registry will have all the things that are in a few of the sections ahead of it.

Page 19, Section 33, I would suggest that it makes sense that a hearing panel ought not to be people who can sit there forever, that they ought to be people that there is going to be some turnover in that. The way it reads now, it would appear that these terms can be fixed by the Lieutenant-Governor-in-Council and maybe reappointed. There is no provision that people could not sit on that hearing panel forever.

Page 20, Section 35(3) relates to people who are not eligible to sit as a member of the hearing panel, and all relate to the idea that they should not have a connection to the person for whom an application is made. I would suggest that none of these things should apply for anyone who has a connection to the person who is making the application as well, so that you ought to be connected to the person who is labelled vulnerable. You ought not to have a connection to the person who is going to be the substitute decision-maker as well.

Section 36, page 21, what is a reasonable amount of time? At worst it seems to me it ought to be spelled out in the regulations and cannot be left up to the discretion of the commissioner or anybody else. Time frames seem to be lacking in several other places in the act as well. For example, Section 43(1) on page 23, Section 49(3) on page 25. On page 28, Section 53(2), a person who is a volunteer or a student placement to an agency is seen as not being in a conflict of interest. I would beg to differ.

I would say that people, students, who are placed with an agency or volunteers to an agency may have their primary loyalty to that agency and not to the person in question. The idea of conflict of interests, the way I understand it, is that people should not have conflicting interests. If I am a volunteer to that agency, if I am a student who may be reliant on the agency for good marks, for example, I may have indeed conflicting interests if I am also supposed to be representing somebody or making decisions for that person.

Likewise, it would seem to me that in Section 88(3) that is sort of the equivalent clause for substitute decision-makers in terms of property. One would think that a potential beneficiary in a financial way of the holdings that a person who is

vulnerable has would also be in a conflict of interest position.

On page 48, Section 96, compensation, it seems to me that a substitute decision-maker ought to be obliged to report how much he is taking from the person in terms of compensation. This has been an issue in the past in situations that I have assisted people in with the Public Trustee's office. The Public Trustee's office takes money from people's account for such things—I can think of an example where if a person is sitting in a nursing home, the Public Trustee's office, as a matter of making sure that the property that that person may own, goes out, drives by the place, checks on it to see if it okay and then drives away again.

* (2130)

I do not know how long that process takes, I assume it takes maybe a matter of minutes. But what happens is that the person gets billed $10 from their account. There is no obligation as far as I know on the Public Trustee's office to tell the person that we are going to be dinging you money out of your account for us to have someone drive by your place and check on it. So in that section, it is seems to me that if I am the substitute decision-maker, I ought to be telling the person who I am making decisions for that, by the way, I am going to be taking money out of your account to pay my expenses, and this is the amount that I am going to be taking out.

On page 52, Section 110(1), I would ask the question, why is the Public Trustee exempt from the same sort of requirements as any other substitute decision-maker? Those requirements are listed in sections 107, 108 and 109 and include giving the person, for example, a copy of the inventory. Again, my own experience is that it has sometimes been very difficult for a person to find out information from the very body that is supposed to be assisting them with decisions. That does not seem right.

I think the analogy to that has also been for many people on the service-providing end to almost feel like it is a black box situation. How much does this person have to spend? We cannot tell you that. Well, then how do we know how much we might be able to spend on assisting a person to take a holiday? You are just going to have to guess on the figure, come back to us and we will tell you whether that is too high or too low. And that happens repeatedly. Can the person ask you and would you tell them? Well, you will have to put that request in writing. If the person is under an order of supervision? Well, they are not mentally competent to get that information.

These are some of the problems you are trying to overcome in this legislation, and it would make sense that the Public Trustee not be exempt from the very things the ordinary citizen substitute decision-maker is going to have to do.

Page 81, this is the last one of my short snappers, and they will probably go as quickly as my other points, is Section 165(1), and that is the section that refers to keeping people in institutions. It seems to me that there is an underlying assumption here that I am very uneasy with, and the assumption is that we are going to make it difficult for people to get into institutions, but we will not make it difficult for people to stay there once they are there.

It seems to me that the idea there is listed on page 34, 62(6), that a person has to make reasonable efforts to find a placement for the vulnerable person other than a developmental centre, and that they also have to prove that it is in the best interests of the vulnerable person to be put in the developmental centre and the developmental centre is willing to take the person in.

It seems to me that there needs to be some sort of provision to make sure that the substitute decision-maker has to prove at some given interval that that is still the best thing and that they have made a renewed effort to get the person out. It ought not to be, I made an effort in 1970 to get the person some other alternate place to live, it did not work out, and now we are not going to worry about it ever again.

There is nothing that says that they have to repeat the reasonable effort they exerted in the first place to make sure that the institution was the only alternative. I cannot envision, and I would challenge the committee to envision, a situation where over the long haul of a person's life, it is in the best interests of a person to be segregated, isolated and congregated in settings that are referred to as developmental centres. I cannot imagine where that is in anybody's best interests.

So it is not the best interest provision here that is going to get played out. What is going to get played out here is, and no suitable alternative is

available. That is always going to be the reason, because one cannot imagine that it is in the long-term best interests of anyone to be placed in an institution and segregated and isolated out of our society unless they have committed a crime. Of course, that is the whole irony of this 165 section, is that people with mental handicaps will have less due process available to them than if they had gone out and hurt somebody and gone through the judicial court system. That is not right.

So let me go from there to say there are a few other concerns that I have, and these are, in many cases, concerns that other people have already brought before you this evening, and so I will be brief in reviewing them.

The first concern I have is that there is no provision for a legislative review of the act. I was at a committee hearing a couple of weeks ago for The Freedom of Information Act, and I think it is a wonderful idea to have that there as a way of making sure that it comes before the Legislature again or at least a committee of the Legislature. I think it seems fairly reasonable that in days where if I am one of the bureaucrats who is now only working four days a week, or my workloads have increased, or the minister may change either because of a change of government or because of a reshuffling of responsibilities, that it is difficult for any minister to assure anybody that that will stay a continued priority of any department.

I would think that experience and wisdom would suggest to us that the best way to do that is to make sure it is locked in, that it ought to be reviewed, that the period that was suggested for The Freedom of Information Act was three years, that even there you find that it has taken really four and a half years for that committee to get into gear. So I think that actually almost is further evidence that even where you put it into the legislation, you are going to find delays. If you do not put it in the legislation, who knows what might happen? My recommendation there would be to add a clause such as Section 56 in the Freedom of Information Act to ensure that a review would occur at this level of government within three to four years.

(Mr. Jack Penner, Acting Chairperson, in the Chair)

My second concern is that the act does not go far enough in extending protection to vulnerable people. Only people who have been labelled mentally disabled are covered. This misses people with such diagnoses as multiple sclerosis, Alzheimer's, autism and head injuries. I know of a woman who, for example, was injured in a car accident after the age of 18 and has spent over a year to two years before finally being moved to a nursing home tied to a chair in the hall of the Health Sciences Centre. There is no provision currently that would enable her to be seen as anything other than mentally ill. That is inappropriate and wrong. It is demeaning to her. The alternative is that either she is left without protection or that she is unduly or unfairly stigmatized. This is happening to hundreds if not thousands of citizens in our province.

The recommendation then would be, again, the pragmatist in me says that this is not likely going to be one that gets the wheels turned around this round, which only says all the more reason to make sure you have a review clause within the legislation that it would be important, once having gotten that review clause in the legislation, to consult with other agencies and associations with the view of ensuring that the benefits of this legislation are extended to all vulnerable people.

The third concern I have is, even as is, the definition of mental disability is already outdated and needs to be revamped. This definition focuses, as many definitions do, at the problem lies with the individual, that the problem is the individual has impaired intellectual functioning concurrent with impaired adaptive behaviour prior to the age of 18. Why 18 is one question. Why not 21 as most of the states who have development disabilities provisions extend that age up, as does the school system?

Likewise, it seems to me, though, that the focus, then, should be on the support required or, to use the terminology of Mark Gold who developed the Try Another Way System, the level of power needed in the training or educational process, that we define the person's disability by the level of assistance that we need to offer them and not by some sort of definition that places the focus on their impaired functioning level. A recommendation here is to adopt—there is a newer definition than the definition that has been adopted under the act that is put out by the American association for the mentally retarded.

* (2140)

The fourth concern I have, I think this is No. 4, is that the role of citizen involvement in the form of advocacy or citizen advocacy is not mentioned in the act. This is a service system that has not responded well to citizen involvement in the past. I have had the experience of having Family Services workers demand that they screen friends and make sure that everybody who comes into contact with people is okay, that they have to meet the personal approval of the Family Services worker. This is a problem, especially for Family Services workers who do not have a lot of time.

The advocacy is recognized by this government in terms of its funding of citizen advocacy, of which I am a board member. This department supports citizen advocacy. This department understands the importance of citizen involvement in the lives of people with disabilities. It is then more striking that there is not more evidence within this act of the importance and need for friends and advocates to be in the lives of people with disabilities.

I think in doing so, one of the potential benefits is that the mere mention of it in the act can have enormous educational power to other people and can serve as a stimulus to citizen involvement, something that is all the more important as we find limits on our human service system.

Even if you are to mention advocacy, it also begs a question of whether there ought to be a separate act with regard to advocacy as there has been in Ontario. The importance of advocacy, it seems to me, is such that, as Bill Martin mentioned, this needs to find a place. It needs to find a home within the department and within the government. To not do so, I think, unduly limits the amount of protection and the variety of mechanisms that we can offer to people with mental handicaps.

So my recommendation on that is to add a clause in the definition to differentiate between service providers, volunteers and citizen advocates. Another concern is that the principles, as outlined in the study submitted to the government by a committee of government representatives and community representatives, have been severely abridged and are not part of the act.

I said earlier I did not have a copy of that committee report, and I did not. The only reason I found out about the principles, at least in their final form, was because Sharon Carstairs read them into the Hansard record in the Legislature a week or so ago. Again, I think the reasons for doing so have been well-outlined by earlier presenters and that I would recommend the reinstatement of those 10 principles and to place them within the text of the act.

I would say that it, to me, was quite notable, especially those recommendations around support services, that it seems to me that the support services section of this act is kind of this peculiar section of the act that you wonder why it is even there. You wonder what its purpose is because there is no mention of it in the whereases and wherefors beforehand. So one can only guess at what the intent of that section was.

As mentioned earlier, the support services portion of this act do not provide for any meaningful appeal of the individual plan. When I was at the Freedom of Information committee a couple of weeks ago I borrowed a phrase from somebody else with regard to a clause that he called the Mack Truck clause. This is the Mack Truck clause, one of the Mack Truck clauses of this act.

To say that anything that is going to relate to financial matters or anything that is going to relate to policy matters is going to be exempt from hearing is to create a Mack Truck clause that any bureaucrat who is so inclined will use. To say that bureaucrats will not use that is to—I think we only we need to, again, look back at The Freedom of Information Act and see how frequently the Mack Truck clauses are used there where approximately 50 percent of freedom of information requests are denied. So my recommendation in this regard would be to get rid of that Mack Truck clause which is Clause 15(1)(b).

The last concern that I have is that the commissioner reports to the minister rather than the Legislature or to another external body. It seems to me that this potentially reduces the effectiveness of this entire mechanism that is designed to safeguard the rights of people with disabilities, particularly people who have been labelled vulnerable or are seen as vulnerable, and creates a new scenario for conflicts of interest with the department.

The government directly provides services to hundreds of people with mental handicaps and funds direct services to thousands of others. The relationship, it seems to me, in this act between the

commissioner and the executive director is not spelled out. Who is where in the bureaucratic chain of command? Is it possible for the commissioner either now or at some future point to be assigned a position under the supervision of the executive director?

Right now, abuse, as I understand it in this act, must be reported to the executive director who is to act accordingly. There is not any obligation, as far as I read the act, for the executive director or, for that matter, the substitute decision-maker to inform the commissioner.

Now, the question might arise, what if a Family Services worker or a supervisor is the abuser? Perhaps it might be a program, a division or even a very structure of the department that is abusive. Who will safeguard the safeguarders? So it seems to me that there is a need to tighten that up in some way that will ensure that abuse gets brought before the commissioner's office as well as the executive director's department. I liked the idea that Sharon Carstairs made saying that it ought to be reported to the police. I like the idea that, as I said, this commissioner's office be moved to an arm's length position with the department.

So those are my comments. My apologies for not having a written presentation, but thank you for the opportunity to appear before you.

The Acting Chairperson (Mr. Penner): Thank you, Mr. Lauder, for your presentation.

Mr. Martindale: Thank you, Mr. Lauder. I find your observations quite articulate and very interesting. I just wish I had time to comment on all of them, but I do not, and I will not do that, but I would like to ask you just a couple of questions.

On Section 32(4) which you called the con artist clause and referred to it as being like a Henderson's Directory, how could that be changed? What would you do to amend that section?

Mr. Lauder: Under Section 32(1) it says, shall establish and maintain a register of appointments and which shall include for each appointment, and then lists the things that will be included with each appointment. It seemed to me in reading the act, and maybe I am wrong about this, but it seemed to me that if it includes all those things above, then it includes the name of the vulnerable person. So I guess under Section 32(4), if indeed it includes all that information listed in 32(1), it ought to exclude under Section 32(4) that subclause (a), if that makes sense. So, yes, you can get the information contained in the register with the exclusion of the name of the vulnerable person for whom the substitute decision-maker is appointed.

* (2150)

Mr. Martindale: Could you comment on the existing legislation, namely, The Ombudsman Act, where the Ombudsman reports to the Legislative Assembly? Do you think that is working? Do you think there are advantages to that? Do you have any comments on an existing example, since I think we all are aware that the Ombudsman has been around for a while and that his office reports to the Assembly?

Mr. Lauder: I think the other example where that occurs, it seems to me, is the auditor, the Provincial Auditor. It is actually the Provincial Auditor's report that I was looking at today and seeing how powerful it is to me that you have a branch of the government that monitors the government itself. I do not think there is any sort of implication that people within the Department of Family Services or the minister or anyone else is not trustworthy. I think it is the implication of what constitutes adequate safeguards around the rights of people.

It seems to me that there are times, and again, I think we need only look to the United States, for example, when you think of some of the lawsuits and some of the court actions that have needed to be brought forward against the governments and departments within the governments of various states where you, for example, had the situation where institutions, by their very nature were abusing people, were neglecting people, were hurting people or perhaps even killing people to see that there could arise a situation that it would make it very difficult to find the minister of the executive director or anybody else to be the one to blow the whistle on.

I think that might be an example of a situation where you want to be able to make sure that somebody can blow the whistle without worrying about losing their job or embarrassing the department, for that matter, just as the Provincial Auditor has that ability now.

The Acting Chairperson (Mr. Penner): Thank you very much, Mr. Lauder, for your presentation.

Mr. Gilleshammer: Just a point of clarification for the presenter and the committee. Under Section

32, Register of appointments, while the name of the vulnerable person would be listed, the detail is really in reference to the substitute decision-maker. I think perhaps that would alleviate some of your concerns, and this is not inconsistent with what other jurisdictions do in this matter.

Mr. Lauder: Okay, thank you.

The Acting Chairperson (Mr. Penner): Thank you very much for your presentation, Mr. Lauder.

The next presenter is Dr. Zana Lutfiyya. Do I pronounce that—

Dr. Zana Lutfiyya (Private Citizen): Pretty close, Lutfiyya.

The Acting Chairperson (Mr. Penner): Thank you very much. Have you a brief to distribute?

Ms. Lutfiyya: No, I do not. I am sorry.

The Acting Chairperson (Mr. Penner): Would you commence with your presentation, please?

Ms. Lutfiyya: Sure.

I would like to thank you for the opportunity to give my views on Bill 30 this evening. I have been sort of counting up my years of involvement in the field of mental retardation or working with people with disabilities. I have spent the past 21 years working in a variety of capacities with people with mental handicaps, but tonight I wish to speak to you more from the perspective of being a citizen advocate.

I have been a citizen advocate and I am today a citizen advocate for a woman. This is a role that I have fulfilled for the past 14 years. This is an individual who lives with a mental disability. We are friends, but over the years, I have provided a fair bit of ongoing practical assistance, support and guidance. So you could say that in many ways, I have acted as a supported decision-maker with this woman in a number of aspects in her life.

I also realize that under current legislation, and very likely under the legislation that is being considered this evening, if something happened to my friend, a substitute decision-maker would be appointed for her, and I would not even know about it unless I happen to be physically present at the time that all of this took place or unless she was able in some way to let me know that something had been happening in her life.

So it is with this tremendous concern that I come forth with my recommendations this evening, and frankly, none of the recommendations that I have will be any different from the ones you have heard already. So I sort of feel in a way that some of my thunder has been stolen. I will try to be brief in reiterating the points.

First of all, I lately had the opportunity to look at a report made by the review committee in September of 1991. I also was able to read Hansard from last week where Sharon Carstairs read into the record the principles that she felt, and several other people tonight felt, should be at the heart of Bill 30. I concur with that notion that this act should be clearly guided by a series of concepts that stipulate when an individual citizen's rights will be abrogated, how they will be abrogated, under what conditions, and in a way so that the individual and the people closest to that person will know what the steps are going to be. So I think that having a series of guiding principles in the body of the act at the beginning that will form the framework for the act makes a whole lot of sense, in fact, is essential. Unfortunately, as has been stated tonight, these principles have been left out of the body of the act.

I also have tremendous concerns about some of the definitions that are currently in place in this act. The first is the definition of mental disability. The definition as it currently appears in the act, I believe, is very similar to the 1973 American association of the then mental deficiency, and now mental retardation, definition and also the World Health Organization definition. That is a dated definition. In fact, the AAMR this year came out with a new definition. I searched for it today, and I could not find a copy, but I think it would be helpful for this committee to review that definition.

Instead of looking at talking about specific deficits inherent in an individual, the definition points to the areas of support that an individual needs in order to function well and safely in society. It seems to me that the notion of the types of the extent and nature of supports that an individual needs is more in line with the philosophy underlying The Vulnerable Persons Act. Certainly, as professionals in the field are looking to different definitions, I think it would make sense for this committee to also review these newer definitions.

As has been noted before, the definition of mental disability is narrow in that there are other individuals who are in fact vulnerable citizens and who would not be included under this act. These are individuals who would acquire a cognate of impairment after the age of 18 either through a

traumatic brain injury or other form of illness or a condition that would manifest itself later in life, such as Alzheimer's disease, and it could potentially leave out individuals with autism. So, again, I would suggest that you consider a more generic definition of vulnerable people which would specify the various conditions or life circumstances that would necessitate substituted or supportive decision making being made available.

Again, it has been noted, nowhere in the act is the word "advocate" referred to, and as someone who considers myself an advocate I find this pretty scary. Reading through the act I realized that I might be considered either in a support network or I might be considered as a volunteer, and so I have concerns about that. I think the definition of volunteer needs to be expanded. Right now it just says a person who is a volunteer, and this comes under human service provider. I think volunteers who are volunteers to an agency who are acting in designated staff-like roles or positions, I think that is how the definition should be expanded under human service provider, because I do believe there are many individuals who act in a voluntary capacity regarding people who are vulnerable and may come under this act who might more readily fit into a person support network even though they would consider themselves a volunteer.

So I would urge you to clarify the definition of volunteer and to include advocate. Once advocate is included, that raises another thorny issue if the person is acting as an unpaid advocate in a voluntarily assumed role or as a paid advocate on behalf of another agency, whatever that agency may be. So there may need to be some consideration about the foundation or premise upon which the advocate is acting. For myself I would appreciate having unpaid advocate added to the list of people who might be found within a person's support network. I think I would feel a lot more at home with the act if that were the case.

* (2200)

As Mr. Gunson pointed out, there is some concern about the concept of substituted decision making and the lack of reference to supported decision making. Frankly, I see those two aspects as part of a continuum, at one end where decision making power would be removed entirely or at least for certain elements of a person's life and another individual placed in charge of making those decisions. For a few individuals, I believe that type of power is necessary. However, my experience with individuals is that most people who experience a mental disability have primarily needed supported decision making, that is, advice, guidance and support from individuals whom they know and trust.

Also in my experience, I know of people with a mental disability who have consciously not followed the advice or guidance of paid service workers, family service workers or whomever, because they did not trust them but would undertake the same types of actions if the advice or guidance came from individuals with whom they had a personal relationship. I think there are many reasons that would suggest that supported decision making needs to be clearly entrenched in this bill. In fact, it would also be much more in keeping with the principle of the least intrusive or least restrictive option being used first. Then, as a last and final resort, substituted decision making would be enacted.

(Mr. Chairperson in the Chair)

In terms of the involvement of support networks in substituted decision making, I feel that the act as it currently is written allows for the participation of individuals who are in the support networks but does not actively solicit or seek out their participation in the life of a vulnerable person. So there are many different sections—for instance, information only needs to be provided to members of the support network upon request. I think that some of the information must be made available to people in support networks. The whole provision around emergency intervention measures says that a substituted decision-maker can be replaced virtually without notification if there is an emergency. It seems to me that if there is just a critical juncture in an individual's life, then it would be most crucial to involve individuals in the support network.

I cannot envision—there might be rare situations where no one would be available to be contacted and some kind of decision had to be taken immediately, perhaps in life-threatening emergency surgery, but quite frankly, in most situations there would be time and opportunity to contact members of the support network and to openly and actively solicit their involvement and participation even in emergency decisions.

As has been mentioned before, I feel that the basis for appeal in this act is virtually nonexistent.

Like everyone else, I can hardly imagine an appeal that might come before the hearing board that would not have some kind of change in policy or reallocation of resources involved in it somehow. I feel that the basis for appeal is just not there, and it is not even there in that limited way in emergency measures or emergency situations.

Again, as has been stated before, I feel that if there is a report of abuse that it should be made not only to the commissioner but also to the police at the same time. I think this is an added safeguard that makes a whole lot of sense. Also, in line with other speakers, I believe that the commissioner should report directly to the provincial Legislature, as does the Ombudsman or, as Rod mentioned, the Provincial Auditor. I think this is important for the same reasons that have already been mentioned, that there is greater likelihood of certain concerns or situations being made publicly available to the Legislature and to the citizens of Manitoba and that these concerns would not somehow be inadvertently buried within a civil service or bureaucratic system.

I have some concerns about what might be called the grandfather clause for individuals who are currently under an order of supervision. As I understand it, the current provisions in Bill 30 would allow anyone who is currently under an order to remain so for at least three years, and unless there are specific reasons to conduct a review, no case-by-case review of existing orders of supervision would take place.

Now I would suggest that it would make a lot of sense to initiate a review on a case-by-case basis of all individuals within the province who are currently under an order of supervision and who would fall within the jurisdiction of the Vulnerable Persons Act or who might fall within the jurisdiction of this act and to review their situation.

My understanding in years past was that in order to receive certain types of service in this province, an individual had to be placed under an order of supervision to make that service available, and in fact some individuals were placed under an order, not so much for decision-making support but in order to receive services, so where that is the case, we may have individuals who are competent but have been rendered legally incompetent under an order of supervision.

I also would suggest that for this case-by-case review of current orders of supervision, family members and advocates and other support network people be involved in the review.

I also question the phrase in the act in Section 165(1) where it refers to the reasons for placement into a developmental centre or an institution, and like Rod before me, I think it can be argued successfully that it is rarely in the best interests of a person with a mental disability to be placed in a developmental centre or institution and that, in fact, virtually all people who have been so placed into such facilities have been there because there is a lack of other alternatives available for them or their families to consider. Many individuals, when they have been placed, their families and other members of their support networks have really been up against the wall. They needed services. They needed supports, and those were the facilities where the support was made available to them.

I think it is important to document exactly why an individual is being placed into an institutional facility. Is it for supposed therapeutic benefits, or is it because right now no other alternatives exist? I think this information would be very helpful for other branches of the government when they are planning a long-term service provision development. They could actually look at how many people have been placed and why they have been placed and see what type of services the service development needs to be thought about.

Finally, in conclusion, I also agree with earlier speakers that there needs to be a review clause in this act. There are many points about this act that I believe right now we are making best guesses. Full of good intentions and desires, we are making some best guesses about what we think will work and will make sense, but we do not really know how it is all going to turn out. It is essential for this act—in fact, I think it is probably a good idea for every piece of legislation—to have a mandatory review clause in it so that every three years or so the Legislature and citizens can together review the implications of the act and make some decisions, amendments and modifications. Thank you very much.

Mr. Chairperson: Thank you very much for your presentation, Ms. Lutfiyya.

Mr. Martindale: I would like to thank the presenter, as well, for a thoughtful presentation. There seem to be five or six themes that are emerging this evening, and there seems to be a fair amount of consensus on what needs to be done about those areas of concern. I would just like to point out that I have amendments addressing a couple of those, which I will present when we get into clause by clause, eventually.

I do not think I have any questions at this time but just wanted to let you know that.

* (2210)

Mr. Chairperson: I will then call on Marilyn Keely, please. I will then call on Barbara Bird.

Will you just pass your presentation around. Okay, you may begin.

Ms. Barbara Bird (River East Advocacy Coalition for the Handicapped Inc.): Good evening, on June 23, 1993, a number of our members were privy to a presentation regarding Bill 30, given by Sandra Devon and Drew Perry at St. Amant Centre. After the presentation we were given an opportunity for a question-and-answer period.

Our presentation acknowledges the importance of this bill in principle; however, after careful review, we feel the bill to be repetitious, vague and open to interpretation.

Our membership is confused as to why this bill makes it more difficult for parents who are already overstressed by bureaucratic red tape. We feel that this particular bill is designed to meet the needs of the higher-functioning individual but fails terribly to acknowledge the needs of those who fall between the cracks.

Many of our individuals are tragically unable to communicate their needs or wishes. These individuals must rely on their parents to advocate on their behalf. Who could be a better support to these vulnerable people than the parents who continue year after year to provide loving care and support?

It is evident that ACL had a great deal of influence in regard to this bill. It is also obvious that there was a deliberate exclusion of expertise from professionals from the developmental centres and from parents who care for those individuals who are classified most vulnerable.

We want it understood that ACL does not speak for every vulnerable individual. We would request that the government not consider parents of mentally handicapped individuals to be ignorant of the needs of their own mentally handicapped son or daughter once they reach the age of majority.

The requirement of an SDM and court orders insults the intelligence of families and now perceives parents to be incapable and in need of assistance from an uninformed third party. The majority of parents take their responsibilities for their loved ones very seriously and are unwilling to place them in a risk situation. It is to be hoped the government is of the same mind.

We are making this presentation on behalf of the members of the River East Advocacy Coalition for the Handicapped Inc., REACH Inc. Considerable evaluation of Bill 30 has led us to the conclusion that we as parents and advocates have a responsibility to strongly oppose certain sections of this proposed new legislation. On behalf of our mentally handicapped, disabled children and adults are areas of contention are as follows.

Residential care, Section 62(6), Grounds for Approval, reads:

> (a) the applicant has made reasonable efforts to find placement for the vulnerable person other than a developmental centre, and no suitable alternative is available.

The wording of this bill infers that developmental centres are inferior or bad places. Secondly, it implies that parents are ignorant and do not know what is best for their mentally disabled child or adult. Checks and balances have already been in place for many years concerning appropriate placement into developmental centres. Many parents who have sought a permanent placement admission have been rejected due to the stringent regulations already in existence for new admissions.

Those families who have a family member in a developmental centre place them there because the centre provided the best medical and behavioural monitoring in all of Manitoba. We are very fortunate in Manitoba to be able to rely on the professional expertise of our developmental centres. Developmental centres are not the feared places that they once were.

Community living programs are, perhaps, the best possible placement for many individuals who

are classified vulnerable. However, even group home placements have problems with mentally handicapped individuals being taken advantage of mentally, physically, sexually and monetarily as we have just read recently in the newspapers in regard to SPIKE Residence Inc. Where were the checks and controls here?

This bill fails to take into consideration individuals who are already in placement in the developmental centres who have not reached the age of majority and for future generations who may require placement. Under new legislation, parents are required to go to court for approval to place their vulnerable persons in a developmental centre.

In respect to this new legislation, no humane thought was given first to the mental strain and anguish parents go through in seeking permanent placement for their child or adult in a residential situation; (2) in addition to the years of stress parents have already endured dealing with the constant daily care of their child/adult, they are now being burdened with: (a) expensive court costs to gain possible admittance into a developmental centre—many will never be able to afford the court costs, and I understand they range from $600 to $1,000; that is a heck of a chunk of money to have to put out; and (b) the stress of going to court for many parents will be too much for them to have to handle.

This aspect of the bill gave little thought as to what it was like to be a parent of a severely mentally handicapped individual. You have to walk a mile in these parents' shoes to appreciate the situation that they go through on a daily basis. Another point to consider is the mounting backlogs already present in the court system today.

Respite, another area. Article 63(1), Commissioner's approval of temporary placement, reads:

> Despite section 62, on application by the substitute decision maker for personal care who has been granted power under clause 56(2)(a), the commissioner may approve the temporary placement of a vulnerable person in a developmental centre for up to three weeks in a year if
>
> (a) the purpose of the placement is to provide respite care for the vulnerable person; (b) the vulnerable person requires a level of care that is not readily available outside the developmental centre; and (c) there is a developmental centre willing to accept the vulnerable person.

This particular article of Bill 30 is totally frustrating for us as parents who have taken it upon ourselves to provide 24-hour care for our mentally handicapped child or adult. To incorporate this article in the bill penalizes parents by requiring them to gain approval for respite for their mentally handicapped child or adult. It gives power to a commissioner who has no knowledge of the needs of the family and the vulnerable person.

Parents who seek the developmental centre as their choice of respite facility do so knowing that their loved one is in the hands of trustworthy and ethical professionals. At present there is a real problem for caregivers to access respite services for temporary placement in our developmental centre. To add another obstacle making it more intimidating for families to gain access to respite adds more stress and despair to parents who already find it a bureaucratic nightmare to access respite care.

Another area of concern in our reading of the bill as it presently stands is in the limitation of the maximum of three weeks. For many families who are in crisis situation and find themselves having to go to court to gain an extension of increased service is totally ludicrous. The concept of respite services is one which fosters relief for families rather than stressing families beyond their endurance. It is quite evident in this bill that there is a lack of understanding in the significance the centre plays in the community.

Commissioner, Article 56(2), Powers that may be granted

> In the appointment of a substitute decision maker for personal care, the commissioner shall specify which of the following powers are granted:
>
> (a) to declare where, with whom and under what conditions the vulnerable person is to live;
>
> (b) to give, refuse or withdraw consent to the health care on the vulnerable person's behalf;
>
> (c) to decide whether the vulnerable person should work, and if so, the nature or type of work, for whom the vulnerable person is to work, and other related matters.

* (2220)

In respect to this appointment of commissioner, there is real concern to the related expertise and qualifications of the individual who will occupy this position. We are led to understand there is a present consideration to fill this position with a lawyer who is best able to protect the individual's legal rights.

There has been, however, a lack of consideration for the medical, mental, social and physical well-being of the individual. It is our position that one person cannot possibly hold the expertise in all these related fields. Therefore, we feel what is needed rather than a commissioner is a panel of individuals who collectively will have the expertise in all related areas instead of an individual who perceives only the legal ramifications.

In conclusion, although there has been favourable discussion on many aspects of Bill 30, our feeling is, the bill fails to take into consideration the individual rights of those at the lower end of the spectrum. If this bill is to be created to meet the needs of all vulnerable persons, we must remember that society is judged by how we treat its weakest members.

Mr. Chairperson: Thank you for your presentation, Ms. Bird.

Mr. Martindale: I would like to thank you, as well, for your perspective, which is different than the other perspectives that we have heard so far this evening. Do you consider that there was not anyone on the review committee who represented your perspective?

Ms. Bird: I consider the fact that we do have developmental centres out there that had absolutely no input whatsoever, and those individuals who had children that are at the lower end of the spectrum were totally excluded.

Mr. Martindale: Did your members attend any of the public meetings that were held?

Ms. Bird: Yes.

Mr. Martindale: I notice, in conclusion, that you feel that the individuals that you are concerned about do not have rights. It seems to me that what this bill does is, it confers a lot of rights on all vulnerable persons. So maybe you can explain to me what you mean by these people that you are concerned about not having rights.

Ms. Bird: Okay. We deal with individuals, from my perspective, who have the mentality of a three-year-old individual, who have the ability of a two-and-a-half- or a three-year-old individual, to be able to give their comments and wishes, their needs, whatever. People that have the vocabulary of a two- and a three-year-old are not going to have the ability to be able to tell you what their needs are.

We have individuals who are in the centre who have absolutely no way of expressing to you or to their parents their needs. How in the world can you expect an individual such as that to be able to tell you what their needs are?

You have just completely forgotten about that group of individuals through this bill, and it is clearly noted by a lot of parents out there that do have this feeling.

Mr. Martindale: One final question. I take it that your group is made up of parents who have children at the St. Amant Centre.

Ms. Bird: No. River East Advocacy. There is not just my group of parents, but there are others out there that are of the same opinion.

Mr. Martindale: So some of your members have children who reside at home with them or in group homes or in a variety of settings.

Ms. Bird: Group homes, St. Amant Centre, the Developmental Centre, in our home environment, yes, all aspects.

Mr. Paul Edwards (Leader of the Second Opposition): Thank you very much for your presentation, Ms. Bird. I hope you will carry that back to your group as well.

I just wondered, you made some specific criticisms of certain sections of the bill. Did your group consider the question, if those recommendations for change were not accepted? Did your group consider whether or not the bill should be supported in any event as a whole, or was it the feeling of the group that if those concerns were not dealt with, that this bill should be voted against?

Ms. Bird: We want the amendments.

Mr. Edwards: So those amendments, in your group's view, are critical to whether or not this bill should be supported, regardless of everything else that it does and talks about.

Ms. Bird: As I say, we need the amendments.

Mr. Chairperson: Thank you very much for your presentation this evening, Ms. Bird.

Ms. Bird: Thank you.

Mr. Chairperson: Thank you. Roger Kiendl. Did you have a written presentation?

Mr. Roger Kiendl (St. Amant Society): Yes, there is, Mr. Chairperson. There is a written presentation from the St. Amant Centre and the St. Amant Society.

Mr. Chairperson: If you would just give us a sec, we will pass them around. Okay, you may begin.

Mr. Kiendl: I am Roger Kiendl, a parent and a member of the St. Amant Society board of directors. The St. Amant Society is a support group, an advocacy group of parents and interested parties supporting the St. Amant Centre. As a parent, I have a child in the St. Amant Centre that is very successfully boarded there. With me is Carl Stephens, the Assistant Executive Director from the St. Amant Centre.

As you heard tonight, there are several questions involved around a developmental centre and what it stands for, and I want to come out and support, as a parent and as a St. Amant Society, that a developmental centre still is a very, very useful item in the 1990s. I want to point out that it is very, very handy, as Ms. Bird said, for the extremely low disabled person, the person that needs excessive medical care and needs developmental care and can find no other alternate centre. I do not want this panel to be confused by the fact that developmental centres of the '50s and developmental centres of the past are considered necessarily a developmental centre of today.

I want to point out, because of the advocacy and people that have left here this evening, that people should not be in developmental centres. We have hundreds of developmental centres in this province, but we do not realize it. They are nursing homes. They take care of the seniors. They are well-run. They are of large size. They hold very many people and are almost a model of the modern developmental centre that the St. Amant Centre in my personal viewpoint is.

Mr. Carl Stephens here is going to read to you areas of the bill which require court-ordered developmental centres. We are really asking for an amendment to that part of the bill. Mr. Stephens, do you want to read that?

Dr. Carl Stephens (St. Amant Society): Thanks for the opportunity to be here tonight. This is a joint presentation, as Mr. Kiendl mentioned. I would like to also mention that in the audience is Mr. Garry Maddocks, who is the chairman of the board of the St. Amant Centre.

It might be worth mentioning to some of you that the St. Amant Centre is a developmental centre as defined in the act. The centre provides a variety of community and centre-based services. The society, as Roger said, is an association of families and community members who basically support the work of the centre.

The St. Amant Centre and the St. Amant Society support Bill 30. Further, we commend the Province of Manitoba for the development of Bill 30. We believe the act is grounded in principles and values that we support. We are confident that the act will better assist people with disabilities to achieve their full rights as citizens of Manitoba.

Further, we commend the province for the comprehensive community consultation that took place as the act was formed. As this process nears completion, we ask for some additional consideration of what we feel are important, needed changes to the act.

Our concerns do relate primarily to the requirement for court approval to access developmental centres. Families who utilize the services of St. Amant Centre are telling us that they are pleased that the act recognizes and acknowledges the support provided to persons with disabilities by family members and friends.

Many families welcome the future opportunity to become substitute decision-makers for the personal care of their totally dependent adult children when necessary and appropriate, recognizing that it will not always be necessary or appropriate.

Families are very concerned, however, that as substitute decision-makers, the act would not allow them to have respite care at the St. Amant Centre for more than three weeks annually and would not allow them to have their child live at St. Amant Centre without the prior approval of the courts.

* (2230)

The requirement for court approval in these instances represents a formidable financial and emotional barrier to accessing services of the centre. This requirement is out of step with the

remainder of the act which seems clearly designed to empower persons with disabilities, their families and supporters in matters relating to living arrangements and service provision.

It appears to us that in attempting to ensure that persons with lesser disabilities are not done an injustice by being placed inappropriately in a developmental centre, the act may create a new injustice by preventing appropriate use of developmental centres for the most seriously disabled persons who require them.

To address these concerns, we suggest two amendments. Without specific wording, one amendment would deal with Sections 62(1) through 62(6), which would be amended to eliminate the need for court approval for placement in a developmental centre when the placement is requested either by the person's supportive team and/or substitute decision-maker for personal care and is uncontested.

I think the rationale here is that when everyone who knows the individual well believes that this is the best decision for that person, even if one of that group is the substitute decision-maker, the group should be allowed to make that kind of decision without having to go through a court process. In some of our initial feedback, we suggested that maybe the approval of the commissioner would be appropriate in those instances.

Secondly, we suggest that Section 63(1) be amended to remove the three-week limit on respite care in a developmental centre, again, when the respite care is requested by the person's supportive team and/or SDM and is uncontested. Again, we feel that if everyone who knows the person well believes that this is the right thing to do, court involvement should not be required.

Of course, if these kinds of decisions are being contested, if there is not unanimous opinion, then court involvement would be, we believe, quite appropriate. Thank you.

Mr. Chairperson: Thank you for your presentation, Mr. Stephens and Mr. Kiendl.

Mr. Martindale: Mr. Chairperson, thank you for your presentation. I am not a lawyer, so maybe you can explain something to me about your amendments. I can read in the act, Section 62(3), who would receive a notice of the application, but perhaps you could tell me who might oppose an application. I think the key word in your recommended change is "uncontested". If it goes to court, who would the parties be and who might be likely to oppose a court application?

Mr. Kiendl: I think we are all having trouble with understanding exactly, and we have asked the government, when an SDM is needed. That is the biggest problem that we are having. If an SDM is appointed, does that SDM automatically take that person to a hearing before court to go into a developmental centre? That is our biggest problem. We have not to this date had that answered. I think the amendment must very realistically say that if there were family members involved, that that court appearance is not necessary.

It is quite a formidable task for parents out there, who have to use a developmental centre, to go through that challenge of going through a court, and we are hoping that this government is recognizing that an SDM is not needed if there are supportive members. This legislation has a little bit of trouble, and we are very supportive of it, in defining whether a supportive family member can do as he sees, or automatically does a substitute decision-maker come into the thrust. I cannot read that in this bill.

I am concerned that as we all disappear into the future, this bill, which might last for 40 or 50 years, will not be clear on the fact that if there are real family members that are supportive people, they can pick the right solution for the severely disabled and that right solution may not be a developmental centre, but it is vague. We are not 100 percent that everybody goes there. We are not for warehousing people in developmental centres but where it is needed, how do we get there? That is my question.

Mr. Martindale: Well, those are very good questions. I hope that the minister might be able to shed some light on them. Do you share the perspective of the previous presenter about the cost of going to court and the emotional cost and the hassle to parents?

Mr. Kiendl: I can give you a viewpoint of that in that the emotional hassle is maybe to the disadvantage of the disabled person. Just take my viewpoint of having a person of age 16 who might really need to go to a developmental centre—remember a developmental centre of high quality has medical care—the emotional struggle is I might

be forced to rush that person into a developmental centre, because at age 18 I might have to take him to court, so therefore I might make a poor decision and rush the child in too early to a developmental centre, whereas they could live at home and enjoy home life.

The other emotional aspect is I will never go that route. The person needs a developmental centre but I will not go that route because if I am an SDM, which we have not defined, I will have to go to court. That is too overbearing, and that will cost me money. What I will do is I will put them in a lesser situation.

Now we are talking of the extremely disabled—not the people that can talk for themselves and can make decisions in support with you—those that are on their back, need medication, need feeding and cannot verbalize to you. There is a terrible traumatic period for parents out there, and I know them now, that need to go to a developmental centre and now look at Bill 30 and say, holy smokes, how am I going to get there?

I think, as a society, the error that we are making is saying that developmental centres are bad. We are trying to minimize their usage by Bill 30, blocking entrance to people that really need it. That is a difficult, traumatic situation.

The financial aspect is another thing. Some people just do not have the money, and then they cannot come to the right solution. They just have not got the cash.

Mr. Martindale: We have heard a concern expressed about the limit of three weeks for respite care. Can you tell me about the capacity of St. Amant and other developmental centres to offer respite care and whether three weeks is realistic or whether you think it should be longer, and whether the facilities have the capacity to accept people for more than three weeks?

Mr. Kiendl: I would like to refer that to people who can tell you about the capacity of the developmental centre. We have Mr. Don Winstone, we have Mr. Stephens and we have Mr. Gary Maddocks who is on the St. Amant board of directors. Maybe they could give you a better view of the capacity.

Mr. Stephens: Presently, the capacity for respite care at the centre would be approximately 1,800 days a year. On average, we would serve around 45 to 50 families; the majority would access respite care more than once during the year. In the majority of cases, people would not utilize more than three weeks of respite care in a year, but I think there are some families that benefit very much from having more than three weeks of respite care. It is one of the critical services which helps them to keep their child at home.

Mr. Gilleshammer: Mr. Chairperson, the thrust of the legislation is to give prominence to supported decision making and to view the appointment of a substitute decision-maker as the last resort. If there was greater clarity given to that, would that resolve some of your concerns?

Mr. Kiendl: I think that would be good for the future of the bill. I would be very pleased about that.

Mr. Chairperson: Thank you very much for your presentation, Mr. Kiendl.

I will now call on Jean Smith and Debbie Doherty. If you would just give us a moment, we will pass out your presentation.

Ms. Jean Smith (Transcona-Springfield Association for Special Needs Inc).: I would like to introduce Debbie Doherty, our secretary from our parent association. I am Jean Smith.

Mr. Chairperson: You may begin, Ms. Smith.

Ms. Smith: On June 23 of this year, we heard a presentation by Drew Perry and Sandra Devon on Bill 30, The Vulnerable Persons Living with a Mental Disability Act. This was the first time we had heard it. We are pleased with some of the changes, disagree with other changes, but also feel a good portion of it does not address the needs of the lower-functioning individual, nor are a good number of the changes clear and precise.

* (2240)

The concerns seem to centre around their rights, rather than their safety and well-being. We do not believe that any portion of this bill should be left to interpretation, as that could leave some of our most vulnerable population in the hands of uninformed and many times, uncaring people. We do not want this to happen to our children, regardless of whether they are five or 50. Also, we do not want this to happen to other people's children.

The attached is a list that addresses the major concerns we have regarding this bill. In the interests of time, we will only speak on a few of these issues to help clarify our concerns.

A brain injury can happen in any family, whether it is before birth, illness-induced, or, as in some cases, due to medical mistakes after birth. As parents, we are very concerned about our children's future and are terrified as to what will happen to them once when we are gone. Our only hope is that our government will have legislated laws that will protect them and meet their needs on a daily basis. It is with this in mind that we ask all members to consider very carefully the changes we have requested. Their lives cannot depend on good will or interpretation.

On page 17, No. 28, appointment of a commissioner. This position should be someone who has worked with vulnerable people and who has experience in dealing with related issues. We do not want a lawyer whose concerns will centre around their rights, rather than their safety and well-being. The commissioner should have to report to the Legislative Assembly and not to any one minister.

Ms. Debbie Doherty (Transcona-Springfield Association for Special Needs Inc.): In regard to page 24, Substitute Decision Maker for Personal Care, and page 39, Substitute Decision Maker for Property. Bill 30 does not state exactly when a substitute decision-maker would be appointed. When would a substitute decision-maker be appointed over an involved family and where are the safeguards for that family? Many children and adults with a mental disability have families who are informed on issues and are very involved with the decision making with and for that vulnerable person.

The possible appointment of a substitute decision-maker is a threat to that family unity. It should clearly state that a substitute decision-maker is appointed only when there are no family members involved in the decision making. It is insulting that families who have loved and cared for their individuals with mental disabilities were not written into this bill. In a society where family units are falling apart, you have ignored the strong family units that are involved with their disabled individuals despite the stress and financial difficulties placed on the families.

We consider it vitally important that this new bill state emphatically that it is recognized that a substitute decision-maker is not appointed when a family is actively involved. This is not something that can be left to be read between the lines or on how somebody interprets Bill 30. It should be stated very clearly.

Ms. Smith: Page 32, Section 61(1)(b). The vulnerable person should be removed from the premises; an immediate investigation should be conducted when "the vulnerable person refuses to live where, with whom and under the conditions that the substitute decision maker has decided." The refusal should be respected as a possibility of emotional, physical and sexual abuse. This environment is supposed to be their home, and not only should they feel safe but be safe there.

Ms. Doherty: We disagree with the yearly allocation of three weeks that can be accessed for respite in a developmental centre. Respite should be based on need of the individual and should be an agreement reached between the parent and the centre. Many times this type of respite has helped alleviate a near-crisis situation in the home. When an individual requires constant supervision, in some cases, 24-hour supervision, it is difficult to maintain any sense of normalcy. It is because of respite and developmental centres that many families have been able to deal with these situations for longer periods of time. To put a cap on the amount of respite available is illogical and shows a complete misunderstanding of what is needed to help keep individuals in the community longer. Respite in a development centre provides a safe environment during emergencies, stressful or crisis situations that occur in all families.

Ms. Smith: For the last one we are going to read out, it is page 19, Section 33(1), as regards the qualifications of every member on a hearing panel, they must have personal experience in either living or working closely with vulnerable persons. Without this experience we have found that people cannot truly understand a vulnerable person's situation, regardless of how intelligent or well-intentioned they are. That is it.

Mr. Chairperson: Thank you very much for your presentation this evening. No questions? Thank you very much then.

Now I will call upon Sister Gabrielle Cloutier.

Floor Comment: She is unable to attend and the presentation has already been made on behalf of St. Amant.

Mr. Chairperson: Oh, okay. Thank you very much. Then we will call upon Ann Zebrowski.

Ms. Ann Zebrowski (Private Citizen): I am the parent of an 18-year-old son with Down's syndrome. My son has significant difficulties with communication and cannot easily make his needs and wishes known to those who do not know him well.

It is likely that our son will need lifelong assistance and support for both personal care and property management. I would like our son to receive the support he needs from family and friends rather than just supervision from someone who does not know our son. While the proposed legislation seems to be moving in this direction, there are some sections of the bill that concern me.

The wording in the bill is so sterile and does not convey the spirit and tone of the policy statements issued by the minister. I think that there is great danger that those administering the legislation will not only lose sight of the purpose of the bill, but also of the vulnerable person. I suggest that the principles in the preamble to the bill be included in the body of the legislation so that all of us are continually reminded that the purpose of the bill is to help vulnerable people make their own decisions on matters affecting their lives.

The restrictions on matters that can be appealed will not offer vulnerable people an adequate mechanism to address issues that are affecting their lives. I think that almost all matters could be construed to have a possible funding or policy implication, and, therefore, could not be appealed.

The commissioner will have information and insights that will illustrate how the assistance vulnerable people receive impacts on their dignity, independence, safety and privacy. I think some mechanism should be included in the legislation that requires the commissioner to make a public yearly report on issues that may or may not be covered by the act and that are affecting the lives of people living with a disability. I do not think that the purpose of the commissioner's report should be to create controversy, but rather to stimulate discussion and find ways of addressing problems.

Mental disabilities can be manifested after the age of 18. The age limitation should be removed from this section. It seems silly to permit someone to be mentally disabled if their disability occurs one day before their 18th birthday, but not one day after.

Finally, this type of legislation proposes a very different way of thinking about people living with disabilities. It is likely that other issues and concerns will surface in the near future. I think that the legislation should include a mandatory review within three years of being passed. Thereafter, it should be reviewed at least every seven or eight years.

I would hope that it would never take again 78 to 80 years to review this act. Thank you.

Mr. Chairperson: Thank you very much for your presentation this evening. If there is no further questions, thank you very much.

I will then call, one more time, Marilyne Keely. Marilyne Keely?

Bill 31—The Health Services Insurance Amendment Act

Mr. Chairperson: As that concludes presentations on Bill 30, we will now proceed with presentations on Bill 31. I will call Ingrid Krueger and Ana Desilets.

Oh, if we could just take one moment, I want to get the minister here. He just stepped out for a second. Maybe we could—[interjection] Mr. Gilleshammer will sit in for him for a minute? Okay, sure, we can continue.

Yes, we have your presentation. She is just going to hand it out. I will just get one, and then we can start. Okay, you may begin.

Ms. Anna Desilets (Alliance for Life): Good evening, my name is Anna Desilets. I am the executive director of Alliance for Life in Canada. Ingrid Krueger cannot be here this evening. In her stead, I have with me an associate, Mary Lamont. I will be making the presentation, and Mary and I will be open to questions.

Alliance for Life is the national co-ordinating body for over 225 prolife groups in Canada. Our head office is here in Winnipeg. These groups include 21 groups from Manitoba, which are affiliated with Alliance for Life through the League for Life of Manitoba. This submission has the support of these organizations through its board and its director, Patricia Soenen.

* (2250)

We heard an earlier speaker say that society is judged by its treatment of its weakest members. Bill 31, in fact, deals with the weakest members of

society or some of the weakest members of society, unborn babies and their mothers.

We support the passage of Bill 31 which will, in effect, mean that hard-earned taxpayer dollars will not be siphoned into funding abortions at the Morgentaler abortuary or any other abortuary, and further, that there be no back payment of fees to abortion facilities or services. It also limits funding to other clinics as well.

We believe that this legislation has wide public support for several reasons. Abortion is not a medically necessary procedure. In the words of psychiatrist, Dr. Willi Gutowski: What disease does abortion treat? I know of no medical evidence that pregnancy is a disease.

No credible source contests the fact that almost all abortions performed in North America are medically unnecessary. As early as 1951, Dr. Roy Heferman of Tufts University presented to the American College of Surgeons, saying anyone who performs a therapeutic abortion is either ignorant of modern methods of treating pregnancy or unwilling to take the time to use them. Even the late Dr. Alan Guttmacher, formerly North America's leading proponent of abortion wrote in 1967: Today it is possible for almost any patient to be brought through a pregnancy alive, unless she suffers from a fatal illness such as cancer, and if so, abortion would be unlikely to prolong, much less save, life.

Statistics from the United Kingdom which are much more complete than Canadian figures on abortion verify this claim. Of the 2.6 million abortions performed in England and Wales between 1968 and 1986, 123 or .005 percent were performed to save the life of the pregnant woman.

There are many statistical indicators that point to abortion as an overwhelmingly elective procedure in Canada. The sheer numbers of abortions performed annually are evidence that abortion cannot be considered a medical necessity. In 1991, the most recent statistics we have, over 95,059 abortions were performed, 23.6 abortions for every hundred live births. We were killing almost every fifth baby conceived.

Clearly, these numbers do not represent an unreported health epidemic among women—77.2 percent of abortion patients were unmarried, 26.1 had had one or more previously induced abortions, and 53.4 were between the ages of 20 and 25. It is difficult to believe that unmarried women are beset by more health problems requiring abortion than are married women, that repeated abortion is a therapeutic solution for over 25 percent of abortion patients or that women in the optimum child-bearing years of 20 to 29 are, in fact, more endangered by pregnancy than are older women.

The more persuasive evidence that abortion is almost always an elective procedure comes from professional abortion providers. In his appearance before the U.S. Senate Judiciary Committee, Dr. Irvin Cushner of Planned Parenthood Federation of America testified that over 98 percent of abortions performed in the U.S. are done for nonmedical reasons. In a 1988 Vancouver radio interview, Dr. Henry Morgantaler stated that fewer than one-tenth of one percent of abortions are necessary, end quote, to save the mother's life.

While statistics identifying the reasons for abortions are not kept for Manitoba where we aborted over 2,500 women in 1991—in fact, 2,663—there is no reason to suggest that the North American figures cited do not apply to our province.

A second reason that funding for abortion has little public support is that abortion is increasingly being used as post-conception birth control, a fact borne out by the high repeat rate, 26 percent. Over one in four is a second, third-or-more repeat abortion.

A number of polls in the U.S. are very revealing of public attitudes which undoubtedly acknowledge no international boundary at the 49th Parallel. A Wirthlin poll, November 5 to 7, 1992, showed that 84 percent opposed abortion as birth control. This confirmed and enlarged results of a Gallup poll of February, 1991, which reported over 70 percent opposition to abortion as birth control. Similar results were reported for abortion for financial and social reasons.

Canadians, as well, believe that abortion should not simply be a way out of an immediate problem. A poll conducted by Environics Research in May and June of '92 revealed that 74 percent of Canadians responding would favour a provincial law requiring that pregnant women considering abortion be given information on the development of the baby in the womb and of possible physical and psychological complications of abortion. Seventy-one percent supported the concept of counselling about the option of adoption before a woman could get an abortion. This poll definitely

lays to rest the notion that Canadians accept abortion as a choice, with no questions asked and no other solutions offered to the woman in need of help.

In over 20 years of speaking to Canadians, and in particular to Manitobans, on this subject, I have found that people are appalled to learn they are paying for abortions through medicare. My experience has been confirmed by Saskatchewan voters who, in 1991, voted 62 percent in favour of a plebiscite to discontinue public funding of abortion. I believe that Manitobans feel very much like our Saskatchewan neighbours. We do not want to see our precious tax dollars used for procedures that really do not treat a medical condition, that in fact takes the life of one of the two patients in the equation and which can cause medical problems to the woman immediately or later in life.

High rates of infertility, premature delivery, low-birthweight babies are all noted aftereffects of abortion. All lead to higher costs in medical care for aborted women in the future. These physical complications and costs of abortion are compounded by the increasingly recognized psychological repercussions, also costly in terms of health care dollars, while being a horrible burden to the aborted woman. Surely this is not the best we can offer women who are facing an inconvenient pregnancy.

The Manitoba government's concern for the well-being of women is reflected in its refusal to fund clinic abortions. Manitoba is not alone in this decision. Only B.C. and Ontario, who have NDP governments, pay the full cost of clinic abortions, between $250 and $750, depending on the age and size of the preborn baby. Even in Quebec, Morgentaler gets only partial payment of fees.

New Brunswick maintains restrictions on who and where abortions can be performed and funded as does P.E.I.; Newfoundland and Saskatchewan pay only for hospital abortions; while Alberta and Nova Scotia give partial funding to clinics and services.

While at first glance abortions in clinics might appear to be less costly than in hospitals, and that has been argued, such is not necessarily the case. Abortion is not without serious life-threatening complications, a fact that is recognized by the Manitoba College of Physicians and Surgeons, which requires abortionists to have admitting privileges at critical care hospitals, if they are doing abortions in clinics, that is.

StatsCan reports one per 100 patients in 1991 suffered reportable complications, and these would be immediate complications, not long term, because we have no statistics on that. Morgentaler himself says that 99 times out of 100 everything is fine, but occasionally a woman has to be rushed to the hospital.

As well, he admits, abortion commonly results in, quote, small perforations that usually heal by themselves leaving scar tissue where muscle tightens around the womb, and the medical literature suggests that that is why some women have trouble conceiving or carrying a pregnancy to term later.

* (2300)

Deaths can and do occur from abortions even in hospitals. Myrna George, 19 years old, died September 14, 1991, in British Columbia. Erin Shannon, 18, died in 1986 in Ottawa. In Edmonton, on March 1 of this year, a 23-year-old woman almost died after an abortion at the Morgentaler abortuary. Only emergency treatment in which she lost her womb, ovaries and fallopian tubes prevented her from bleeding to death. That is a serious situation for a 23-year-old woman. This near tragedy, incidentally, was reported in only one Canadian daily and no one ever hears of the hazards.

Abortion deaths of women in U.S. clinics are constantly being reported, not to mention the maiming of unborn children like Anna Rosa Rodriguez, who appeared on television on numerous occasions, whose life was threatened after her right arm was severed in a botched abortion attempt. What do we tell little Ximena, whose parents I just met last weekend, a perfectly healthy baby left to die at 27 weeks in her mother's pregnancy and now living with multiple and very serious handicaps? Is it any wonder that common-sense people in this province and elsewhere in this country do not want to pay for the killing or maiming of others?

The only way it might be argued, as has been done, that abortions are cheaper in clinics is if we do not factor the essential costs of the backup emergency service ensured by the hospitals into the cost of the clinic abortions. Failure to do this skews the figures and furthers the impression that

abortion is a safe, simple procedure with no complications. Who will tell that to the families of Myrna George, Erin Shannon or Anne Rosa, Ximena or Pam, who lost her whole reproductive system in Edmonton?

While Bill 31 is far from providing the protection of women and their babies that would be essential to a civilized society, Alliance for Life urges the committee to promote its adoption. The Canada Health Act does not expect abortion to be treated as an essential medical service. Bill 31 recognizes this fact as well as the principle of provincial control of health care spending essential to controlling health care costs. At a time when citizens keep being told about cutbacks of important and many life-enhancing services, we believe that this particular bill has great public support.

We would further urge this committee to recommend to the Legislature that informed consent regulations be strongly enforced. I know that people will say that we already have them in place, but informed consent regulations, when it concerns abortion, should include an explanation of the development of the unborn child, its stage of development and the possible physical and psychological complications that may result. We also recommend that alternatives to abortion always be presented to a woman seeking abortion. That way she has a true choice.

Pro-life groups and agencies across the country offer alternatives to pregnant women. Many of us are volunteers and many groups across this country spend a great deal of time and effort to help women in situations of unintended pregnancy. I would highly recommend that alternatives to abortion always be presented.

Thank you for this opportunity to present.

Mr. Chairperson: Thank you very much for your presentation this evening. As there are no questions—

Hon. Donald Orchard (Minister of Health): Mr. Chairperson, I would just like to thank the presenters for their briefs, their patience in waiting and their support of the legislation.

Mr. Chairperson: I will now call on Audrhea Lande. Do we have the correct spelling of your last name, Lande?

Ms. Audrhea Lande (Private Citizen): Yes. The "e" is silent.

Mr. Chairperson: The "e" is silent. And the first, we have A-u-d-r-h-e-a.

Ms. Lande: Yes, that is correct.

Mr. Chairperson: That is right. Okay. Did you have a written presentation?

Ms. Lande: No, I did not have time to do that.

Mr. Chairperson: That is okay. You may begin then. Thank you very much for your time.

Ms. Lande: I am going to start by saying that I am not pleased to be here tonight to speak to this kind of legislation, and, in fact, before I make my points about that, I have a question.

I was on my way to the cottage, as a matter of fact, this evening, when I accidentally heard about these hearings at seven o'clock tonight. I had been following this issue through the papers and through friends of mine who work in health care and had been intending to speak to this particular issue when hearings were called. I was packing my car when a friend drove by and told me that this was on tonight and I wanted to ask, was this publicized in the usual fashion that these kind of hearings generally are? Where I usually see them is in the Free Press and they say this is when the date is going to be and this is where you can phone if you want copies of the legislation and so on. Was that done? Who can answer that? I noticed on the billboard in the hallway here that there was something posted on July 9, but how many people are in the Leg?

Mr. Chairperson: I have been informed by the Clerk that the normal procedure is that the calling of the committees is not published in the paper or advertised but it has been from time to time picked up by the press and they present it on their own volition. There is not a procedure for the Legislature or the Clerk's Office to publish when committees are called in the papers.

Ms. Lande: That is interesting then if you are seeking public submission on different acts or pieces of proposed legislation, I would think that you would let the public know.

I am not pleased to be here on a number of accounts and not going to the cottage tonight was just really a minor inconvenience compared to my anger around a couple of other issues.

I guess, I am here to speak as an outraged taxpayer and as a law-abiding citizen. This legislation does not make any sense in a physical

way. In countering what the two women before me said, there have been numbers of court challenges all the way to the Supreme Court and two recently here in the province of Manitoba that have said that women should have access to abortion if that is what they choose. This legislation flies in the face of that, and, in fact, Mr. Orchard, you have been quoted in the papers as saying when the appeal court ruled that yes, you did have to pay the doctors' fees if they performed abortions in clinics, you specifically said that you were going to find a way to get around that. So this legislation would seem to me to be looking for a way to circumvent what all the courts in the country have said should be, and in fact the Charter of Rights, I think, says too something about equal benefit of the law. If the intent is very clear that abortion should be accessible to women and you are trying to find a way around that, I think that is disgusting. I really do.

Secondly, in terms of money, well, how much do those court challenges cost? I as a taxpayer am now going to, apparently, with this legislation going through as it undoubtedly will, I am going to be paying for yet other court challenges because that is what is going to happen. I have already paid for two in Manitoba around this whole issue. I and other taxpayers like me, and now I am going to be paying for some more because this legislation will be challenged just as all the rest was and it will fail like all the rest did because Henry Morgentaler has right on his side. It will fail and I will be paying for it. I am outraged about that.

The other part about the money is just what these other women said, too. In fact, Mr. Orchard, you have been talking about this in your health reform legislation, that procedures and health care should be performed at the level where it is the least expensive, where it could be most reasonably provided in a medical setting. I cannot quote them because I was not ready to come here and present all of this the way I am, on the spur of the moment, but it is clear that having procedures done in the teaching hospitals as you have said, having them done there, like at the Health Sciences Centre, is an expensive way to do things. So why are we trying to have all the abortions done there, rather than having them done at a place that is less expensive and does them faster and in a safe fashion?

* (2310)

The Supreme Court has said this shall be, and there is no law in Canada against abortion. So why are we as a government trying to force women to go to the most expensive places to have these procedures when all of the rest of the health reform legislation is saying, we want to move this down into community settings and clinics? It does not make any sense to me at all.

So on all of those counts, I am just outraged that my government should be proposing to spend money and to try to circumvent court rulings in this way. I think this is pernicious legislation that should be dropped. That is all I have to say.

Mr. Chairperson: I thank you for your presentation.

I have further clarification, more direction on registering. It has been pointed out to me that when a person is aware of a bill that is coming forth, all they would have to do is phone the clerk and mention they would like to make a presentation. At that time, the clerk will contact the individual to tell them when the bill is going to be brought forth for public presentation.

Ms. Lande: So early in June when I knew this was coming out, I should have contacted the clerk and said please put me on the list and let me know when it is going to be.

Mr. Chairperson: Right. Then they would contact you and tell you when it is coming. That is a matter of clarification.

Ms. Lande: That is good for future reference, although I tend to be a private citizen, not a public advocate like this, but it just seemed not to make any sense.

Mr. Chairperson: Ms. Barrett was going to ask you a question, I believe.

Ms. Becky Barrett (Wellington): Would you be willing to answer a question?

Ms. Lande: If I can.

Ms. Barrett: I wanted to say I appreciated your presentation and your sense of outrage, particularly around the cost saving and your comments about the least expensive level in the health care reform package. I wanted to give you a quote from the minister and then ask you a question.

This is from the minister's comments in the Legislature on July 9 where he was talking about this particular piece of legislation, and he is saying, quoting now: " . . . we have provided insurance

health care services in the province of Manitoba to determine where services can be safely and economically provided within the budget framework that Manitobans have put at their disposal through taxation and borrowing to provide needed health care services in Manitoba."

I think you very eloquently just stated that very fact, and that the—

Ms. Lande: I have to admire Theresa Ducharme, who said two things that I really support. One, she talked about you people listening to her, and I think that has something to do with respect. It did not look very good when I was sitting over there, and other people were talking. Some people were not listening. I am a school teacher, so I notice that. So I think that was a point well made.

I also supported her point when she said she was crying about the home care being reduced. Yes, it is, and here we could be saving money by not putting through this kind of legislation and having to pay for court challenges that are bound to arise. Have the services provided at the least expensive place that the College of Physicians has accredited, or whatever they say, and save that money and put it into some other things that people need.

Ms. Barrett: I have just one question for you. I hope it is not an unfair to question to ask you, but you have stated that for cost savings and decentralized community-based services and court challenges, et cetera, there is no reason for this piece of legislation.

Can you think of a reason why this piece of legislation might have been brought into the House?

Ms. Lande: Well, only by what Mr. Orchard himself said, that he is going to find a way to get around what the courts have said has to be, and so he is doing it for some reason of his own, not because it makes any sense.

Mr. Orchard: I want to thank you for your comments and your expression of your personal feelings. They are shared by many Manitobans on both sides of this issue. Thank you.

Ms. Lande: I guess I want to say that this legislation does not, nor should it, speak to the rightness or the morality or the decision making around abortion. We all know that there are strong feelings around this whole issue, and this is not what the legislation is about. I mean, we should be looking, like the government is, at how can we cut the deficit and all of those kinds of things.

Mr. Orchard: You are absolutely correct. This legislation is not, as you and others have indicated, solely directed at the issue of service provision and therapeutic abortion. It is a much larger amendment that has value to this government, to future governments and governments in the past in terms of directing where service provision ought to be within the control of the Ministry of Health and the government for those very reasons you have identified—safety and affordability.

Mr. Chairperson: Thank you very much for your presentation, Ms. Lande.

I will now call on Amanda Le Rougetel. Your presentation has been distributed, so you may begin.

Ms. Amanda Le Rougetel (Coalition for Reproductive Choice): I did not have a huge amount of time to prepare, so what I am going to say is also what you are going to have, in front of me, but I will speak it eloquently, so I urge you to listen to me.

We are a volunteer pro-choice organization; that is the Coalition for Reproductive Choice. We work to ensure that women have access to abortion. We believe that women are moral beings, fully capable of making difficult decisions that are right for them, whatever that decision may be.

I am here tonight at 11:15, by my watch, to speak on behalf of the coalition and to raise our voice in opposition to Bill 31. We believe this bill is unfair, unjust and unnecessary. It is our belief that the Minister of Health (Mr. Orchard) and the government of this province are introducing this bill in order to make it more difficult for women to access the legal, medical procedure of abortion at the Morgentaler Clinic in Winnipeg.

We further believe that this bill has as its intention to differentiate between abortions performed at hospitals and those performed at free-standing clinics, such as the one owned and operated by Dr. Henry Morgentaler. This clearly flies in the face of the decision handed down by Justice Vern Simonsen and also Justice Huband last year and earlier this year. The current law provides for access to abortion regardless of the location of that procedure.

If this government is serious about wanting to curb rising health care costs, it will look seriously at

supporting fully the existence of the Morgentaler Clinic and funding for procedures performed there.

Bill 31 is an unnecessary piece of legislation that will make it harder for women to access the medical procedure of abortion in a free-standing clinic. In a time of fiscal restraint and national concern for improving quality of health care, Bill 31 is entirely illogical, and we urge this committee to recommend the withdrawal of Bill 31. Thank you.

Ms. Barrett: I would like to compliment you on your making a lot of points in a very short period of time, not only for the presentation time between finding out about the committee hearing and coming, but in a small number of words actually, which some of us around this table could take a lesson from, myself included.

Ms. Le Rougetel: I am a writer by profession.

Ms. Barrett: You state in your third paragraph that you believe this bill has, as its intention, the differentiation between abortions performed at hospitals and those performed at freestanding clinics.

This may be an unfair question, but do you have any sense of why this differentiation is being instituted through Bill 31?

Ms. Le Rougetel: Well, that is a large question that I am really not the perfect person to answer. It seems to me that there is a long history that exists between the current government of this province and Dr. Morgentaler. We know there is no love lost between those two parties.

The timing of this legislation is interesting. We have had a case brought by Dr. Morgentaler. A decision was brought down. The government appealed. There was another decision that was brought down. Both those decisions were in favour of Dr. Morgentaler. Yet, now we have this legislation introduced which is very much in line with the comments that were made by the minister in the press about how he would introduce legislation to find a way through the loopholes maybe that existed in the decision. So the timing is interesting.

Certainly the relationship that exists between Dr. Morgentaler and this government is well-known by most of us in this room. I think this legislation is a result of this somewhat, well, shall we say, the dislike that exists between the government and Dr. Morgentaler.

Ms. Barrett: Mr. Chairperson, I have just one other question. I would like to preface it by quoting from the minister's statements on May 12 when he introduced this bill for second reading.

He talked about: "We believe this legislation is absolutely essential to enable Manitoba Health to adhere to our realistic and crucial need to provide efficacious insured services that have identifiable benefit in improving the health status of one million Manitobans."

I am wondering if you can respond to that statement. Do you think the impact of Bill 31, which will be in effect to not provide financial support for the services provided at the Morgentaler Clinic, adds to or detracts from efficacious, insured services and providing improved health for Manitobans?

* (2320)

Ms. Le Rougetel: I think the statement you read sounds like a good thing that he is striving for. However, Bill 31 I do not think fits with that particularly. I think there is a disjuncture between the legislation being introduced and the statement made.

I think the point that needs to be made over and over again is that the decision to have or not to have an abortion must lie with the individual woman. It is the responsibility of the government at the provincial level that administers health care funds to ensure that all citizens have access to the medical procedures they require.

Abortion is one of those procedures, whether individuals around this table or sitting in this House like it or not. That is the truth. There are many women, many of whom I know, who have had to make that incredibly difficult decision and must live with it for all of their lives.

This government should not put itself in the role of moral watchdog of those women. It should instead put itself in the role of providing decent health care that is accessible to all citizens who need to access it.

Mr. Orchard: Thank you kindly for your presentation this evening.

Mr. Chairperson: Thank you very much for your presentation this evening.

I will now call on Lori Johnson. Did you have a written presentation, Ms. Johnson?

Ms. Lori Johnson (Morgentaler Clinic): I do not, Mr. Chairperson.

Mr. Chairperson: Okay. You may start, then.

Ms. Johnson: My name is Lori Johnson, and I am the Director at Morgentaler Clinic here in Winnipeg. I appreciate the opportunity to appear before this committee. I raise my voice also to urge you to withdraw the proposed Bill 31.

I agree absolutely that it is the mandate and prerogative of the Minister of Health (Mr. Orchard) to control with judicious care the spending of health care dollars. I urge the minister also, in the area of the provision of abortion services, to avoid the political trap of becoming caught in the moralizing on either side of the issue. Clearly there are strong feelings on both sides of the issue.

Recently, to my pleasure, the minister has directed the executive director of the Manitoba Health Services Commission to begin paying the long since disputed tariff fee for 860, the Manitoba Health Services Commission tariff No. 4, therapeutic abortion services.

Immediately upon receiving notice that in fact the clinic was going to be funded for those therapeutic abortions which had taken place since the March 2 court date, Dr. Morgentaler instructed me to advise our referring physicians and referring service agencies in the city of a substantial decrease in the fees that clients who come to Morgentaler Clinic still—

Mr. Chairperson: Excuse me, if I could just interrupt you. I am sorry to interrupt you, but we have got a bit of technical difficulty behind us, and we are going to have to take about a five-minute recess. I am sorry.

Ms. Johnson: That is perfectly fine. It gives me a moment to collect my thoughts.

The House recessed at 11:24 p.m.

After Recess

The House resumed at 11:28 p.m.

Mr. Chairperson: If I could call the meeting back to order. We are back in line here, so Ms. Johnson, you can continue with your presentation. Sorry for the interruption.

Ms. Johnson: As I was saying, recently the clinic has begun to feel the effects of the funding of the disputed physician's fee. The response of Dr. Morgentaler has been to take the opportunity to decrease the overall facility fee that women have been facing in the clinic as quickly as possible. It was instituted immediately.

The point that I want to make is that this little bit has made a difference in terms of broadening access for the women of this province and certainly Northern Ontario and our neighbouring Saskatchewan.

I urge the Minister of Health (Mr. Orchard) not to take any action which would reinstitute a situation where the clinic was forced to again raise fees, limiting access to these women, rather to consider the funding of other educational agencies, for example Planned Parenthood. Again we look to that being perhaps a consideration for the wise spending of health care dollars in terms of decreasing the numbers of therapeutic abortions.

* (2330)

I guess the main point that I would want to leave you with is that increased access makes a difference. Our best hope would be that, again, in the wise spending of limited health care dollars, total funding of a freestanding clinic would be an issue that we should be talking about.

I guess my position is exactly that, that this antagonistic, confrontational dance that has gone on, lo, these many years between this government and Dr. Morgentaler personally might perhaps be laid to rest and perhaps an age of more conciliatory conversation might perhaps be a possibility, and that would be my fondest hope.

Mr. Chairperson: Thank you very much, Ms. Johnson.

Ms. Barrett: Thank you for your presentation. I have basically one question. I think that of the presenters tonight you have the most first-hand knowledge, being the director of the clinic.

The minister, as I stated earlier, talked about services being safely and economically provided within budgetary constraints. I am assuming that perhaps one of the reasons that the Bill 31 would be instituted, one of the rationales would be that the services would be different qualitatively.

Can you compare the services provided in your clinic with those services provided in hospital? I do not mean going detail to detail, but are there any differences that you see that could justify Bill 31's imposition as far as quality and safety?

Ms. Johnson: Certainly I am in no position to speak with any authority about how things are run in hospital. I can tell you from my experience at the clinic that for the most part, particularly now in the summer months when those doctors who are providing therapeutic abortion services in hospital are beginning to rotate into summer holiday schedules, and this is a seasonal sort of occurrence, access is certainly not guaranteed in hospital right now.

We in the clinic are seeing women who would be without other resources, period, on compassionate grounds with a full waive of clinic fees, because to say no would mean that these women would be carrying to term pregnancies that were unwanted.

So generally we have more flexibility in terms of the length of the wait list. Certainly that has to do with the numbers of clients who come through our doors as opposed to going through hospital doors.

I think that when we are talking about therapeutic abortion services the length of the waiting list is no small matter. We know certainly that medical risk increases with gestational age.

Mr. Orchard: Ms. Johnson, can I ask a question in terms of your out-of-province women who access the clinic from Ontario and Saskatchewan. Are those respective governments reimbursing the clinic?

Ms. Johnson: Yes.

Mr. Orchard: Okay. I thank you for your presentation, Ms. Johnson.

Mr. Chairperson: Thank you for your presentation this evening, Ms. Johnson.

Now call on Mr. Robbie Mahood. Did you have a written presentation?

Mr. Robbie Mahood (Private Citizen): I do not. I am in the same position of belatedly hearing about this.

Mr. Chairperson: Okay. You can begin then, Mr. Mahood.

Mr. Mahood: Yes, I will. I did feel some frustration likewise about the failure to disseminate widely the fact that these hearings were taking place and, indeed, if not more actively to solicit contribution from interested groups or individuals particularly in terms of legislation that might illicit some controversy as this one has. I sense that this is something far short of democracy and probably indicates why our democratic institutions are held in such low regard in the population. This sounds like government by stealth rather than full democratic airing of views.

However, that being said, I will try to address myself to the issues that I think this bill raises. By way of introduction—

Mr. Chairperson: Mr. Pallister, on a point of order.

Point of Order

Mr. Brian Pallister (Portage la Prairie): Sir, I think it is fair to note, and, perhaps, for your information, that Manitoba is the only province that goes through this process on every bill, and so in terms of—

Mr. Mahood: So much the worse for the other provinces, I guess.

Mr. Pallister: Well, perhaps, perhaps it is.

Mr. Chairperson: The member does not have a point of order.

Mr. Mahood: Okay, I do not want to dwell on that. I am just expressing my personal view—

Mr. Pallister: And you have the opportunity to do so.

Mr. Mahood: And I will be eternally grateful.

Mr. Chairperson: Mr. Mahood, to continue.

* * *

Mr. Mahood: Just by way of introduction, I am a practising family physician and clinical co-ordinator of medical services at Klinic Community Health Centre, although I want to stress that I am speaking here tonight in a personal capacity.

I am also a physician abortion provider, and I suppose I am in the rather unique position, as far as I am aware, of performing abortions both at the Morgentaler Clinic and also at Women's hospital, that is in both the hospital setting and in a freestanding clinic setting. I have always been impressed, I guess, by the absurdity that I can perform an abortion funded under medicare in one setting and perform, perhaps the next day, the same procedure under somewhat different, and if I may say so in some respects, superior circumstances without medical care coverage for the patient in the other setting.

I think this bill would have to be rejected for that reason alone, that it would allow this government to continue this absurd situation, and, in fact, a

situation that is discriminatory toward a particular institution.

I think we have to view Bill 31 as a politically motivated piece of legislation which really has nothing to do with provision of quality health care. It is no secret that this government is determined to deny women, who choose to terminate their pregnancies at the Morgentaler Clinic, medical care coverage.

Having lost two battles in the courts, the government clearly plans to bring in omnibus legislation, or enabling legislation I suppose we could call it, which it is obviously hoped will enable them to continue their discriminatory policy toward the clinic. There may well be other objectives. I tend to think that those are somewhat questionable as well.

Even before his government took office in 1988, Mr. Filmon, who was then Leader of the Opposition, declared his party's opposition to the Morgentaler Clinic and the intention of his party, if elected, to close the clinic down. The government's stubborn insistence on denying coverage to women attending the clinic is consistent with this partisan political declaration, but it flies in the face of logic, certainly the logic of equitable and unimpeded access to abortion services and even the much vaunted logic of cost cutting, so dear to the government and the Ministry of Health.

Since clinic abortions can be provided at substantially less cost than those provided in the hospital, Mr. Orchard searched in vain for excuses, even going so far as to claim that clinic abortions were not as safe as those provided in hospital, a statement which betrays either an appalling ignorance or deliberate dishonesty. There is not a single shred of evidence to support this assertion of Mr. Orchard. In fact, the evidence clearly shows that the safety record of clinics is at least as good as that in hospitals and in several important respects, notably counselling and patient support as well as cost, the clinic record is clearly superior.

It is the College of Physicians and Surgeons in Manitoba in any case, not the Minister of Health, whose business it is to determine if health services provided in facilities meet accepted standards of safety and quality of care. The Morgentaler Clinic has met this test consistently and recently had its approval by the college reaffirmed after an on-site inspection. Mr. Orchard unfortunately has yet to visit the clinic, though I am sure he would be welcomed without prejudice.

The refusal to fund abortions at the Morgentaler Clinic represents a potential threat, I think, to the withdrawal of funding for all abortions per se by a government so inclined. Indeed, we saw a previous presenter embrace this concept rather naively, I think, from any viewpoint. Such a retrogressive step of deinsuring abortion services would mean a disastrous decline in women's health care, with a dramatic increase in illegal abortions and the increased mortality and morbidity that attend any situation where abortion is not freely available to all women.

* (2340)

This legislation I think should be seen not as an aid to government in its attempts to rationally distribute health care resources, but as a means to introduce political criteria into the revision of health care, specifically by denying the right of Manitoba women to access abortion services where they choose and where in fact it makes more sense for them to be provided in the first place.

This government, as I mentioned, long ago declared its opposition to outpatient or freestanding clinics in the heat of a political campaign that first brought it to office. The clinic I think offends Mr. Orchard and the government because it improves access to abortion services for women in the province and because it is symbolic of the battle for women's rights more generally. That is why the government is prepared to maintain its position despite the greater costs in offering the service in the hospital sector, and to spend money in a losing battle to defend its untenable position in the courts and to draft legislation to facilitate this blatantly discriminatory policy.

This government, especially in the public role played by its Minister of Health (Mr. Orchard) and his deputy minister, has launched a high-profile campaign to restructure health care, its so-called health care reform initiative. There has been a lot of rhetorical wind devoted to the need to move services out of hospital and into the community. So far, I think we have seen simply a downgrading of hospital services, particularly those services that have made the hospitals a little more responsive to the community, without a compensatory development of nonhospital community-based services.

The government's abortion policy exposes I think the government's health care reform initiative and all its contradictions. In this case, we have a service which from both a fiscal and a clinical standpoint is more advantageously provided outside of hospital. Yet the government refuses to acknowledge or act on this reality, preferring to prioritize its own narrow sectarian agenda and keep abortions exclusively in hospital. The danger here is that the declining nursing and social work resources within the hospital will impair the standard of abortion care which clearly could suffer in the long run.

One can understand, I suppose, the desire to adopt a more rational approach to the provision of health care services, limiting expensive and intensive diagnostic and therapeutic services to a few large institutions, but there will surely be a need to move many services such as women's reproductive health care services, including therapeutic abortion services, outside of hospital and to provide the necessary infrastructure and staffing to make these services accessible and of high quality.

Speaking as a community-based family physician who is also an abortion provider, I look forward to the day when clinics like the Morgentaler Clinic are fully funded by government, not just for the physician's fee, but encompassing counselling, nursing and administrative costs as well. In the long run, this is the only way to provide high-quality abortion and other reproductive health care services that are accessible and supportive of patients while cognizant of the need to contain costs.

That is the end of my remarks. I would urge this committee to recommend that this bill be withdrawn.

Mr. Chairperson: Thank you very much, Dr. Mahood.

Ms. Barrett: You have done an excellent job I think of summarizing the background and the issues that are present in not only Bill 31 but in the larger debate around health care and more particularly around therapeutic abortion services.

One element I had not heard mentioned before is the potential problem, if it is not already an actual problem, faced by women in hospital settings with the reduction in nursing and social work services and the potentially very damaging effects that could have on not only direct patient care but also, I would imagine, the counselling component of abortion services. I appreciate that additional connection between health care reform and this problem.

Mr. Mahood: Just to clarify, I am not saying that standards of care have been compromised at this point. I just think that because of the general assault on particularly nursing and social services staff in hospital and the reduction in their numbers, that hospital services generally are at risk of deterioration, and abortion services may suffer as a consequence, maybe deprioritized perhaps of different priorities within the hospitals.

It is not a situation that leads me to be entirely optimistic, although I think there are lots of good aspects about the services provided at the Health Sciences Centre, have been and continue to be. In a larger framework, I think it is both for clinical reasons, reasons of quality of care, and financial reasons, reasons of cost, that it is not logical. It does not make sense to provide abortion services in a hospital. Clearly a superior option is to provide them in outpatient clinics.

Mr. Orchard: Thank you, Dr. Mahood, for your contributions tonight.

Mr. Mahood: Thank you.

Mr. Chairperson: Thank you very much for your presentation this evening, Dr. Mahood.

I now call on Cynthia Byers. Do you have a written presentation, Ms. Byers?

Ms. Cynthia Byers (Private Citizen): No, I do not.

Mr. Chairperson: That is okay. You may begin then. Thank you very much.

Ms. Byers: Good evening to everybody in front of me and everybody behind me.

I am here as a private citizen and as a taxpayer. I want Bill 31 to pass. I have indicated this to my MLA, Mr. Glen Findlay.

Taxpayers, that means all of us here, are already paying for abortions done in hospitals here in Manitoba. As far as I can see, abortion-providing clinics are a duplication of service. Is that not what, above all, should be avoided? Indeed, this government had been working at eliminating duplication, and here is another new one up for consideration. It is ludicrous.

If there are any complications that arise from an abortion, and let us not forget that one in a hundred is one figure that women suffer from one of the many complications of induced abortion. Henry Morgentaler, himself, admits this, and Statistics Canada confirms it.

If a complication does arise from an induced abortion, if the abortion had been done in the hospital, the woman is already at the right place to receive further treatment to handle the emergency. I think that would be a big cost saving right there.

Health services are being reduced. They have been reduced already. Health dollars are becoming scarcer and should be used for health, for regaining it, for promoting it, for keeping it. Abortion is for the purpose of death. Health dollars should not be used to pay for destroying life.

When a person becomes curious about abortion and decides to really become informed, startling information is discovered, information that is not widely reported by the main media formats. That information is that there are many frightening physical complications of the abortion procedure. Some are corrected right away, for example, the emergency removal of the women's uterus that had become perforated—some complication indeed.

* (2350)

Other physical complications are long term, for example, loss of fertility. Treatment for this problem can go on for years. Also, as listed in the Diagnostic and Statistic Manual of Mental Disorders, revised edition, post-abortion syndrome covers the psychological complications which many women who have had abortions suffer from. Women end up needing ongoing counselling and other services to help them mentally deal with their trauma.

Where will it all end? How many women are receiving care or service now because of a problem, either physical or psychological, that was caused by an abortion? How many health dollars are they using up? It seems to me, at least, that the fewer abortions the province gets involved in, the better. The actual cost of abortion is bad enough, but the hidden costs of abortion can be unreal, both on a monetary level and on a human level.

I want to see Bill 31 passed. Let us save some dollars, and let us save lives. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Byers.

Mr. Orchard: Thank you very much for your presentation, Ms. Byers.

Ms. Byers: You are welcome.

Mr. Chairperson: Thank you very, very much.

As this concludes public presentations on Bills 30, 31, and 33, we will now go into clause-by-clause consideration of the bills.

Bill 30—The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act
(continued)

Mr. Chairperson: The first bill we will consider is Bill 30, The Vulnerable Persons Living with a Mental Disability and Consequential Amendments Act.

During the consideration of the bill, the Title and the Preamble are postponed until all other clauses have been considered in their proper order by the committee. We will now consider clauses—

An Honourable Member: Just give us a minute here.

Mr. Chairperson: Just have one moment, okay. For the convenience of the committee, there are bills available up here at the front.

We will call the committee back to order here. As the minister did not have any opening statements, I will ask the critic for the official opposition on Bill 30 whether he had any opening statements.

Mr. Doug Martindale (Burrows): I will try to be brief.

I thought the presentations tonight were very interesting. There was some diversity, but there was some unanimity. There were things that a number of presenters would like to see amended in this bill, particularly a mandatory review of the act after it has been in operation for a couple of years or a number of years. Several presenters thought there should be advocates. A number of presenters—four of them I believe—recommended that the Preamble be included in the bill itself and five presenters recommended that the commissioner report to the Legislative Assembly.

I will be moving amendments on two of those. I wish I had anticipated the unanimity on those so I could have moved amendments on all of them, but I was unable to do that, although I did talk to a number of people before tonight. When we get to those clauses, I will have a couple of amendments.

Mr. Chairperson: I thank the member for his opening comments. Mr. Alcock, did you have an opening statement?

Mr. Reg Alcock (Osborne): Mr. Chairperson, actually I have just a couple of comments that I will wrap a question around. I note the variety of opinion that has been expressed on the bill. I understand that the minister has some amendments that he is considering and intending to bring forward. I see that there are recommendations for other amendments.

I am just wondering whether or not we can facilitate the process tonight by having the minister just make a few comments on the nature of his amendments which may then allow us to forgo other amendments that people may feel it is necessary to bring forward. Perhaps we could start by the minister telling us which amendments he is prepared to consider. Having done that then, it will put us in a position to better assess any further amendments we might want to discuss.

Mr. Chairperson: I thank the member for his comments.

Hon. Harold Gilleshammer (Minister of Family Services): Yes, we do have some amendments to clarify and give more prominence to the support network that individuals referenced in this bill have surrounding them and, secondly, to indicate that the supported decision-making appointment is a last resort. So our amendments surround those two factors. We have been working with some of the presenters here this evening to bring further clarity to the act, and we have copies that we can distribute.

Mr. Alcock: I wanted to just ask a couple of questions of the minister on that then. There was some discussion of a possibility of a review after a particular period of time and some request for that by a couple of the groups. Is it the government's intention to incorporate that in the bill?

Mr. Gilleshammer: We have had discussions on the issue of putting into the bill a time frame for the review. We are not going to proceed with that, but I have indicated to some of the people who have been in discussion with the department and myself that we feel that this is a piece of legislation that is going to require a lot of work prior to it coming into effect and that there will be an ongoing review of it.

Mr. Chairperson: Part 1, Interpretation and Administration Clauses 1 through 4. Shall they pass? Mr. Martindale, on which clause did you have amendments?

Mr. Martindale: I move

THAT the heading—

Mr. Chairperson: Is it on Clause 1?

Mr. Martindale: Yes, before Clause 1.

Mr. Chairperson: Oh, before Clause 1.

Mr. Martindale: I move

THAT the heading "INTERPRETATION AND ADMINISTRATION" preceding subsection 1(1) be struck out and "PRINCIPLES, INTERPRETATION AND ADMINISTRATION" be substituted.

THAT section 1 be renumbered as section 1.1 and the following substituted as section 1:

PRINCIPLES

Declaration of principles

1 This act shall be interpreted and administered in accordance with the following principles:

Presumption of capacity

1 Vulnerable persons are presumed to have the capacity to make decisions affecting themselves, unless demonstrated otherwise;

Self-determination

2. Vulnerable persons should be encouraged to make their own decisions;

Support in decision making

3. A vulnerable person's support network should be encouraged to assist the vulnerable person in making decisions so as to enhance his or her independence and self-determination;

Least restrictive and least intrusive assistance

4. Any assistance with decision making that is provided to a vulnerable person should be provided in a manner which respects the privacy and dignity of the person and should be the least restrictive and least intrusive form of assistance that is appropriate in the circumstances;

Substitute decision making as last resort

5. Substitute decision making should be invoked only as a last resort when a vulnerable person needs decisions to be made and is unable to make these decisions by himself or herself or with the involvement of members of his or her support network;

I move it in English and French.

[French version]

Il est proposé que le titre "DEFINITIONS ET APPLICATION", qui précède le paragraphe 1(1) du projet de loi, soit remplacé par "PRINCIPES, DEFINITIONS ET APPLICATION".

Il est proposé que le projet de loi soit amendé par substitution, au numéro d'article 1, du numéro d'article 1.1 et par adjonction du titre et de l'article 1 suivants:

PRINCIPES

Déclaration de principes

1 La présente du interprete et est appliquée à la lumière des principes suivants.

Présomption de capacité

1. Les personnes vulnérables sont présumées avoir la capacité de prendre des décisions qui les concernent.

Autonomie

2. Les personnes vulnérables devraient être encouragées à prendre leurs propres décisions.

Aide à la prise de décisions

3. Le réseau de soutien de la personne vulnérable devrait être encouragé à aider la personne vulnérable à prendre des décisions de façon qu'elle puisse accroître son indépendance et son autonomie.

Aide la moins restrictive et la moins gênante possible

4. L'aide fournie à une personne vulnérable en ce qui concerne la prise de décisions devrait respecter l'intimité et la dignité de la personne et être la moins restrictive et la moins gênante possible dans les circonstances tout en répondant aux besoins de la personne.

Subrogation

5. La subrogation ne devrait être invoquée qu'en dernier recours lorsqu'une personne vulnérable a besoin que des décisions soient prises et qu'elle est incapable de prendre ces décisions d'elle-même ou avec la participation des membres de son réseau de soutien.

Motion presented.

* (0000)

Mr. Martindale: I would like to speak to my amendment.

Mr. Chairperson: Yes, you can now.

Mr. Martindale: The review committee report has as recommendation No. 5 that the principles in their entirety be in the body of legislation which may be enacted. I am sorry that I did not actually have a copy of the review committee report until tonight when it was in someone's brief. I sent research staff to the library to get a copy of it, and, unfortunately, all they got was the discussion paper. If it was not available to the public, I am disappointed. One of the presenters tonight said that he had asked for a copy and could not get it. That is a minor point.

We did hear a number of presenters tonight, including ACL, Mr. Rod Lauder and two others, who recommended very strongly that the principles not be a preamble but they be part of the act itself. In fact, a couple of presenters would be disappointed because a number of the principles in the review committee report were dropped in the preamble.

My amendment is really only a partial correction as far as they are concerned, because I am only recommending that what the minister put in the bill as preamble be put in as principles as part of the whole bill. There are still some principles that were in the review committee report that are left out.

My understanding is that this makes a big difference in interpretation should someone go to court. The principles would have to be considered in any interpretation in the court, whereas a preamble does not have the same kind of legal status.

Mr. Chairperson, I commend my amendment to the committee's consideration. I think there is support for this amendment by many of the presenters tonight, if not the majority of them, and I hope that this minister would give my amendment serious consideration. In fact, I hope he supports it.

Ms. Becky Barrett (Wellington): Mr. Chair, I just wanted to add my voice to the member for Burrows' motion on putting the principles not in the preamble but in the body of the legislation, and suggest that this piece of legislation, as has been stated, and I think correctly, by the minister over the last two years or even more that it has been underway, that this is a landmark piece of legislation that is dealing with issues that will have massive impacts. It is first or close to first, certainly in Canada.

I agree with that discussion about the importance of this legislation and think that it is no less important a piece of legislation for those who will be under its aegis than The Environment Act or The

Child and Family Services Act, both of which have the principles within the body of the legislation.

I can think of no reason why this piece of legislation should not follow in the footsteps of those two important pieces of legislation and incorporate the principles within the body.

Mr. Gilleshammer: The usual practice is to have the principles in the preamble, and I would just indicate that the government will be rejecting the amendment.

Mr. Chairperson: On the proposed amendment by Mr. Martindale, all those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

An Honourable Member: A recorded vote, Mr. Chair.

Mr. Chairperson: A recorded vote has been requested.

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

Yeas 3, Nays 6.

Mr. Chairperson: In my opinion, it has been defeated. Six beats three.

Part 1, Interpretation and Administration. Clauses 1 through 4—pass.

Mr. Gilleshammer: Mr. Chairperson, I have an amendment on supported decision making which will be 5.1, and we can distribute that. I understand I have to read it into the record.

THAT the following be added after section 5:

Supported decision making
5.1(1) In this section, **"supported decision making"** refers to the process whereby a vulnerable person is enabled to make and communicate decisions with respect to personal care or his or her property and in which advice, support or assistance is provided to the vulnerable person by members of his or her support network.

Role of supported decision making
5.1(2) Supported decision making by a vulnerable person with members of his or her support network should be respected and recognized as an important means of enhancing the self-determination, independence and dignity of a vulnerable person.

[French version]

Il est proposé d'ajouter, après l'article 5, ce qui suit:

Prise de décisions appuyées
5.1(1) Dans le présent article, la prise de décisions appuyées s'entend du processus qui permet à une personne vulnérable de prendre et de communiquer des décisions concernant ses soins personnels ou ses biens et dans le cadre duquel les membres du réseau de soutien de cette personne fournissent à celle-ci des conseils, du soutien ou de l'aide.

Rôle de la prise de décisions appuyées
5.1(2) On devrait respecter la prise de décisions appuyées et reconnaître l'importance de son rôle dans l'accroissement de l'autonomie, de l'indépendance et de la dignité de la personne vulnérable.

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All opposed, please say nay.

In my opinion the Yeas have it. The amendment is accordingly passed.

Clause 5 as amended—pass; Clauses 5 and 6—pass.

Part 2, Support Services, Clauses 8 and 9—pass. Individual Plan, Clauses 10 and 11—pass. Mediation, Clauses 12 through 14—pass. Application to Appeal, Clause 15—pass.

Mr. Gilleshammer: The next amendment is

THAT clause 16(1)(b) be amended by adding ",the person for whom support services are requested if not the applicant," after "applicant".

[French version]

Il est proposé que l'alinéa 16(1)(b) soit amendé par adjonction, aprés "l'auteur de la demand", de ", la personne qui fait l'objet de la demande de services de soutien si elle n'est pas l'auteur de la demande".

Mr. Chairperson: On the proposed amendment by the honourable minister, all those in favour, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All opposed, please say nay.

In my opinion the Yeas have it. The motion is accordingly passed.

Clause 16 as amended—pass; Clauses 17 through 19—pass.

Part 3, Protection and Emergency Intervention, Protection, Clauses 20 through 24—pass; Emergency Intervention, Clauses 25 through 27—pass.

Part 4, Substitute Decision Making, Division 1, Vulnerable Persons' Commissioner. Clauses 28 through 31—pass.

Mr. Martindale: When we get to 32 I have an amendment.

Mr. Chairperson: Yes, we are there right now.

Mr. Martindale: I move

THAT the following be added after section 32:

Annual report

32.1 The commissioner shall prepare and submit to the Speaker of the Legislative Assembly an annual report respecting the performance of the duties and the exercise of the powers of the commissioner, and the Speaker shall cause the report to be laid before the Legislative Assembly within 15 days after receiving it if the Legislative Assembly is then in session or, if it is not in session, within 15 days after the beginning of the next session.

[French version]

Il est proposé d'ajouter, après l'article 32 du projet de loi, ce qui suit:

Rapport annuel

32.1 Le commissaire établit un rapport annuel relativement à l'exercice de ses pouvoirs et de ses fonctions et le présente au président de l'Assemblée législative. Ce dernier fait déposer le rapport auprès de l'Assemblée législative au plus tard 15 jours après sa réception ou, si l'Assemblée ne siège pas, dans les 15 premiers jours de séance ultérieurs.

Motion presented.

Mr. Martindale: This amendment is based on two things. One is recommendation 25 of the review committee report which says: That the position of vulnerable persons commissioner be established, preferably appointed by and reporting to the Legislature. They also had an alternative suggestion. Also when we heard presenters tonight there were five individuals or groups who recommended the same thing.

I think there are a number of very good reasons as to why the commissioner should report to the Legislative Assembly rather than a minister. The first one is that this commissioner has a great deal of power, and anyone who has read the bill or studied the bill can see the power and authority of this individual because it is spelled out in the act. In fact, 56(2) has alphabetical letters (a) to (i) spelling out the powers of the commissioner. So that is one reason, because I believe that when there is this much power there needs to be a considerable amount of accountability. I believe it is preferable to have this person accountable to the Leglislature than to the minister.

The second reason is that we have had experience in the area of other pieces of legislation with regard to reporting or not reporting to the Legislative Assembly. I think people would agree that it is a good thing to have the Ombudsman and the Auditor report to the Legislative Assembly. A number of presenters cited those precedents.

Now I think everyone at this table will remember that last year we had a debate around the Children's Advocate bill, and there were amendments requested to have the Children's Advocate report to the Legislative Assembly. The government was not in favour of that. We pointed out that there could possibly be disadvantages or repercussions to that, that we would not know what recommendations the Children's Advocate was making to the minister.

Little did we realize how soon after his appointment our predictions would come true. In fact, in Estimates this spring I asked the minister a number of questions about the Children's Advocate. In fact, I asked him repeatedly if the Children's Advocate had made any recommendations to the minister. I asked him three times, and the minister each time he replied said he had been in discussion with the Children's Advocate, but he would not admit to the fact that the Children's Advocate had made recommendations, and the reason is that we were not privy to those recommendations.

However, we did receive a copy of a letter that the Children's Advocate had written to someone in Thompson, and in the letter the Children's Advocate said he made recommendations to the minister, something that the minister would not admit to when he was asked very directly in Estimates.

(0010)

Mr. Gilleshammer: Absolutely not.

Mr. Martindale: We could look up Hansard and show the minister that he used the word discussions, over and over, and would not admit that the Children's Advocate had indeed made recommendations, a word that he used in his correspondance.

So based on other precedents, including in this minister's department, we believe it would be much preferable to have—I almost said the Children's Advocate report to the minister. Yes, that too. He should amend that act, but we believe that the commissioner here who has considerable power and responsibility and authority should report to the Legislative Assembly; therefore, there would be public accountability.

We note that numerous presenters tonight agree with this amendment, and we hope that this minister will agree to this amendment as well.

Mr. Gilleshammer: Mr. Chairperson, I would only have to assume that the late hour is causing the member to have not a real good grasp of the facts of which he speaks.

The amendment is inconsistent with Manitoba practice, and I would urge that we defeat the amendment.

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

An Honourable Member: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

Ms. Barrett: A recorded vote, Sir.

Mr. Chairperson: A recorded is being requested.

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

Yeas 3, Nays 6.

Mr. Chairperson: The amendment is accordingly defeated.

Clause 32—pass.

Division 2 Hearing Panels, Clauses 33 and 34—pass.

Division 3 Substitute Decision Maker for Personal Care, Application for Substitute Decision Maker for Personal Care, Clauses 45 through 47—pass.

Mr. Gilleshammer: Mr. Chairperson, I move

THAT section 48 be amended by striking out "and" at the end of clause (a), by renumbering clause (b) as clause (c) and by adding the following as clause (b):

(b) whether the person for whom the application is made appears to have a support network and reasonable efforts have been made to involve the support network with the person; and

[French version]

Il est proposé que l'article 48 soit amendé par substitution, à la désignation d'alinéa b), de la désignation d'alinéa c) et par ajonction, après l'alinéa a), de ce qui suit:

(b) quant à la question de savoir si la personne qui fait l'objet de la demande semble avoir un réseau de soutien et si des efforts sérieux ont été faits pour que ce réseau de soutien s'occupe d'elle;

That change, as all of these, should be in English and in French.

Motion agreed to.

Mr. Chairperson: Clause 48 as amended—pass.

Mr. Gilleshammer: I move

THAT subsection 49(2) be amended by striking out "clause 48(b)" and substituting "clauses 48(b) and (c)".

[French version]

Il est proposé que le paragraphe 49(2) soit amendé par substitution, à "l'alinéa 48b)", de "aux alinéas 48b) et c)".

I move that both in English and in French.

Motion agreed to.

Mr. Chairperson: Clause 49 as amended—pass; Clauses 50 to 51—pass; Clauses 52 to 55—pass; Clauses 56 to 68—pass; Clauses 69 to 75—pass; Clauses 76 to 79—pass.

Division 4 Substitute Decision Maker for Property Clauses 80 to 82—(pass).

Mr. Gilleshammer: I move

THAT section 83 be amended by striking out "and" at the end of clause (a), by renumbering clause (b) as clause (c) and by adding the following as clause (b):

(b) whether the person for whom the application is made appears to have a support network and reasonable efforts have been made to involve the support network with the person; and

[French version]

Il est proposé que l'article 83 soit amendé par substitution, à la désignation d'alinéa b), de la désignation d'alinéa c) et par ajonction, après l'alinéa a), de ce qui suit:

(b) quant à la question de savoir si la personne qui fait l'objet de la demande semble avoir un réseau de soutien et si des efforts sérieux ont été faits pour que ce réseau de soutien s'occupe d'elle;

I move that both in English and French.

Motion agreed to.

Mr. Chairperson: Clause 83 as amended—pass.

Mr. Gilleshammer: I move

THAT subsection 84(2) be amended by striking out "clause 83(b)" and substituting "clauses 83(b) and (c)".

[French version]

Il est proposé que le paragraphe 84(2) soit amendé par substitution, à "l'alinéa 83b)", de "aux alinéas 83b) et c)".

I move that both in English and French.

Motion agreed to.

Mr. Chairperson: Clause 84 as amended—pass; Clauses 85 to 86—(pass); Clauses 87 to 90—pass; Clauses 91 to 92—pass; Clauses 93 to 96—pass; Clauses 97 to 106—pass; Clauses 107 to 112—pass; Clause 113—pass; Clauses 114 to 118—pass; Clauses 119 to 128—pass; Clauses 129 through 133—pass; Clauses 134 through 138—pass; Clauses 139 through 145—pass; Clauses 146 to 157—pass; Clauses 158 to 163—pass; Clauses 164 through 166—pass; Clauses 167 through 170—(pass); Clauses 170 through 208—(pass), Clause 209—(pass); Clause 210—(pass).

Mr. Gilleshammer: I move

THAT Legislative Counsel be authorized to change all section numbers and internal references necessary to carry out the amendments adopted by this committee.

[French version]

Il est proposé que le conseiller législatif soit autorisé à modifier les numéros d'articles et les renvois internes de façon à donner effet aux amendements adoptés par le Comité.

I move that in both English and French.

Motion presented.

Mr. Chairperson: All those in favour of the addition, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Mr. Martindale: Mr. Chairperson, just before we finish, I would like to say that although the amendments by the minister came fast and furious, I did have a chance to read them, and they did appear to be good and helpful amendments.

I understand that the minister worked them out in consultation with the community, and I just wanted to say on the record that from what I had a chance to read very quickly, we support those amendments.

Motion agreed to.

Mr. Gilleshammer: I would just like to comment that even though the honourable member for Burrows' (Mr. Martindale) memory is fading at times, I am pleased that he has a better understanding of the legislation and is now supportive.

Mr. Chairperson: Preamble—pass; Title—pass. Bill as amended be reported.

Bill 31—The Health Services Insurance Amendment Act
(continued)

Mr. Chairperson: We will now go to consideration of Bill 31, The Health Services Insurance Amendment Act (Loi modifiant la Loi sur l'assurance-maladie).

During the consideration of this bill, the Title and the Preamble are postponed until all of the clauses have been considered in their proper order by the committee.

Clause 1 through 3—pass; Clauses 4 through 5—pass; Preamble—pass; Title—pass. Bill be reported.

Bill 33—The Provincial Railways and Consequential Amendments Act
(continued)

Mr. Chairperson: We will now continue on with the consideration of Bill 33, The Provincial Railways and Consequential Amendments Act (Loi concernant les chemins de fer provinciaux et apportant des modifications corrélatives à d'autres lois).

During the consideration of the bill, the Title and the Preamble—

Hon. Albert Driedger (Minister of Highways and Transportation): I will wait a minute.

Mr. Chairperson: Well, what is happening here? Oh, here he comes.

Does the minister responsible for the bill have some opening comments?

Mr. Driedger: Mr. Chairperson, I just want to say that we have two very minor amendments that I will be proposing. I gave copies of that to the critic beforehand. They are of a very minor nature.

I understand that the member of the opposition or the critic has two amendments. I have indicated to him that I am not prepared to accept them at this time, though I am prepared to take and give them consideration when I review them with staff. If they are reasonable, and I think they might be, I would be bringing in amendments in third reading. Thank you.

* (0020)

Mr. Chairperson: I thank the minister for his comments. Does the member for the official opposition have any opening comments? No. Okay, then we will proceed with the bill—[interjection] Oh, pardon me. Does the member for the second opposition have any opening comments?

Mr. Reg Alcock (Osborne): Mr. Chairperson, no, I do not.

Mr. Chairperson: Thank you, Mr. Alcock.

During the consideration of the bill, the Title and the Preamble are postponed until all other clauses have been considered in their proper order by the committee. Shall Clauses 1, 2, 3, 4, 5—[interjection] I am sorry, Mr. Reid.

Mr. Daryl Reid (Transcona): One quick question. Are you going page by page, section by section?

Mr. Chairperson: No, I am doing clause by clause. I am doing it clause by clause or blocks of clauses.

Mr. Reid: I have one question under . . . short-line railways.

Mr. Driedger: Mr. Chairperson, I thought in the explanatory notes and the information that I gave to the critics, both critics, that that was clarified in there.

Legal counsel advises me that the federal legislation applies to intraprovincial, extraprovincial rail lines and short line invariably has to deal with intraprovincial rail lines. I will have legal counsel just clarify that further for me. If there are going to be any proposed changes, I am prepared to make those.

Mr. Chairperson: Thank you, Mr. Minister.

Shall Clauses 1 through 38 pass? They are accordingly passed.

Mr. Reid: Mr. Chairperson, I do not know why we just do not include the whole bill if you want to go like that. Page by page would be a bit more reasonable, I would think.

Mr. Driedger: Mr. Chairperson, I have an amendment at 39(1), that is why.

I move

THAT subsection 39(1) be amended by adding "with a shipper" after "enter into a contract".

[French version]

Il est proposé que le paragraphe 39(1) du projet de loi soit amendé par adjonction, aprés "peuvent conclure un contrat", de "avec un expéditeur".

It is a very minor change.

Motion presented.

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it. The amendment is passed. Shall Section 39, as amended, pass? Is accordingly passed.

Shall Clauses 40 through 45 pass?

Mr. Reid: I have a question that is relating to the first section under 34. If we can go back. I had

raised during my comments on second reading of this bill with respect to the NTA provisions that allow for the abandonment of the bayline, for example, and since it is considered in the interests of Canada that this bill allow for . . . operators to come in and establish on the bayline will in effect extinguish that protection of that bayline.

Has counsel provided the minister with any clarification on that under Section—I believe it is—158 of the NTA?

Mr. Driedger: Mr. Chairperson, legal counsel advises that in the event—and God forbid if this happens. If they would ever give up the bayline, it will fall under this—we could fit that into the short-line railway legislation.

That, hopefully, would never happen. I still feel that once we get to that stage I suppose that provision would cover that. Certainly that is not the reason why this legislation has been brought forward, because that one will be played at the political level for a long, long time.

Mr. Reid: I only raised that because I am concerned that the minister and the government, whoever the government of the day may be, will have to take over jurisdiction for that then if that comes to pass.

Section 158(4)(d) says that if the declaration for the line or segment is at work in Canada, it ceases to have effect, should it be transferred. That is why I raised it here, and I wonder if I could have some clarification, if the minister wanted to do that, on third reading.

Mr. Driedger: Mr. Chairperson, I am prepared to take it. I am very sure that I will have the clarification at third reading, at that time.

Mr. Chairperson: Clauses 40 to 45—(pass).

Mr. Driedger: Mr. Chairperson, I move

THAT proposed clause 46(3)(a) be amended in the English version by striking out "contained" and substituting "contain".

[French version]

Il est proposé que la version anglaise de l'alinéa 46(3)(a) du projet de loi soit amendée per substitution, à "contained", de "contain".

It is just a typing error, basically.

Motion agreed to.

Mr. Chairperson: Clause 46 as amended—pass.

Shall Clauses 47 and 48 pass?

Mr. Reid: Mr. Chairperson, 47(2) talks about qualified engineers. I am just wondering if that is all the engineering groups— . . . mechanical, electrical.

Mr. Driedger: I wonder if the member could repeat that question.

Mr. Reid: Under Section 47(2) on page 25 of the bill: " . . . unless the qualified engineer has inspected the railway and reviewed the operating procedures . . . ." Does that mean civil, mechanical, electrical engineers, or what type of engineering qualifications do we have that will be qualified to meet the needs?

Mr. Driedger: Mr. Chairperson, I am advised by legal counsel that a qualified engineer would mean somebody who is qualified to do an inspection on there. You could not have an electrical engineer doing it on a railway. The qualified engineer aspect of it should address that.

* (0030)

Mr. Reid: Just for the minister's information there are certain logical components of the docket which require some expertise, so that is one of the reasons why I asked this question.

The next one, I need to know if there are going to be people who are going to perform that testing or that inspection, did he have that qualification?

Mr. Driedger: Mr. Chairperson, I can only assume that it would be somebody who would be qualified in doing inspection on a railway. I cannot vision that one of my Highways construction engineers would do an inspection of that nature, but I understand what the member is saying and I will ask legal counsel to give me a clarification on that to maybe further define what is qualified to do that inspection.

Mr. Reid: If the minister will undertake that with his staff and then come back on third reading of the bill and give some indication if another amendment is necessary, we would probably be able to . . . an amendment that would include some provision for ensuring that the qualified people would be doing that type of inspection.

Mr. Driedger: Mr. Chairperson, I undertake to take and have that further clarified so that it meets the qualifications required.

Mr. Reid: Under that 48(1) regulations there was no time for the implementation of the regulations. Is that going to be answered right after the bill is

proclaimed or are we going to wait for some period down the road before regulations are brought forward?

Mr. Driedger: Mr. Chairperson, we have already started the process of developing the regulations. There are various time elements involved in terms of how this thing evolves. We feel that we will be in a position to have the regulations drawn up by the time that there would be any onus or request for a short-line railway. The process has started already. We are looking at the maximum—well, not maximum, I should not say that, but we are looking at anywhere around maybe four months in the discussions that we had just prior to the committee meeting tonight.

Mr. Reid: Mr. Chairperson, Section 49—

Mr. Chairperson: We have passed—we have asked for permission to pass Clauses 47 through 48.

An Honourable Member: Pass.

Mr. Chairperson: Accordingly passed.

Mr. Reid: I have an amendment for Section 49(1) and it is the section relating to the minister's ability to appoint any person as an inspector for the purposes of this act.

THAT subsection 49(1) be amended by adding "who has a demonstrated knowledge and expertise in railway equipment and operations" after "any person".

[French version]

Il est proposé que le paragraphe 49(1) du projet de loi soit amendé par adjonction, après "quiconque", de "a des compétences et des connaissances reconnues dans le domaine de l'équipement et de l'exploitation ferroviaires".

Motion presented.

Mr. Reid: I think it is important, Mr. Chairperson, that we do not have just any person who would not have demonstrated knowledge or some expertise in that area appointed as an inspector. I think it is important, if for nothing else, for the safety element that somebody doing these inspections have that knowledge. I know that from my own experience there are a fair number of people who are available with that expertise that government could ensure that they had staff to do that work for them. That is why I raised this amendment.

Mr. Driedger: Mr. Chairperson, I will ask the committee to turn down this amendment at this time, not saying that it is not a good amendment. I would like to take the opportunity because we have taken two years to develop this legislation that the professional people involved with this, I am going to take and bring forward both the amendments that the member is proposing. I think they make sense but I just want to have a comfort level with that and if it makes sense that I would take and bring them forward under third reading or the member could bring them forward under third reading at that time.

Mr. Reid: We also on Section—

Mr. Chairperson: I will pass 49 first.

On the proposed motion by Mr. Reid, all those in favour of the motion please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the nays have it. The amendment is accordingly defeated.

Clause 49—pass.

Mr. Reid: I have an amendment.

THAT clause 50(1)(a), be amended by striking out the word "reasonable".

[French version]

Il est proposé que l'alinéa 50(1)(a) du projet de loi soit amendé par suppression de "convenable".

Motion presented.

Mr. Reid: The reason, Mr. Chairperson, that the member might not understand the railway lingo that is used in the provisions that are provided under the National Transportation Act, under the National Transportation Act, there are provisions that allow for the inspectors to go at any time onto the property of the railway company to do their inspections when they think that there is a possible safety hazard or infraction that had occurred allowing that opportunity to do that. With this it is more subjective or objective that I am trying to bring forward here. I think that it is reasonable that those inspectors that the minister may either contact through the department or with the federal government to do these inspections or staff that he may have in his own department to be allowed at any opportunity where there is a suspected infraction to go in and investigate that.

Mr. Driedger: Mr. Chairperson, I personally do not see any reason why we should not accept it, but I

am not quite sure because, like I say, I would like to extend the same circumstances to the member as I did on the other one. I am prepared to take this under advisement. I would like to have it turned down now and if there is any reason why we should not accept it in third reading, I am prepared to take and bring that forward on third reading. So I ask members to turn it down. [interjection] I just want to get a comfort level with that by the time that we come to third reading.

Mr. Chairperson: On the proposed motion by Mr. Reid, all those in favour of the amendment please—oh, Mr. Reid, I am sorry.

Mr. Reid: I will let the vote go first and then I will make my comments.

Mr. Chairperson: On the proposed amendment by Mr. Reid, all those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the motion is accordingly defeated.

Shall Clause 50 pass?

Mr. Reid: With that, if the minister in consultation with his advisers would review that "reasonable" request by way of this amendment and come back on third reading and give an indication—

Mr. Driedger: I will let you know beforehand.

Mr. Reid: —we would look favourably upon that amendment should it come forward again in third reading.

Mr. Chairperson: Clause 50—pass; Clauses 50 through 51—pass.

Mr. Reid: On 52, I have one question here before I bring forward this amendment. Can the minister give me an indication of why, since the NTA allows for a five-to-one fine ratio, why the minister here has only chosen a two-to-one ratio, $25,000 versus the $50,000 for individuals and corporations?

Mr. Driedger: Mr. Chairperson, legal counsel advises me that it is sort of a normal process that for an individual versus a corporation that at least it doubles. That is what the policy advisers have stated. The point I want to make is that we are not talking of CN or CP in terms of the corporation, that we are talking of a short-line railway, which could be a group or a small group of shareholders or an individual versus a big corporation like CN or CP. That is part of the rationale.

I am prepared to take and review that based on the suggestion the member makes. As I say, we have had professional people working on this for two years, and they work in conjunction with the federal and provincial governments across this country.

I will take note of it. The member can move the amendment if he wants, but the same thing would apply here. I would want to take this back, have it reviewed, find out whether that is reasonable or not, and the rationale for that.

Mr. Reid: Well, I will not introduce my amendment at this time, Mr. Chairperson, and I will wait for the minister to come back with the rationale for his decision, if he feels it is more appropriate, as some members of the committee had suggested, to reduce the individual. That might be the way to go.

Mr. Chairperson: Clauses 49 through 55—pass; Preamble—pass; Title—pass. Bill as amended be reported.

The time being 12:40 a.m., committee rise.

COMMITTEE ROSE AT: 12:40 a.m.