



Third Session - Thirty-Sixth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



Vol. XLVII No. 8 - 10 a.m., Thursday, June 26, 1997

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 26, 1997

TIME – 10 a.m.

Does the minister have an opening statement? Well, maybe we can pass the bill before we do anything else. No? Okay.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

Hon. Bonnie Mitchelson (Minister of Family Services): Mr. Chairperson, I do not think I have an opening statement. We did have some very brief discussion at the end of the last committee meeting around some amendments that I was contemplating bringing into the bill. I think I will just leave it at that and see what questions arise, and hopefully we can get moving clause by clause.

VICE-CHAIRPERSON – Mr. Peter Dyck (Pembina)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mrs. Mitchelson, Hon. Messrs. Radcliffe, Reimer, Toews

Ms. Cerilli, Mr. Dyck, Ms. Friesen, Mr. Martindale, Ms. McGifford, Messrs. Penner, Sveinson

Substitutions:

Ms. Barrett for Ms. Friesen

Mr. Chairperson: Mr. Martindale, do you have an opening statement?

Mr. Doug Martindale (Burrows): Well, I have a lot of questions, but yesterday I asked the minister if she would be willing to go over her amendments first. That might forestall a lot of questions if she were to do that.

Mrs. Mitchelson: Mr. Chairperson, I am prepared to do that at the outset, and then we can see whether any of the questions might get answered as a result.

APPEARING:

Mr. David Langtry, Assistant Deputy Minister, Child and Family Services Division, Department of Family Services

The first amendment that I have is to subsection 8(11), as set out in Section 5 of the bill. This is the section that deals with licensing for foster homes and child care facilities. This is the piece that used to be under The Social Services Administration Act.

MATTERS UNDER DISCUSSION:

Bill 48—The Child and Family Services Amendment and Consequential Amendments Act

Mr. Chairperson: The Committee on Law Amendments shall come to order. This morning, we have for your consideration Bill 48, The Child and Family Services Amendment and Consequential Amendments Act.

So this is for the licensing and appeals of foster homes. It used to be under The Social Services Administration Act. The amendment removes the minimum penalty of \$200 for failure to have a licence to operate a home. The reason for removing that—and it was in The Social Services Administration Act that there would be a minimum penalty of \$200 and a maximum penalty of \$1,000. I guess what we want to do is ensure that no one faces imprisonment due to poverty, so we are taking away the minimum amount of \$200. So that is what the amendment is.

Mr. Martindale: Yes, I would like to ask the minister if the reason for that was advice by Legislative Counsel?

Mrs. Mitchelson: By Constitutional Law.

So that is the first amendment. The second amendment is in subsection 15(3.3) as set out in subsection 6(2) of the bill. It is the area that deals with fail to file financial disclosure, and we are proposing that we add into that section "and any such order may be enforced as a judgment of the court" after "exceeding \$5,000," and that is to clarify that this is a civil and not a criminal penalty. That was also a Constitutional Law recommendation for amendment.

The third amendment is an addition after subsection 8(2) of the bill, and this is the reporting. When an agency investigates presently, they only have to report back on any individual who has been—[interjection] When they find a child is in need of protection, they must report back to several different people, but they do not have to report back if, in fact, the child is found not to be in need of protection, so we have indicated all of the people who needed to be notified when the child was in need of protection.

I guess this was an amendment that came up as a result of a presentation that was made the other evening that indicated there was some concern about reporting to a school that someone had been investigated but were not found to be—[interjection] When the child was not found to be in need of protection, they did not have to report to the employer—[interjection] I will try to answer this one, but I think maybe I could defer to staff for any further technical explanations, because I am having a little difficulty describing exactly what is happening.

Presently, if a child is found to be in need of protection there is a section in the act that indicates who needs to be notified. What we were planning to do was introduce changes to that that say when an investigation is done and a child is not in need of protection that there still should be a report that indicates that the child does not need protection. We were going to include employer and school, and there was some concern raised at committee the other night.

Why would we raise the issue with an employer or a school if the child was not in need of protection?

So we are removing those two pieces by amendment so that if there is no case found for need of protection of a child, we would not be notifying those individuals, but we would still require the parent or guardian, the custodial parent, or anyone who identified or made the abuse allegation.

Mr. Martindale: For clarification, are we discussing Section 11 of the bill, which amends 18, or actually repeals and substitutes 18.2(1) or 18.2(2)?

Mrs. Mitchelson: It is page 9 of the bill, Section 8(2), Clause 18.4, and we will be adding 18.4(2.1).

* (1010)

Mr. Martindale: Okay. I am looking at the briefing notes with all the caucus decisions which are numbered. Are we looking at caucus decision No. 31? Is that the relevant section?

Mrs. Mitchelson: It does not correspond to the briefing notes because there have been other additions to the bill, when it went to legislative drafting.

Mr. Martindale: I guess if I have more questions I will ask when we do clause by clause, but I think I understand what the minister is doing. I remember the brief and I remember the concern about reporting where there was no abuse found, and people were concerned about the reputation of the individuals and the harm that might be caused because the report was required regardless of the outcome of the investigation.

Mrs. Mitchelson: That is exactly the issue we are dealing with.

For clarification, Mr. Chairperson, do we want to still go through the amendments?

An Honourable Member: Yes.

Mrs. Mitchelson: Okay. As a result of the previous amendment, there is another one right in the very next section under restrictions on disclosure, and we have to

add in (2.1) after section (2). So it is very minor, just to ensure that we include that amendment in.

Mr. Martindale: That is just for consistency in the bill.

Mrs. Mitchelson: Yes.

On page 12 of the bill is the next amendment. This is subsection 19(3.6) as set out in subsection 10(2) of the bill, and we will be striking out everything after "At a hearing" and substituting the amendment that I provided for my honourable friend the other day. This is just to clarify the absolute intent of government to ensure that children would not have to appear before the Court of Queen's Bench, and that they could certainly be represented, and any information that was pertinent to the case could be heard at Court of Queen's Bench, but children will not have to appear.

Mr. Martindale: Is this the same clause where the minister is going to amend to omit the word "agent"?

Mrs. Mitchelson: Yes, this is the same clause, and it does not provide for an agent.

Mr. Martindale: So this is the amendment I referred to as the Sushe amendment.

Mrs. Mitchelson: Yes.

Mr. Martindale: I did have questions in other places. I had questions about children as witnesses. I cannot remember the section, but I do remember reading somewhere that at a hearing, presumably Court of Queen's Bench, that there would be examination and cross-examination of witnesses. Presumably that would be witnesses except for children because of this amendment.

Mrs. Mitchelson: Mr. Chairperson, the amendment clearly says that a child cannot be compelled to testify so they cannot be subpoenaed or cannot be called, but there are instances where a child might choose to be examined. In those cases, there could and would be cross-examination, but children cannot be compelled, cannot be subpoenaed to testify against their will.

Mr. Martindale: So this amendment, which if I was patient I would get to see later anyway, will clearly say that children as witnesses cannot be compelled to attend.

Mrs. Mitchelson: That was the one that I provided the other day to my honourable friend. It says a child who the agency alleges was abused by the applicant shall not be compelled to testify.

Mr. Martindale: Presumably there will be amendments then to 19(3.6), as well, which includes the word "agent," so there is another amendment coming.

Mrs. Mitchelson: That is 19(3.6), and also, yes, the word "agent" has been taken out.

Mr. Chairperson: Madam Minister, the next amendment.

Mrs. Mitchelson: The next one is on the same page. It is 19(3.7), Decision of court. This amendment was made as a result of some concerns by the court that they would have to provide all parties with written reasons, and substituting for that, and record all reasons.

This was a workload issue at the court level, and they felt that if all reasons were recorded, that should be sufficient, and we have agreed with that.

Mr. Martindale: Well, since I am not familiar with the court process, perhaps the minister could explain, what does it mean to say decisions are recorded as opposed to providing written decisions?

Mrs. Mitchelson: Mr. Chairperson, I am going to ask Mr. Langtry to answer that one.

Mr. David Langtry (Assistant Deputy Minister, Child and Family Services Division, Department of Family Services): Essentially, what it would mean is if we had stated that they are to be provided with written reasons, which would be a written judgment of the court which would be prepared and distributed, by now providing that all decisions be recorded, it can be done simply as a notation in the court pocket.

Mr. Chairperson: Maybe what I should have done for the benefit of the committee—if I could have the committee's attention for a wee bit—is ask the committee's indulgence to have staff answer some of the questions on technical matters. [agreed]

Ms. Jean Friesen (Wolseley): Mr. Chairman, I just wondered if that could be explained a little further in layman's language, my language, because I am not sure what is meant by putting on the pocket.

What I am concerned about is the accessibility of that information, given that we have had presentations to this committee within the past 24 hours, in fact, that have spoken of the difficulty of getting access to information from the courts and the cost of that. One person came and spoke of the government's elimination of the pauper law, elimination of the practical value of that, and I do not want to see anybody else getting caught in that trap. So I wonder if Mr. Langtry could respond to that.

* (1020)

Mr. Langtry: Yes, there certainly would be access, and when I say the pocket, it is really the court file, which is open to the public to see everything that is on any court file, all the pleadings and so on and so forth. I have not practised for six years. I do not know if there is any cost to do—the file people basically go down and have access to the court file.

Just if I might—the reason that we had put in for written reasons and really had contemplated not even providing for written reasons because of the fact there is no appeal from the decision of the court, however, on reflection, we thought there should be some recording of the reasons for the decision because, on applications subsequently by an individual who is on the child abuse registry, to have their name removed from the registry, felt that for the benefit of the court hearing that application, there should be some indication of the circumstances and the judge's thinking and so on in making a determination as to whether to remove the person's name from the registry.

Apart from that subsequent application, because of there being no appeal, there really was not a reason to have written reasons. So the court in considering this

amendment said, rather than distributing written reasons, which is a fairly onerous thing oftentimes—judges then need to reserve decision, defer it to a later time and actually do a fairly substantive written reasons—they said, as long as it was recorded on the file for subsequent use that that should suffice.

Mr. Chairperson: The next amendment.

Mrs. Mitchelson: The next amendment is in subsection 19(6), as set out in subsection 10(4) of the bill, and there is just a discrepancy between the English and the French version. This is on page 14, and instead of saying, reporting by court re offence, it should just say, reporting by court. It is correct in the French version, but it is not correct in the English version.

Mr. Martindale: Thank you, Madam Minister. Far be it from me to comment on whether the French version would be correct or not.

Mrs. Mitchelson: Oh, here comes the expert.

The next one is on page 17, and this is subsection 30(1.3). We are amending that by adding “and any such order may be enforced as a judgment of the court.” after “exceeding \$5,000.” These words are added just to clarify that this is a civil and not a criminal penalty. It was Constitutional Law that raised this.

The next amendment is on page 18. What we are doing in this—did I say subsection 20(1) of the bill?—we are removing the word “master” because only a judge can order payment of maintenance. So only a judge may order—a very bad order. So we are just taking out the word “master.”

The final amendment is on page 21, and it is subsection 78(5). This is very similar to the previous one. It is taking out the word “master” because it is only a judge who orders access, so it is only a judge that may vary access, not a master. Those are the amendments.

Mr. Martindale: As I indicated earlier, I would like to ask my questions on the bill before we go into clause by clause, and then, presumably, as we did in Bill 47, the clause by clause will go fairly smoothly and with fewer

interruptions. We will make best efforts to pass it this morning.

Mr. Chairperson: So you are suggesting that we go clause by clause without—

Mr. Martindale: With as few interruptions as possible, I mean by questions.

Mr. Chairperson: Great, thank you.

Mr. Martindale: In Clause 4, there is a reference to licensing of child care facilities. I wonder if the minister could just indicate what some of these child care facilities would be. Maybe even naming some of them would help me to identify what sorts of institutions we are talking about here.

Mrs. Mitchelson: They are group homes, foster homes and treatment centres.

Mr. Martindale: The next paragraph refers to powers given to, I believe it is the director, similar to those of the Children's Advocate. Does that mean that the powers will be mainly to investigate and to recommend?

Mrs. Mitchelson: Yes, those would be included, plus also licensing of foster homes. Also, I understand, added into a later section, though not in this section, is the ability for him to do independent investigations of abuse allegations.

Mr. Martindale: I wonder if the minister could remind me whether or not the director has any power to enforce compliance with his recommendations.

Mrs. Mitchelson: Yes.

Mr. Martindale: In Section 8 of the bill, referring to licensing, presumably we are talking about the same kinds of facilities here, foster homes, group homes, et cetera.

Mrs. Mitchelson: Yes.

Mr. Martindale: Decision No. 46 says the authority to license be expanded to include similar provisions under The Social Services Administration Act. I wonder if

the minister could spell out for me what similar provisions means.

Mrs. Mitchelson: The licensing provisions are set out in the legislation, and we have just lifted them from The Social Services Administration Act and put them into this act.

Mr. Martindale: Yes, I think I understand that, but I am just wondering what some of those provisions are without going into too much detail.

* (1030)

Mrs. Mitchelson: The significant change that has been made here is that the director will now license foster homes—[interjection] Agencies will license foster homes still, but appeals will be made to the director of Child and Family Services, the reason being that there was a concern that when an appeal went to the Social Services Advisory Committee, they might uphold a foster licence, but then there was no onus on the agency in any way to place children in those foster homes.

So there seemed to be a concern that maybe all of the information was not available for the Social Services Advisory Committee to make a decision and that it should come directly to the director of Child and Family Services to make that decision, because there are sometimes circumstances where an agency would not want to place children in a foster home, and yet the Social Services Appeal Board would say uphold the licence. So that is the only piece that will be appealed to the director of Child and Family Services.

Mr. Martindale: If I could go back to number, it appears to be 6 in the bill, "Clause 4(2)(d) is repealed and the following is substituted: (d) establish procedures to hear complaints under this act."

Could the minister spell out what kinds of procedures she has in mind here?

Mrs. Mitchelson: Mr. Chairperson, this just gives the director the ability—I guess right now it says he can appoint a board, and what we are saying is that on a case-by-case basis it might require that the director himself investigate, that he appoint an independent

investigator or a panel if that is appropriate. That would have to be judged on a case-by-case basis.

Mr. Martindale: Going back now to appeals from decisions, is the minister concerned that we are switching from a public process whereby people were formerly going to the Social Services Advisory Committee to now doing it differently in not as public a process?

Mrs. Mitchelson: Mr. Chairperson, I am not really concerned in this instance. I think the issue that the Social Services Advisory Committee raised was that they felt sometimes because of some confidentiality, all of the information was not shared with them in order to make an informed decision and, as a result, I think that the director certainly has the ability to receive all information from an agency that would be pertinent to the facts surrounding that foster home and, then, in the best interests of the children the right decision would be made whether that foster home should continue to operate or whether it should have its licence removed.

Mr. Martindale: But it is correct that instead of going to an appeal hearing process where, you know, both sides are represented and people can bring legal counsel if they choose, instead the director is now going to make an administrative decision. Is that correct?

Mrs. Mitchelson: Mr. Chairperson, that process will be able to be undertaken when the director hears those appeals also. I will just give you an example, in one instance, where an agency determined that a foster home was no longer an appropriate placement for children, and that foster home appealed to the Social Services Advisory Committee. Based on all of the information that they had, the Social Services Advisory Committee said, give that home their licence back. The agency, however, never placed another child in that foster home, because they had information that they believed would not indicate that that would be an appropriate placement for children.

So, I mean, if you have an appeal board that says, reinstate the licence, but you have an agency that says, in the best interest of the children in our care we are not going to place children in that home, there is a real conflict. I guess the issue there was that there was

information that the agency had that they felt they could not share through the appeal process with the Social Services Advisory Committee.

So the best solution would be to have the director hear the appeals, but it would take the same form or the same process as it did under the Social Services Advisory Committee.

Mr. Martindale: I think I understand the example that the minister is using, but, again, on the process, does it mean that the director might have a hearing where both sides would be present, and their legal counsel if they so choose?

Mrs. Mitchelson: Yes.

Mr. Martindale: Is it also partly the case that the Social Services Advisory Committee felt that their expertise was in the area of social assistance and not in Child and Family Services, and they may have felt uncomfortable and recommended this change?

Mrs. Mitchelson: Not necessarily, no. They hear daycare appeals, they hear social services appeals, and they still will be hearing group home and treatment homes. It was because of a couple of instances with foster home licensing that they felt, I mean, a real problem for them when a foster parent or a previous foster parent would call back and say, well, you have given us our licence; the agency is not giving us any children. Because of those circumstances, they had some concern. I mean, I certainly would not want to be responsible for forcing placement of children in a foster home that the agency did not feel was appropriate, so we believe this will be a better process.

Mr. Martindale: Did the minister consider setting up a Child and Family Services appeal committee?

Mrs. Mitchelson: We have never ruled that out down the road, but I do not think it is necessary at this point in time. If we sense that there are any other issues that have arisen, or do arise, we would certainly consider it in the future.

Mr. Martindale: I would like to go on then to Section 10, which adds 15(3.1) Order for payment of maintenance. I have a number of questions around this.

I am wondering if the minister could tell me if she has information about the current situation as to how many people are requested to pay maintenance and how many actually do pay maintenance now?

Mrs. Mitchelson: It is not something that government collects; it is something that the agencies collect and keep, so it would be over and above the budget allocation that we give them. Right now, it is about \$250,000 per year. I would have to ask the agencies individually on how many families that would be, but that is money on a voluntary basis that the agency receives and keeps to provide service to children.

* (1040)

Mr. Martindale: Given that people who presented briefs were concerned—and I share their concern—that many families whose children are brought into care cannot afford to pay maintenance, does the minister realistically believe that by making it compulsory that much larger sums of money will be collected?

Mrs. Mitchelson: Mr. Chairperson, obviously it is unrealistic to expect that every family will be able to pay for support for their children once they come into care, but I have to ask my honourable friend, and I know he will probably say I should not be asking him questions, but I look to an example of a prominent physician, for example, in the community who abuses his child and is convicted in criminal court of abuse, and that child, as a result, is apprehended and ends up being in foster care with significant requirement for treatment and resources, taxpayers' resources, for support.

I guess my sense would be that when you accept responsibility, you accept that responsibility to parent, and if, in fact, you have the means to support that child and you abuse your privileges as a parent and are charged and you have significant resources, should those who are working for minimum wage, on a low income, have to pay taxes to support someone who has significant financial means but is not required today to pay anything toward that support?

So I think that based on looking at family income and a sliding scale—and we know that people who are on social allowance or on low incomes are not going to be

able to pay support, and we do not expect them to, but I think in instances where there are significant financial means in a family, that those parents should be contributing.

If my honourable friend disagrees with that kind of an instance or example, I would like him to state that. I mean, I guess it could be the same situation for me if I abused my child. I certainly have an ability to afford to support that child, and I should make some contribution to the system, so that the taxpayers and those who are on low incomes are not having to pay taxes to support my child.

Mr. Martindale: The minister probably should not ask me questions unless she wants me to sit in her chair and answer them, which I would be delighted to do; of course, I meant after the government changes.

In a serious vein, can the minister tell me how much she anticipates that Child and Family Services agencies may raise because of this amendment?

Mrs. Mitchelson: No, I do not know at this point in time how much it might generate. We will have to sit down and look at what is an appropriate or reasonable charge, and that will have to be set out in regulations, but I want to assure all Manitobans and all members of this committee that we are not going to put undue burden on anyone who cannot afford to pay.

Mr. Martindale: Well, I will get into ability to pay in a minute, but we did hear concerns from front-line workers who are already working with families under stress, and they were concerned that in addition to already being involved with a family in a stressful situation, they would also have to inform the family that the agency was going to court or was prepared to go to court to enforce maintenance and that this added to the stress of an already stressed-out family. I am wondering if the minister shares that concern that was presented at the public hearing stage.

Mrs. Mitchelson: I know, on a voluntary basis, right now the agencies are looking at receiving a contribution where possible. I indicated there was \$250,000 that has been collected by agencies through voluntary placements. What we are talking about here is those that end up in the court process. It would be the courts

that would ask for the financial information and assess a cost based on the information received.

Mr. Martindale: Could the minister tell us if she has any details about the sliding scale based on ability to pay?

Mrs. Mitchelson: No, I do not have any of those details right now. I just have the principle that is being put in legislation. We will have to determine that as we move along to getting everything in place to proclaim this legislation.

Mr. Martindale: Would it be correct to assume that families on social assistance would be exempt?

Mrs. Mitchelson: Absolutely.

Mr. Martindale: Will low-income working families be exempt?

Mrs. Mitchelson: Yes.

Mr. Martindale: My understanding is that the maintenance will be very similar or I guess maybe even identical to provisions under The Family Maintenance Act. I am not familiar with The Family Maintenance Act, and I wonder if the minister could explain how The Family Maintenance Act works. I know that your briefing notes say the act should provide for financial disclosure and maintenance enforcement similar to The Family Maintenance Act, but I am wondering if the minister can explain briefly how The Family Maintenance Act works since I am not familiar with it.

Mrs. Mitchelson: I hate to be as presumptuous as to indicate that one of my colleagues might be able to answer that question a little bit more appropriately than I can or, quite possibly, one of my colleagues might be prepared to have his staff brief my honourable friend on, you know, the details of The Family Maintenance Act. That is not an act that falls under my responsibility; it is in the Department of Justice.

Mr. Chairperson: I am listening very closely to the questions and the responses, and I would caution committee members that we be careful that we pertain our questions and responses to the act. I realize that there is a correlation here between the two acts and,

therefore, I would allow, if there is a response from one of the committee members that has knowledge in this area that wants to respond, I would ask them to respond. Madam Minister, is there anybody that you would suggest that respond to this?

Mrs. Mitchelson: Can I just add for some clarification, I guess it would be the process that is followed under The Maintenance Enforcement Act for disclosure of financial information, but that does not necessarily mean that the costs that are asked under The Family Maintenance Act would be exactly the same as—but maybe I could ask my honourable friend whether he would be prepared to be briefed by—[interjection]

Hon. Vic Toews (Minister of Justice and Attorney General): If the member requesting the information wishes to contact my staff in respect of a briefing in respect to The Family Maintenance Act, I would be more than happy to arrange such a briefing for him. If he contacts my assistant in the office, I believe someone out of the Family Branch of the Justice Department would be pleased to provide him with that background information.

* (1050)

Mr. Chairperson: Thank you, Mr. Toews. I think that would be the appropriate manner in which we should address this, and it certainly would expedite procedures around this committee table. If that is satisfactory, then I would suggest that be done.

Mr. Martindale: Mr. Chairperson, it is satisfactory with a caveat, and that is that I would really like to have this briefing before we pass the bill, because I know that I used to get a lot of phone calls about maintenance enforcement. I know that there have been disagreements between the minister and the critic, and our critic has brought in a lot of amendments. It just seems to me that it is a rather controversial area, and I do not want to agree to something that is going to be a new system in The Child and Family Services Act without understanding how it works.

So depending on what time the committee rises, we may or may not pass the bill this morning.

Mr. Toews: The appropriate staff member is here now, and the member may wish to discuss this issue immediately with that person.

Mr. Chairperson: Is it the will of the committee that we take a few minutes break and allow the member to have that discussion, if that is Mr. Martindale's will? Could we recess for, let us say, 10 minutes?

Mrs. Mitchelson: Well, 10 minutes, and if we need a little longer, I am flexible.

Mr. Chairperson: That is agreed? [agreed]

The committee recessed at 10:52 a.m.

After Recess

The committee resumed at 11:20 a.m.

(Mr. Vice-Chairperson in the Chair)

Mr. Martindale: Mr. Chairperson, I would like to thank the staff in the Department of Justice for the briefing and for the Minister of Justice for being so accommodating and making it possible, and the Chair for agreeing to recess. Now they are all in a good mood, I have more questions on this section. First of all, I believe the bill says that the provisions on maintenance enforcement will be similar to The Family Maintenance Act. Can the minister tell us if it will be similar or identical?

Mrs. Mitchelson: Can I indicate that the income test will be similar to the test for maintenance enforcement. What we want is to ensure—and the onus will be on the parents or the parent to provide disclosure of financial information. If, in fact, they refuse to provide that disclosure, there is provision in the legislation for some penalty. Based on that disclosure, then it certainly will not be the same test for payment as maintenance enforcement because the conditions are considerably different. In this instance, you are not balancing one spouse's income versus another. What you are doing is looking at family income and ability to pay some support for the care of your child. The assessment of cost will not be the same as under The Maintenance

Enforcement Act. What we want to do is ensure that we are using similar guidelines to determine income.

Mr. Martindale: I am glad the bill says ability to pay. I am wondering if the minister already has a schedule that is going to go into the regulations.

Mrs. Mitchelson: No.

Mr. Martindale: Could the minister tell us how much additional revenue Child and Family Services agencies may collect?

Mrs. Mitchelson: No, I cannot because, quite frankly, we do not require disclosure of financial information at this point in time, so we have no way of knowing what the income might be.

(Mr. Chairperson in the Chair)

Mr. Martindale: Can the minister tell us if any analysis was done of the costs and benefits, like the cost of going to court to collect maintenance and maintenance enforcement as compared to the amount of revenue that may be raised?

Mrs. Mitchelson: Mr. Chairperson, that is done through the court process, but we do not know. There has been no analysis done.

Mr. Martindale: Having dealt with maintenance enforcement on behalf of my constituents, I know that they are already understaffed and overworked, and it is very difficult to get through to maintenance enforcement especially on the phone. In fact, the way I get through is by faxing the director. Can the minister tell us if this is going to cause additional workload problems in maintenance enforcement because they are going to be given a whole new responsibility under this bill and presumably it is going to require some staff resources to enforce these court orders?

Mrs. Mitchelson: Mr. Chairperson, maintenance enforcement already assesses and does work under our legislation. There may be more. I guess that is what we are going to have to analyze and work with the Department of Justice through this whole process.

Mr. Martindale: Did the Minister of Family Services consult with her colleague the Minister of Justice (Mr. Toews), who is here today, about the increased workload for his staff in maintenance enforcement and whether or not they would be able to cope with the additional workload of these new court orders that are going to be enforced?

Mrs. Mitchelson: Mr. Chairperson, obviously the Minister of Justice does support this legislation, and we certainly have a commitment to work together to try to ensure that the resources are available in order to meet any increased workload or any increased demand.

Ms. Marianne Cerilli (Radisson): Well, I just want to go back to the basics, and for the minister to explain why it is the government is bringing in this section to collect maintenance for children who are taken out of the care of Child and Family Services. What is the justification for this section?

Mrs. Mitchelson: I guess it goes somewhat along with parental responsibility, and I guess my honourable friend was not here when I explained earlier that if, for instance, and I will use myself as an example, I as a member of our Manitoba community significantly abused my child and as a result I was charged and my child had to be removed from our family circumstances and supported at a minimal or maximum level through our child welfare system, is it right for all Manitobans to have to accept that responsibility for looking after my child, when I have the financial ability to pay some support towards the care of that child in foster care?

In those instances, I believe it is extremely important that we ask families to contribute in some way, and I believe that if there is significant financial income in a family that we should not require low-income Manitobans to pay taxes to support my child in the child welfare system. So that is the principle behind this.

This is not requiring low-income families to contribute. This is not requiring welfare families to contribute. This is looking to the people that have the financial means to contribute to help to pay some support as a result of their abusing their children.

Ms. Cerilli: How many cases are there where children are taken into care where, and I know I have dealt with some of these, where the family just is exasperated or the parents are exasperated. They cannot deal with their children anymore. They are out all hours of the night. They feel that they cannot discipline or control them and they, in turn, want to have the children taken into care by Child and Family Services. Is that a significant problem? How many cases are there? Is that on the increase?

Mrs. Mitchelson: I think if we look at society today, we will see that many parents are extremely frustrated, especially with their teenage children, who sometimes become out of control. Those are the voluntary placements that are presently taking place, and I just indicated earlier that presently the agencies in Manitoba collect about \$250,000 from parents who have the ability to pay. That money does not come to government. That money is left with the agencies over and above what we give them as a grant in order to provide support for children. So those voluntary placements are in place today.

I guess it is the issue of the court's assessing through a criminal charge. Right now, it says the courts may assess. I think what we are doing is changing it to shall assess financial income and determine, in fact, then whether a parent has the ability to pay some of the costs. Those parents who are throwing up their hands and saying I just cannot manage anymore, I am just so frustrated, in instances now are paying the agency through a voluntary placement agreement. I guess in the case of a criminal offence or an offence where the case goes to court, we want to ensure that those people who have the ability to pay are contributing also.

* (1130)

Ms. Cerilli: Well, I am sure the minister can appreciate our difficulty in being required to vote for this section in particular; we do not have any information of what the scale is going to be, what the schedule is going to be. It is going to get very complicated. You may have one family where the child is being taken into care, there will be other children who are still in the home; it is going to have to be a very complicated schedule for assessing the amount that is going to flow, more complex even perhaps than

with child maintenance and some of those kind of situations where there could be multiple children in the family. So we are concerned that we do not have any information about what that scale or schedule is going to be.

The member for Burrows (Mr. Martindale) has asked some questions about how many cases. Some of the briefs we have heard presented on this bill said that as many as 80 percent of the cases in CFS in certain districts are on social allowance. Even if we consider that 20 percent of the cases for CFS would have this section applied to them, we could be talking about 1,000 families.

Is that in the ballpark? What percentage is the minister working from? I mean, we need some information about the number of families this is going to affect and the kind of families this is going to affect, their income and their composition, in order for us to make some decisions with respect to this section.

Mrs. Mitchelson: I can tell you unequivocally that this section of the legislation would probably apply to me and any members of the Legislature. It would probably apply to many professionals that are working and earning significant incomes.

I could go back to asking a question. I believe that if it got to a point where I abused my child and was charged with that, I should be required to pay. I would hope that—I know that my colleagues support that principle, and that is why this is in the legislation—members of the opposition would take their parenting responsibilities seriously enough to realize that if they harmed their child in a significant manner and they were earning the incomes that they are earning, that they should not expect low-income wage earners to pay additional taxes through the tax system to support their children in the child welfare system.

Ms. Diane McGifford (Osborne): I do not think we need to put personal remarks about members of the opposition and their child-rearing practices on the record. I do not think that is helping with this argument this morning at all.

I have the same problems that my colleague has; I do not understand. We do not understand the numbers that

are affected. We do not have a definition of low income. I would like to ask the minister whether or not other factors such as numbers of children in the family, other financial responsibilities that a family might have would also be factors. I am thinking of instances, for example, where a family may be supporting an elder, that sort of thing.

Mrs. Mitchelson: Obviously, all of that would have to be taken into consideration, and we will have to work out the details.

I hear my honourable friends indicating that they are having difficulty supporting, because they do not have a lot of the detail and a lot of the analysis around this. I guess it is the principle that I have tried to explain around who would be required to pay, size of family, other commitments obviously. It might be in an instance where there is maintenance being paid as a result of family breakup, too. There is not going to be a standard amount. All of that will have to be taken into consideration before costs are assessed. Presently today, there are costs assessed in voluntary placement circumstances where a family asks the system to provide some support, and the child has to be removed, and parents are paying today. I indicated there are about \$250,000 that is collected that the agency has the ability to use for support for children.

I am sorry if I offended members of the opposition, but this was the kind of discussion we had around our caucus table. I think all of our members did buy into the concept that along with parenting comes the responsibility, and, if there is the ability to pay, we should not be expecting other taxpayers to foot the bill if we can afford to pay for some support for our children. I think that is the principle behind it. I think probably my honourable friends are not going to be supporting this legislation.

Anyway, they have not, and this is probably another area where there is some difficulty. I think it is the principle behind parental responsibility that has this amendment in the legislation, and I know that we wholeheartedly support it.

Ms. McGifford: Mr. Chair, I certainly agree with the minister that principles are important, but I think principles are often the theoretical structure, then we

have the practical application. So, we may have the theory, but we do not have the practice. As we have said, it is very hard to vote on theory without content or structure without content, however, whatever kinds of opposites we wish to choose here.

I am wondering what plans the minister has or what difficulties she may be entertaining as far as people leaving the province and then the attempt to collect this maintenance.

Mrs. Mitchelson: I guess people have the ability to leave the province. We know many spouses leave the province and abdicate their responsibilities to their families. But, I guess, I could try to put it a different way. We do have families today that do contribute, and those are families that are voluntarily contributing. They are not people that have been charged with child abuse necessarily. They may want some help because they do not want to ever be charged, and they are having difficulty with a family circumstance or situation where they are possibly thinking they may be out of control because things are not going well. So, those people voluntarily contribute.

Just look at the other side of the issue, where you have people with significant enough income to voluntarily contribute and care to contribute, and then, on the other hand, you have people that actually do abuse their children and are charged and convicted, may end up on the Child Abuse Registry. But those people are not in anyway obligated to pay anything towards the cost of that child. Although they may be in the very same financial circumstances of those that voluntarily agree to pay to support their children or to help try to get their family back together and, you know, sort of on the right track.

So I guess it is in those instances where we are not requiring the courts to assess any cost that we are looking at fixing through this circumstance or situation. I would envision it would be those kinds of people through the criminal court system that would be impacted.

Ms. Cerilli: I want to get back to the kind of questions I was asking, in terms of the situations that could occur. If there are allegations of abuse, perhaps there is even a conviction, but often there is no incarceration. It

certainly happens a lot. In that case, there would be the opportunity for that parent to still work and have an income, and—the question I have—potentially still have other children at home and in their care.

Could that occur? Then that parent would both have the requirement to pay into this system, plus they would still have the responsibility for care of other children at home.

* (1140)

Mrs. Mitchelson: I suppose any scenario could occur. I guess, if in fact a person was convicted of child abuse, and I am talking convicted now, we are not saying—

Point of Order

Ms. Cerilli: On a point of order, I guess the minister keeps talking about the example that she has used. I am talking about an example now. We know that a number of people that have their children in care of CFS are never convicted of anything, and those are the ones I am asking about, if they are going to be required under this section to provide the maintenance, and I said even if they are convicted, oftentimes, they are still in that situation. So let us deal with the example that I am using.

I know that the example the minister has used is more difficult to argue with, but there are all sorts of other instances where families have their children in care with CFS, and they have never been convicted of anything.

Mr. Chairperson: The honourable member does not have a point of order. It is simply a dispute of the facts. I would caution members to use points of order correctly. I mean, there is a reason to raise a point of order, and there is an appropriate time to raise a point of order, but to simply use it as a matter to argue another fact, I would suggest you wait for your turn and make the argument next time around when the question comes.

* * *

Mrs. Mitchelson: Mr. Chairperson, thank you for your clarification. Although it was not a point of order, it

probably would have been a question, and I think I could answer it as though it was a question. It says right in the legislation, the financial circumstances, including other financial obligations, of the parent or guardian will be taken into consideration. So that is right in the legislation. It is on page 8, Factors affecting order. It is 15(3.4).

Ms. Cerilli: Then in conclusion, I just want to ask two more things. That there will indeed be a schedule, and I am wondering how much discretion Child and Family Services staff will have, and also what requirements Child and Family Services will have for liaising with child maintenance, and what responsibilities are there going to be for CFS in respect to collecting information, getting information from families when their circumstances change in terms of financial information.

I see that there is going to be now more and increased requirements on Child and Family Services. This is a whole new requirement for them. I know that the minister has talked about reducing the requirements and responsibilities on Child and Family Services workers, so I am wanting to see how much this is going to increase demands on CFS.

Mrs. Mitchelson: Mr. Chairperson, presently now Child and Family Services are doing voluntary placement payment arrangements, by and large. What I am envisioning is that as a result of criminal proceedings or court proceedings on the family side, there will be people that will be assessed, based on the income test, some financial contribution. The details of that will have to be worked out. I have indicated that the Minister of Justice (Mr. Toews) and I and our departments will have to work together around this and see what, if any, workload increase there might be, and then how do we ensure that the resources are there to make it happen.

So that will have to be part of the whole process, and I can assure my honourable friend that, you know, until we have things in place this will not be proclaimed.

Ms. Cerilli: Just the discretion issue with the staff. My other part of the question was the amount of discretion that CFS staff will have or the maintenance staff perhaps with respect to the schedule that is going to be developed.

Mrs. Mitchelson: We will certainly be working with them towards the development of that, and we will ensure that we are sensitive to all of the issues as is spelled out in the legislation around what other commitments are there for individual families.

Mr. Martindale: Mr. Chairperson, could you ask for leave of the committee to do a committee substitution, please?

Mr. Chairperson: Is there leave of the committee to do a substitution? Leave has been granted.

Committee Substitution

Mr. Martindale: Mr. Chairperson, I move, with the leave of the committee, that the honourable member for Wellington (Ms. Barrett) replace the honourable member for Wolseley (Ms. Friesen) as a member of the Standing Committee on Law Amendments effective June 26, 1997, with the understanding that the same substitution will also be moved in the House to be properly recorded in the official records of the House.

Motion agreed to.

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Mr. Martindale: Mr. Chairperson, I would like to ask the minister if she and her staff have thought about the impact of these amendments on voluntary placement agreements? It seems to me that if someone knows that when they get involved with the agency that the agency will be going to court for maintenance that they may be reluctant to enter into a voluntary placement agreement.

Mrs. Mitchelson: Mr. Chairperson, they do not go to court now, and they will not have to go to court under this legislation.

Mr. Martindale: Well, I am just looking at the briefing notes that the minister gave me which refer to voluntary placement agreements. It says obtaining parental contributions may occur in two separate sections of the act, where the parent has entered into a voluntary placement agreement or where an agency is seeking an order for protection.

So my question is: Will this not discourage people from seeking a voluntary placement agreement knowing that when they do they are going to have to pay maintenance?

Mrs. Mitchelson: Mr. Chairperson, there is no change from the present practice that exists under voluntary placements. The only change is that parents will be required to file financial information.

Mr. Martindale: Well, I am not sure that that answers my question. I think I am trying to ask if the minister anticipates that there will be an impact on voluntary placement agreements because parents might think, well, why should I enter a VPA if I know that one of the results is going to be that I have to pay maintenance?

Mrs. Mitchelson: That is what they do now.

Mr. Martindale: But my understanding is that the current legislation is discretionary, that the agency may ask for maintenance. The new legislation says, the agency shall go to court for maintenance.

Mrs. Mitchelson: Mr. Chairperson, the legislation does not say that the agency shall go to court. It says that they shall assess, based on financial information that will be required now. Based on income and based on how we set the sliding scale, parents will pay a certain portion of that support.

Now, I guess the question is: Will people come to the agency? I know that many individuals have the option or the opportunity to go to other counselling services outside of the agency, if they have, and maybe what we need to do is an education process for the general public that says that the Child and Family Services agency is not the only place that you can go to for help, that there are other community organizations and agencies, family support programs outside of the Child and Family Services agency that are available. I think that probably, and I know from just talking to constituents of mine that are having difficulty with teenage children, and sometimes have not had a very positive experience with the Child and Family Services agency, even calling the crisis number, finding that there is no response, no one available, and have wondered where they turn for help.

I guess maybe there is a need for us to gather together an inventory of all the kinds of services that might be available out there. A Child and Family Services agency is not the only vehicle for support. I think maybe as families are struggling more and more with the increasing pressures and issues that face our teenagers out there on a day-by-day basis, I do not think it matters where you live. Especially in the city of Winnipeg, there are issues of drugs and activities that we were not exposed to as we were growing up and going through the school system. Maybe it is time that we looked at ensuring that there is an inventory of all the services available and some sort of public information campaign so that parents do know that there are options and different places that they might be able to go to to receive some support or some help.

* (1150)

Mr. Martindale: I stand corrected on my remarks about going to court, and I agree with the minister that maybe it would be a good thing if people went to counselling agencies in the community rather than only to Child and Family Services. An inventory of all services would be a good idea.

I am not sure that the minister has answered my original question, which is: Will families not be discouraged from entering into a voluntary placement agreement if they know that under these amendments the agency is going to assess their income and they will be forced to pay for maintenance?

Mrs. Mitchelson: Well families are doing that now and as a result we have \$250,000 extra in the agencies, and that may increase. I have no way of knowing that at this point in time, but families are doing it now and they are paying. So I have no reason to believe that they will not do it in the future.

Mr. Martindale: But is the point of these amendments not that it is going to be compulsory; that in every case there is going to be a requirement to pay based on ability to pay, whereas in the past it was discretionary?

Mrs. Mitchelson: After all of the considerations are taken into account, we are expecting that families that do have the income will pay a certain portion towards the cost.

Mr. Martindale: I have a question on 15(3.4). I wonder if the minister could tell me what is an average length of time in care.

Mrs. Mitchelson: I guess I seek some clarification. If it is temporary placements or voluntary placements, the average stay is four months. Permanent wards, that is a different circumstance because once they become a ward of the state they might be permanent wards for 18 years. But an average for voluntary and temporary placements is four months.

Mr. Martindale: In Section 15(3.4), we have the cost of maintenance including residential accommodation, housekeeping, food, clothing, recreation, supervision, et cetera. I am wondering if the minister has figures on the daily cost so that we could figure out how much money we are talking about here, whether we are talking about several hundreds of dollars or thousands of dollars for the cost of a child in care.

Mrs. Mitchelson: I guess it would be on an individual case-by-case basis. Accommodations, housekeeping, food, clothing, recreation, supervision, it would depend on the type of placement that a child was in. Are we looking at treatment facility, are we looking at a high-needs foster home, are we looking at a very low-needs child and what that stable environment might be?

So it all depends on the severity of the abuse when we are talking abuse cases and people that are charged versus those that are on a voluntary placement agreement. So, I think, you would have to look at different circumstances in different ways.

Mr. Martindale: I suppose we could be looking at something like \$10 a day for an extended family foster home or maybe hundreds of dollars a day in the Manitoba Adolescent Treatment Centre. Is that correct?

Mrs. Mitchelson: Those are the differing, I guess, the different high to low, and I am not indicating that we are looking at cost recovery. I am indicating parental contribution to support children if you have the ability to pay.

Mr. Chairperson: The hour is approaching high noon. I wonder what the will of the committee is, whether you want to consider sitting or whether you want recess for lunch or whether you want the committee to rise and be called again this afternoon. What is the will of the committee?

Mr. Martindale: I appreciate you consulting the committee. We still have a number of questions before we go into clause by clause, and we are certainly prepared to come back this afternoon. The only accommodation that I would request is that the House leaders have agreed to do condolence motions right after Question Period. My understanding is that there are four individuals, three Conservatives and one former member for Burrows, and I would like to speak in that debate.

So we are certainly prepared for this afternoon, but we may need to either accommodate me for one short speech or start after condolence motions.

Mrs. Mitchelson: I think that what we might want to do—I do not believe I will be speaking on any of the condolence motions this afternoon, and we might want to see whether there is a willingness by House leaders to accommodate the member for Burrows early on in the condolence process, so that once he has finished we could reconvene committee. We will see. If there is a willingness to do that by House leaders, that is what I would recommend.

We will find out and I guess we will come back, based on those discussions, at the appropriate time.

Mr. Chairperson: I think what I am going to suggest to the committee is that the committee will rise, and we will ask the House leader to call the committee again in the House. That way he can set the time limit by agreement of all three parties in the House. Okay? [agreed]

Committee rise.

COMMITTEE ROSE AT: 11:59 a.m.