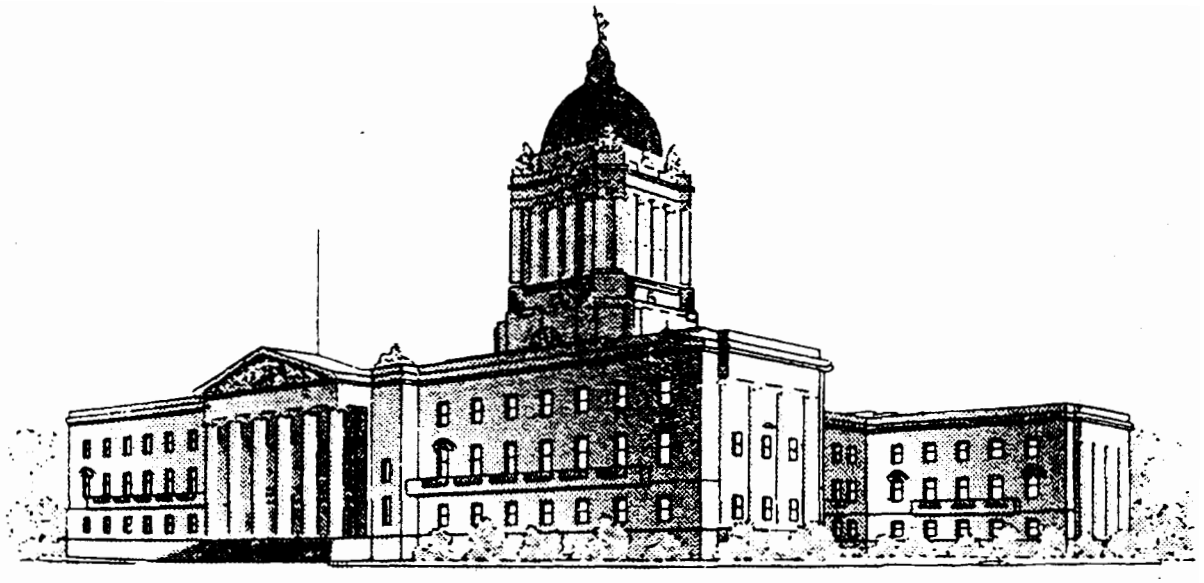
First Session - Thirty-Seventh Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Monday, July 24, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh

Ms. Asper, Messrs. Jennissen, Loewen, Maloway, Martindale, Penner (Steinbach), Praznik, Rondeau

Substitution:

Mr. Laurendeau for Mr. Pitura

APPEARING:

Hon. Eric Robinson, Minister of Aboriginal and Northern Affairs

Hon. Tim Sale, Minister of Family Services and Housing

Hon. Steve Ashton, Minister of Highways and Government Affairs

MATTERS UNDER DISCUSSION:

Bill 13–The Taxicab Amendment Act

Bill 25–The Interpretation and Consequential Amendments Act

Bill 26–The Court of Queen's Bench Amendment Act

Bill 27–The Correctional Services Amendment Act

Bill 28–The Northern Affairs Amendment and Planning Amendment Act

Bill 30–The Social Services Administration Amendment Act

Bill 32–The Victims' Rights Amendment Act

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act

Bill 34–The Statute Law Amendment Act, 2000

Bill 36–The Summary Convictions Act

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Mr. Chairperson: Good Morning. Will the Standing Committee on Law Amendments please come to order. Are there committee substitutions?

Committee Substitution

Mr. John Loewen (Fort Whyte): I move that the Honourable Member for St. Norbert (Mr. Laurendeau) replace the Honourable Member for Morris (Mr. Pitura) as a member of the Standing Committee on Law Amendments with the understanding that the same substitution will also be moved in the House and will be properly recorded in the official records of the House.

Mr. Chairperson: Is there leave of the Committee to do the substitution? *[Agreed]* Moved by Mr. Loewen, with the leave of the Committee, that the Honourable Member for St. Norbert replace the Honourable Member for Morris as a member of the Standing Committee on Law Amendments with the understanding that the same substitution will be moved in the House to be properly recorded in the official records of the House.

* * *

Mr. Chairperson: This morning the Committee will be considering the following bills: Bill 13,

The Taxicab Amendment Act; No. 23, The Jury Amendment Act; No. 25, The Interpretation and Consequential Amendments Act; No. 26, The Court of Queen's Bench Amendment Act; No. 27, The Correctional Services Amendment Act; No. 28, The Northern Affairs Amendment and Planning Amendment Act; No. 30, The Social Services Administration Amendment Act; No. 32, The Victims' Rights Amendment Act; No. 33, The Highway Traffic Amendment and Conse-quential Amendments Act; No. 34, The Statute Law Amendment Act, 2000; No. 36, The Sum-mary Convictions Amendment Act.

Did the Committee wish to indicate how late it is willing to sit this morning?

Mr. Gerard Jennissen (Flin Flon): I would suggest that the Committee consider sitting until twelve o'clock noon.

Mr. Chairperson: Twelve o'clock, we have heard.

Mr. Marcel Laurendeau (St. Norbert): No problem with that, but might I recommend that we deal with the bills in the order of Bill 30 first and then Mr. Robinson's bill and then Mr. Ashton's bill and then we can get on to the law bills.

Mr. Chairperson: We need to agree on adjournment at twelve o'clock. Is it agreed? *[Agreed]*

The next item is the sequence. At the previous meeting of this committee, held July 19, the Committee had agreed to commence clause-by-clause consideration. How do you wish to proceed this morning with the consideration of these bills? We have had a suggestion from Mr. Laurendeau to do Bill 30. We have a request from the Minister to do Bill–

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Just looking at who is present, if we could do Bill 28 and then Bill 30.

Mr. Chairperson: Is it agreed that we do Bill 28 and then Bill 30? *[Agreed]*

Bill 28–The Northern Affairs Amendment and Planning Amendment Act

Mr. Chairperson: Mr. Robinson, please take the chair. Does the Minister responsible for Bill 28 have an opening statement?

Hon. Eric Robinson (Minister of Aboriginal and Northern Affairs): I do not really have too many comments on the Bill. The purpose of this bill is simply to clarify the relationship between a Northern Affairs Act and a Planning Act, with respect to northern Manitoba for the ease of its users, the Aboriginal and Northern Affairs communities. Fundamental to this commitment is allowing northerners the chance to take charge of their own destiny. The 51 Northern Affairs communities are all increasingly taking more control over their own development, and this legislation we feel will facilitate that.

Mr. Chairperson: We thank the Minister of Aboriginal and Northern Affairs. Does the critic from the Official Opposition have an opening statement?

Mr. Marcel Laurendeau (St. Norbert): Mr. Pitura could not be here this morning, but asked me to say that he has had discussion with the Minister on this bill, and he was prepared to see it passed.

Mr. Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1 and 2–pass; clauses 3, 4, 5, 6(1), 6(2) and 7–pass; clauses 8, 9, and 10–pass. Clause 10 carries over to page 8. Clauses 11 and 12–pass; preamble–pass; title–pass. Bill be reported.

Bill 30–The Social Services Administration Amendment Act

Mr. Chairperson: Will the Minister of Family Services come to the table. Does the Minister

responsible for Bill 30 have an opening statement?

Hon. Tim Sale (Minister of Family Services and Housing): This bill intends to put in place some amendments to the regulations for premises that we license for people who are in care of one kind or another. My department has a fairly large licensing function, and at the present time there is no capacity to deal with situations where we have a home that is falling below standards in a persistent way and failing to meet the needs of residents from a safety point of view. In a short-term situation, we cannot immediately place eight, ten, twelve people in secure settings. We believe, we need the same kind of capacity that exists with personal care homes to be able to put in secure management for a period of time to either stabilize the setting and solve the problems, or to arrange for alternative care for the residents. Essentially, that is the major function of the Bill.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Marcel Laurendeau (St. Norbert): No, that will be fine.

* (10:10)

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks, conforming to pages, with the understanding that we will stop at any clause where members may have comments, questions, or wish to move an amendment. Is that agreed? *[Agreed]*

Clauses 1 and 2(1)–pass; clauses 2(2), 3(1), and 3(2)–pass; clauses 4, 5(1), 5(2), 6, 7, 8, and 9(1)–pass; clauses 9(2), 9(3), 9(4), and 10–pass; clause 11–pass; clause 12–pass; clauses 13 and 14–pass; clauses 15, 16, 17, 18(1) and 18(2)–pass; clause 18(3)–pass; clauses 19, 20(1), and 20(2)–pass; preamble–pass; title–pass. Bill be reported.

We thank the Minister.

Bill 13–The Taxicab Amendment Act

Mr. Chairperson: Call the Minister of Highways to the table. Does the Minister responsible for Bill 13 have an opening statement?

Hon. Steve Ashton (Minister of Highways and Government Services): I will briefly outline the impact of this bill. It does not have a major impact. It just expands the size of the board. It helps us obtain quorum. It is part of our efforts to improve the relations between the Taxicab Board and the industry.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Marcel Laurendeau (St. Norbert): No, we will leave that one alone.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; clause 3–pass; preamble–pass; title–pass. Bill be reported.

We thank the Minister.

Bill 26–The Court of Queen's Bench Amendment Act

Mr. Chairperson: Does the Minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mr. Marcel Laurendeau (St. Norbert): No, not on this one.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; clause 3(1)–pass; clause 3(2)–pass; clause 4–pass; clause 5–

pass; preamble–pass; title–pass. Bill be reported.

Bill 34–The Statute Law Amendment Act, 2000

Mr. Chairperson: Does the Minister responsible for Bill 34 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): No.

Mr. Chairperson: Does the critic for the Official Opposition have an opening statement?

An Honourable Member: No.

Mr. Chairperson: Clauses 1(1) to 1(3)–pass.

Mr. Mackintosh: Mr. Chair, there are 88 clauses here. These are housekeeping amendments. I suggest we go page by page.

Mr. Chairperson: Is it agreed to proceed in blocks of clauses? *[Agreed]*

Clauses 1(1) to 1(3)–pass; clauses 1(4) to 1(10)–pass; clauses 1(11) to 3–pass; clauses 4(1) to 4(6)–pass; clauses 4(7) to 5(2)–pass; clauses 5(3) to 7–pass; clauses 8 to 11–pass; clauses 12(1) to 12(6)–pass; clauses 12(7) to 12(10)–pass; clauses 13 to 14(6)–pass; clauses 15 to 18–pass; clauses 19(1) to 19(5)–pass; clauses 19(6) to 22–pass; clauses 23 to 24(6)–pass; clauses 25(1) to 25(7)–pass; clauses 25(8) to 27(2)–pass; clauses 27(3) to 30(3)–pass; clauses 31 to 33(3)–pass; clauses 33(4) to 36–pass; clauses 37 to 40–pass; clauses 41 to 44(3)–pass; clauses 45 to 47(5)–pass; clauses 47(6) to 47(13)–pass; clauses 47(14) to 47(22)–pass; clauses 47(23) to 48(2)–pass; clauses 48(3) to 49(1)–pass; clauses 49(2) to 50(2)–pass; clauses 50(3) to 51(3)–pass; clauses 52(1) to 54–pass; clauses 55 to 57(3)–pass; clauses 58 to 59(5)–pass; clauses 60 to 62(3)–pass; clauses 63(1) to 64(1)–pass; clauses 64(2) to 65(4)–pass; clauses 66 to 69–pass; clauses 70 to 71(3)–pass; clauses 72 to 74–pass; clauses 75 to 77–pass; clauses 78 to 80–pass; clauses 81 to 84–pass; clauses 85 to 87(3)–pass; clauses 88(1) to 88(4)–pass; preamble–pass; table of contents–pass; title–pass. Bill be reported.

* (10:20)

Could I ask the Members if there is a preference for the next bill, or shall we go through in sequence?

Bill 25–The Interpretation and Consequential Amendments Act

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I would recommend we start at Bill 25. That is The Interpretation Act.

Mr. Chairperson: Bill 25. *[Agreed]*

Does the Minister responsible for Bill 25 have an opening statement?

Mr. Mackintosh: There were some responses to issues raised by the critic at the second reading stage. First, with regard to section 6, that is the fair, large and liberal interpretation section. That provision is in the current act and is in every interpretation act in Canada. It was included in Canada's first interpretation act back in 1849. Now, that is not a justification for it, so I just want to put on the record the reason that section is put into the new statute.

Its purpose is to put into statute or to codify what is called the mischief rule. It is a very old rule, dating back to the 1500s, that a court, when interpreting an act, should ask what is the mischief or the defect in the law that the act seeks to cure. Modern writers such as Côté on the interpretation of legislation in Canada say that this provision tempers an excessively restrictive approach to statutory interpretation and has helped to foster the purpose of approach to interpretation. In other words, it has facilitated an interpretation of statutes in accord with its objectives, the objectives of either the social control or the wrong that is attempted to be corrected.

The courts have continued to apply rules of strict construction to certain types of statutes such as penal statutes. The courts remain obligated to comply with the written expression of the statute. The Supreme Court of Canada decision on this particular section says this, and I quote: There is nothing in this provision that

would tend to displace the rule that the intention of the Legislature is to be gathered from the words used. That was in *Wellesley Hospital v. Lawson.*

The section regarding Aboriginal and treaty rights, which is being added, was recommended by the AJI and again by the implementation commission a few months ago. It reflects the protection that is already given to Aboriginal and treaty rights in the Constitution. So in this sense it does not extend additional rights, it only recognizes the existing constitutional rights, but what it does do, and I think it is more than symbolic, is it puts in Manitoba statutes and it is an expression of the Manitoba Legislature on this important principle of constitutional law. It may bring to the attention of the court this principle by including it in The Interpretation Act, but it is really bringing it home and is an expression, I think, of the MLAs of Manitoba.

Then I can just deal with the last section that the Member raised questions about, section 13. That is the preamble. This section talks about the preamble being intended to explain the meaning and the intent of the Act. This section is in Manitoba's existing act and is also in the interpretation acts of the other Canadian jurisdictions. It reflects a long-standing rule of statutory interpretation that preambles are part of an act and can be used to interpret it. Legal commentators say that the practice in Canadian courts has been to attach as much weight to the preamble as seems appropriate in the circumstances. There is no clear, fixed role for preambles in different statutes. It is just that they are part of the statute and the words in them may have weight depending on the arguments before the court and other considerations.

I note that preambles I think have become more popular in statutes over the last little while. I can only speculate. We have been part of that experience, really is to express the general social purpose of legislation that the Legislature had in mind at the time legislation was introduced.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): I want to thank the Minister for that information. If I may ask him a question on a couple of these provisions, with respect to the Aboriginal rights, section 8, would he concur with the statement that this provision does not in fact extend any new rights? It simply recognizes what is already in the Constitution of Canada and administratively flags for anyone interpreting Manitoba statutes what is already a constitutional right. Would that be a fair statement?

Mr. Mackintosh: I think that was what I said in my opening remarks. So the Member, in my view, is correct. I think what it does is institutionalize in Manitoba statute through an expression of the Legislature this constitutional principle.

Mr. Praznik: By the way, I have no objection in doing that, in recognizing what is already the law of the land. To flag it is something that should be considered interpreting statutes. There will always be a certain element in society or the community who may argue that this in fact has extended rights, whether it be for their own purpose, being a First Nations person saying, well, this has given me new rights, or someone who wants to argue that the Government and the Legislature is extending rights by this clause.

I think it is very important just for the sake of the record to be very clear that this does not in fact establish any new rights. It is simply a recognition of what already is enshrined in our law and our Constitution and that if a statute or regulation was interpreted in a manner that was inconsistent with those rights, it would be challengeable before the courts. That, in fact, I believe is the case. It is my legal interpretation. I believe the Attorney General is confirming that the purpose of this provision, in fact, is to ensure that anyone interpreting Manitoba's statutes, in reading our Interpretation Act, this would be flagged with them that all of our laws have to be read with respect to the Constitution and Aboriginal rights as enshrined in our Constitution.

If that is the case, we certainly are in agreement on the necessity of this clause. But I just wanted to ensure, and the Attorney General can just confirm this for the sake of clarity, that

this is in fact what this clause does, because I would fear people using it for purposes for which it was not intended on either way. I do not think the intention of the Legislature is to either in any way create new rights or define rights. We are simply recognizing what is already the law and ensuring administratively that whenever we are interpreting our statutes, we are interpreting them within what is already the law.

Mr. Mackintosh: I agree.

Mr. Chairperson: During the consideration of a bill, the schedule, preamble, table of–

Mr. Praznik: Just one other question on the preamble section. The concern that we had with this particular section, and the Attorney General has flagged it, and my party has been as guilty of it as I think his party is becoming as well, is that we are tending to put longer and longer preambles in our statutes to define social purpose, political purpose of an act. I have always objected to that. I objected to that within our administration and I would object to it here, simply that all MLAs may agree with what the Act does, but they may not in fact agree with the preamble section of an act, particularly when that preamble is used to make what some may consider to be political statements as to the reasons for the Bill.

The trouble I have with that is, again, the plain reading of an operative section of statute is what is important. We may come to agreement on that particular provision for different reasons. When we put long, often political, preambles in legislation with social statements, they may not be agreeable to all members of the Assembly, but the actual operative sections of the Bill may. It just creates a difficulty for members when approving legislation. They may like the thrust of the Bill but they may not like the preamble statement. I have some difficulty with them being given a lot of weight. I just wanted to flag that today. I appreciate the Attorney General's comments.

* (10:30)

Mr. Chairperson: During the consideration of a bill, the schedule, preamble, table of contents and the title are postponed until all other clauses have been considered in their proper order. Shall we proceed with blocks of clauses? *[Agreed]*

Clause 1–pass; clauses 2, 3, 4, 5, 6, and 7–pass; clauses 8, 9(1), 9(2), 10(1), 10(2), 11(1) and 11(2)–pass; clauses 12 through 15.

Mr. Praznik: Mr. Chair, if you could perhaps deal with clause 12, we will want to register an objection to clause 13. That can be recorded and then we can proceed with the remainder of the vote.

Mr. Chairperson: Clause 12–pass; shall clause 13 pass?

Mr. Praznik: No. Vote on it.

Mr. Chairperson: Oh, sorry. Clause 12 is accordingly passed. Mr. Praznik, on clause 13.

Mr. Praznik: Yes, we would object to that and ask for a vote on it, please.

Mr. Chairperson: A vote has been requested.

Voice Vote

Mr. Chairperson: The question for the Committee is: Shall clause 13 pass? All those in favour, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say Nay.

Some Honourable Members: Nay.

Mr. Praznik: On division, Mr. Chair.

Mr. Chairperson: On division.

* * *

Mr. Chairperson: Clauses 14 and 15–pass; clauses 16, 17, 18 and 19–pass; clauses 20(1), 20(2) and 21–pass; clauses 22(1), 22(2), 22(3), 22(4) and 23(1)–pass; clauses 23(2), 24(1), 24(2), 25, 26, 27 and 28–pass; clauses 29(1), 29(2), 29(3) and 29(4)–pass; clauses 30, 31(1), 31(2), 32(1), 32(2) and 32(3)–pass; clauses 30, 31(1), 31(2), 32(1), 32(2) and 32(3)–pass;

clauses 32(4), 33, 34(1), 34(2), 35(1) and 35(2)–pass; clauses 36, 37, 38 and 39(1)–pass; clauses 39(2), 41, 42, 41(1), 41(2), 41(3), 42 and 43(1)–pass; clauses 43(2), 44, 45 46(1) and 46(2)–pass; clauses 47(1), 47(2), 47(3), 47(4), 47(5) and 47(6)–pass; clauses 47(7), 48(1), 48(2), 48(3), 49 and 50–pass; clauses 51, 52, 53, 54(1), 54(2), 55 and 56–pass; clauses 57, 58, 59, 61, 62 and 63–pass; clauses 61, 62, 63 and 64–pass; clauses 65, 66 and 67–pass; schedule–pass; preamble–pass; table of contents–pass; title–pass. Bill be reported.

Bill 27–The Correctional Services Amendment Act

Mr. Chairperson: Does the Minister responsible have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): There were some questions and issues raised by the critic at second reading that I want to respond to. The other jurisdictions surveyed reported worker compensation coverage for offenders doing community service work as in Manitoba. Saskatchewan Corrections has a letter of understanding with the Saskatchewan Workers Compensation Board to provide coverage for these workers in the event of injury. Alberta's Workers Compensation Board applies to inmates. Nova Scotia has workers compensation coverage for accidents befalling offenders in their community work program. New Brunswick's Workplace Health, Safety and Compensation Commission provides coverage for offenders in community work programs.

Last year, '99-2000, 10 offenders received workers compensation payments from the Corrections Division. Seven offenders were from custodial facilities and three from the Fine Option program. The total billed cost was approximately $11,000. One inmate from Milner Ridge was involved in a chain saw accident and that accounted for approximately 75 percent of these billings. The payments cover drugs, doctors fees, chiropractic fees, et cetera. During the first two months of the current fiscal year, payments were made for only one inmate, the one from Milner Ridge referred to earlier.

There are approximately 4000 Fine Option community service order registrations each year. The three Workers Compensation incidents over the past year are representative of other years and reflect a very low incidence of claims. The Province is a self-insured participant in the Workers Compensation coverage scheme, and it pays direct costs instead of premiums.

For greater certainty in assuring that Section 57 of this act does not exclude offenders from this coverage, amendment is proposed specifically stating that the section does not apply in such cases. So, in other words, there is no change in practice here. It is just to assure, particularly our partners in the community that they will not be liable in the event of a compensable injury.

Mr. Speaker: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

* (10:40)

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, I think ensuring that the law is brought up to date with the practice is very good. I have one small question and that is with respect to premiums. Are any of our inmates in our correctional service doing work in work programs in the private sector, where their coverage would be paid for by the group who would be providing that labour? I am thinking of municipalities. I know the R.M.s of Lac du Bonnet and Brokenhead have used people from Milner Ridge for ditch clearing and things over time. Is that what they are expected to pay, or do we include that in our provincial coverage?

Mr. Mackintosh: First of all, there is no dual coverage and the current situation is that the individual is an employee of the Province of Manitoba, unless they are working for the municipality and receiving a salary from the municipality. That is not the case. They are doing community service work and not receiving remuneration from that private corporation.

Mr. Speaker: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; clause 3–pass; clause 4–pass; clause 5–pass; pre-amble–pass; title–pass. Bill be reported.

Bill 32–The Victims' Rights Amendment Act

Mr. Chairperson: Does the Minister responsible for Bill 32 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): There are three amendments, and we will just distribute those now.

Mr. Chairperson: We thank the Minister. Does the critic for the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, may I just have a moment to look at these amendments before I respond? It may save some time.

First of all, as I said in my remarks on second reading, the general thrust of this legislation is very admirable. I view this bill as one in which the Minister was trying to establish clearly in law that people who are the victims of crime, in essence, when a crime has taken place, have some role to play in the system from the point of view of at least being informed, that they had some rights as to being informed of process, of how to recover their property, of receiving information, et cetera.

Wholeheartedly, I think that is really important because it establishes an attitude where it affects the attitude within the Department or within the justice system. I think that is important. I have run across people, of course, who have had property damage, lost property, wanted to know how to recover it and had sort of gotten the shunt out of the justice system, pushed out because they did not have time for it, and they felt doubly aggrieved at having lost their property in the first place and not necessarily having easy access to get it back. I am sure that can be replicated a number of times over.

There are some issues that arise out of this bill that were flagged by the Association for Rights and Liberties. My colleague the Member for Steinbach (Mr. Jim Penner) reminds me again today that the argument that was made with respect to victims' rights versus complainants' rights is one that is certainly worthy of consideration by this minister, because there is that sense that this is prejudging by calling someone a victim of crime, giving him rights in advance of a conviction or a determination if in fact a crime has taken place.

It may be overstepping the correct terminology for what we are trying to achieve. Now I know that makes it difficult for the Minister. I know the Minister is trying to give a sense to people who have legitimately been aggrieved by crime that they have the right to certain information in the process. It is a concern to us, as it is to the Manitoba Association of Rights and Liberties, that the nomenclature may in fact not be the appropriate nomenclature here.

I am going to ask the Minister perhaps to respond to that because it is a concern that was brought forward. I do recognize that one of his amendments I think attempts to deal with some of that. The other issue is the one with respect to the consultation with Crown attorneys. I share with him and I take at his word that the intent is to ensure that a Crown attorney is at least keeping people informed of what they are doing and understanding, having that communication with a complainant or a victim if a criminal act has in fact taken place.

The concern that the Association for Rights and Liberties raised is certainly a very valid one, that our system of justice over 1000 years of development in the British system of justice has been based on taking the retribution or the punishment or the action out of individuals into the hands of the Crown so that it could be meted out with an even hand across the realm, that punishments could be appropriate or actions could be appropriate, that they were not the blood sport of people seeking vengeance on one another, and that is a very, very important principle.

Now in listening to the Attorney General very carefully, at least I got the impression he made it clear that the consultation was not required to seek direction from the complainant or victim. What an injustice that would be if the complainant or supposed victim was the perpetrator of the crime at the end of the day and was using that newly established right to further an unjust cause.

So we have some concerns with those particular issues, and I want to seek the commentary of the Minister of Justice because we would like to see a bill here that I think works and works well. I would say 98 percent of this bill I certainly have difficulty with. So the concern we have is with the reference to victim when we have not yet established that a crime has taken place. We are really talking about a complainant and that may not necessarily mean changing the title of the Bill, but is there some way in which the Attorney General would be comfortable with accommodating that particular concern of the Association for Rights and Liberties?

The second point that we raise is for some clarification, because the word "consult" can be taken to mean more than just talking. It does imply that there is not just telling you, that there is also listening and absorbing. We perhaps would like to see some clarification in this bill that would ensure that the discretion of the prosecutor, of the Crown attorney, is still an independent discretion.

Now, because I think this bill is so worthy of support and I certainly do not want to be in a position to, shall we say, get into a host of amendments that we would propose back and forth, with which the Attorney General is not comfortable, I look to him for direction. If he would like to take another day or two and come up with something he can live with in this bill that meets those kinds of concerns, I think we would be very pleased to provide a speedy passage of this bill through the Legislature. I am not here today to make political points, but those are legitimate concerns. We want to make sure that this bill cannot be interpreted at some point down the line, particularly with the discretion, in some way interfere with a thousand years of independent discretion by Crown attorneys, yet maintaining what the Attorney General, I think, would like to do, which is ensure that the complainants have the right to access and say this is what happened to me; this is what took place. There is a communication, and I think an appreciation for what is happening.

By the way, I am very sympathetic to what the Attorney General says. I have found in any administrative system when people are pumping through cases day after day after day, you do tend to lose that sense of how aggrieved it is for someone who has been legitimately wronged. I know in my days as a law student doing work with the Legal Aid clinic, going in and dealing with criminal cases, even of a minor nature, we often forget how aggrieved individuals can feel. So I think I know where the Attorney General is coming from. I think we want to support those efforts. We would just like to make sure that the Bill is one that these couple of, I would think, as a bit of rough edges are assured. So one would be some maybe additional provision the Attorney General would like to move just to clarify that the consultation does not interfere with the discretion of the Crown attorney in making their decisions. So, just a little clarity around the word "consultation", and secondly, the nomenclature around victim versus complainant, and our concern is that we do not want to leave the impression that we are prejudging, in essence, that a crime has taken place.

* (10:50)

Now, I know that does present a problem with the title of the Bill, and I look to my colleague from Steinbach, who shares this concern greatly with me. I do not think that the title is necessarily the issue as perhaps some of the nomenclature within the operative clauses. I think the Attorney General wants to make a strong statement that we are, as a Legislature, doing something for victims of crime. I concur wholeheartedly. We do not want to water down that sense of providing some rights to access to information, but we do want to ensure that our nomenclature is not challengeable, that cannot be taken to be affecting the status of a situation.

Now, I say this to the Attorney General, and I know he has some other amendments that he has done, if he would like to put this off, even to this afternoon, I think our House Leader would agree to sit this committee again concurrently with the Legislature, to take a few hours, perhaps, or even tomorrow to give it some thought to how we could deal with that. I would be most happy if those amendments would come from the Attorney General that he is comfortable with, rather than us having to try to draft them. So those are the comments I want to make.

Mr. Mackintosh: The points raised are good points. The first one was raised, of course, in the MARL presentation and then by members. In our justice system, one is assumed to be innocent until proven guilty. But, similarly, when one complains of a criminal wrongdoing, one is basically assumed to be a victim. It would be important that we ensure that the Act not apply only to victims who have gone through the court process and only after a person was judged to be guilty. So we want to have a broad application of this legislation.

The word "victim" may be perhaps generous in certain circumstances as may be proved over the course of proceedings. But when someone comes to the police as a complainant alleging criminal activity directed against the individual, I think it is fair to treat the person as a victim of crime. Therefore, we have proposed an amendment to section 1(1). That amendment adds the words "or is alleged to have committed" in the definition of victim. In other words, a victim means an individual or corporation, organization or other entity against whom an offence is committed or is alleged to have been committed. That is consistent with the earlier legislation. As well, I might add, we are pleased that this issue was raised, and we could clarify it. So this makes it absolutely clear that complainants are to be treated as victims, and indeed in most cases they will, and they are victims without doubt.

It should also be added that the word "victim," I think, is a term that is generally accepted and acknowledged as being an apt descriptor of the individuals that we are attempting to give information and a voice to. So it speaks to ordinary Manitobans, I think. If we did otherwise than changing the definition section, I do not know if we will be doing a service to people to ensure that there is an access to this legislation and the rights in it.

On the second issue of prosecutorial discretion, there is no change, of course, in prosecutorial discretion by this legislation, and we acknowledge that in the preamble where the legislation is to be consistent with the law and the public interest. But, more importantly, I think, when we look at the word "consult," it means what is commonly accepted as the definition of consult and that is to listen to and to consider the advice or information from an individual. It is not to take directions.

But what we will do, and we have had discussions with the prosecutors in this regard, and we think it is important that there be clear directions and assurances to prosecutors, in particular, and we will develop, either as a regulation or as a prosecutions policy, which is available to the public generally, guidelines or directions for prosecutors to assist them in their discussions or consultations with victims which would presumably be most important at the stage of plea bargaining. We have consulted other jurisdictions and other jurisdictions that have similar legislation, and they, too, have developed policies to give parameters to the word "consult" for the public and for their prosecutors and for the victims. For example, we have looked at six states right now and that will assist us in working with the prosecutors to establish a good, clear, firm policy.

But I think it has been a very strong statement from this government since this legislation was contemplated, let alone introduced, that this provides a voice not a veto for victims that speaks directly to the issue that was raised by the critic. So we will be moving the amendment to section 1(1) and, as well, we have two other amendments.

Mr. Jim Penner (Steinbach): I, too, want to endorse the concept behind this bill. I feel it is necessary to address the rights of people who have become victims. But the reason for our suggesting a short delay and a little more study was that too often, as history has shown, and sadly so, the victim happens to be the accused. So when we say "victim's rights," maybe we are talking about the person who is being blamed for a crime, because as we know and history has shown us in the last years, the victim, too often, is the accused, and sadly so.

That was one of the reasons why we were really concerned that the purport or the intent of this bill would be carried through. We feel that the use of the term "victim" has too many directions to stand up in court. Thank you.

Mr. Chairperson: During the consideration of a bill, the preamble, table of contents and the title–

Mr. Praznik: One other matter that I had raised with the Attorney General that I would like his comment on is whether or not his amendments deal with this or he is prepared to make an amendment in this area. I flagged with him in one or two of these sections where the prerogative or the decision as to whether or not the victim would receive the information requested was of course to be judged by the standard of whether or not it would delay or affect the terms of the investigation. What I had suggested to him in committee was this currently left it as very objective, to be decided really whether or not it would interfere in the investigation or prejudice it by whoever the Act defines as the investigator at the end, whereas I had suggested that it really had to be a subjective decision of the head of that police agency at the time. Investigations tend to be fast-moving, and the last thing we wanted to do was to be judging that police force after the fact, with a third party, as to whether or not they properly exercised that discretion, that it really should be their discretion as to whether or not they provide that information based on what was happening in a fast-moving investigation.

So does the Attorney General want to comment on that, or do we have to prepare an amendment?

* (11:00)

Mr. Mackintosh: No, I was going to deal with that in section 7, and I think it is more appropriately dealt with now. I know the Member characterized section 7, a setting out what he thought was an objective standard, that of a reasonable person, which a law enforcement agency must meet when determining whether to give a victim some requested information about the case or the investigation, and whether that would unreasonably delay or prejudice an investigation or prosecution or affect the safety or the security of any person. His express concern was that that was maybe too high of a standard.

We are of the view that the issue is whether the delay is reasonable, or whether disclosure would jeopardize an investigation or prosecution or affect the safety or security of a person. As the provision is worded, the decision maker would have to make that determination fairly, not arbitrarily, after considering relevant circumstances. So it is not, in our view, entirely an objective standard at all.

We have talked to Winnipeg Police Service, Brandon Police Service and RCMP. They have all reviewed the drafts of this section, and they have expressed no concerns. The Law Enforcement services within the Department and the Public Safety branch have also looked at this issue. They are comprised of several former law enforcement officers, and they have expressed satisfaction with how this current section is worded, considering the remarks.

The section simply requires that police, as they do every day, balance the victim's need for information with the potential that disclosure could jeopardize any investigation or prosecution or affect someone's safety. It requires police to respond to a request, unless its release would cause a delay or create problems for the investigation. A decision not to release information must be justified, but the decision is made by police with the information that they have, with the discretion that they are given. They must judge whether the danger to the case outweighs the victim's right to information.

The Bill will be put in place by way of an implementation committee, and that will be comprised of the RCMP, the Brandon Police Service, Dakota Ojibwa Police Service, for example. They will be developing supporting policies if there are any lingering concerns about this section.

I might also add, of course, that the Bill requires a re-evaluation within five years of proclamation, and if there is any unfortunate circumstance arising, we can mend it immediately or, of course, the review can identify that. I think, as a matter raised now with the passage of the Bill, that will be an issue that should be explored at the five-year review. And it could be, of course, sooner than five years.

Mr. Praznik: The reason I flagged these is it is great to talk about implementation committees and practices and directions to Crown prosecutors, but what we pass here is the law. And if in practice you handle it differently, but

the law is what we write, it is open some day to being challenged.

It is open where the head of a police service makes a decision not to provide information, and it ends up being challenged, and ends up going to this review process. Then we find out we are second guessing our heads of the police services after the fact.

I think we should try to get it right in legislation the first time and that is that if the discretion is one that is objective or to be judged by some outside body, I just do not think it is appropriate. I think that what we are flagging with head of the police service is, it is their responsibility to make that decision. They are not going to be second guessed about it later on.

It is just a concern that one has, because it will be that one circumstance in ten thousand that ends up testing this law and causing a problem. So that is why we flag it today. I do not take comfort from the fact that we are going to have committees to implement this. I think the law should be clear on its reading at the current time and that is why we raise it.

Mr. Mackintosh: Certainly, if the law enforcement agencies were raising this concern, I would have some different views, but the people who have been consulted on this bill from the different agencies have expressed satisfaction with the wording in its current form. So I think what we can do is just be vigilant. I will defer to the view of the law enforcement agencies at this time, given that they have a lot at stake with that section, of course.

Mr. Chairperson: Shall we proceed to clause by clause?

Clause 1–pass; clause 2–pass; clause 3–pass; shall clause 4 pass?

Mr. Mackintosh: I move

THAT the definition "victim" in the proposed subsection 1(1), as set out in section 4 of the Bill, be amended by adding "or is alleged to have been committed" after "committed" in the part before clause (a).

Motion presented.

Mr. Chairperson: The amendment is in order.

Mr. Praznik: Mr. Chair, I gather the reason why the definition of "victim" is simply against whom a crime is alleged to have been committed or to have suffered from an alleged crime is that the Bill also applies or provides rights post-conviction. That is the difficulty in the nomenclature, that the term "victim" is applying both before and after. That is why this amendment is being made in this form.

Mr. Mackintosh: That is one, but the other purpose and reflecting on the comments made by the critic and the Member for Steinbach (Mr. Jim Penner), that one is to be dealt with as a victim when one complains of a criminal activity or injury being directed against the individual. In other words, it is to ensure that there is that recognition, that one is not a victim simply after conviction.

I might add that this is important because the current statute does have this in the definition section. I think it is important to give clear direction to the courts, the administration, justice officials, that when one complains of a crime committed against oneself one is to be treated as a victim. I might just add as assurance, obviously, if at any time during the course of proceedings it appears that one is not the victim at all, the section is there; one will no longer be treated as a victim and someone entitled to information or consultations.

Mr. Praznik: One other question. The concern raised by the Member for Steinbach, one that I share wholeheartedly, we all know from time to time that you have people who sometimes come forward and make false accusations of criminal–it happens. Obviously, if that person has become a suspect in the investigation–here is a question. This right is going to apply where you have–case scenario–an individual who makes an allegation that they have been wronged by another person. The police begin the investigation, and it becomes very evident or evident to them or it becomes suspicious that this person may, in fact, not be telling them the truth–the complainant, the victim under this act. What happens under that case when that person then says: Well, wait a minute. Hold on. You are not telling me what I want. I am the victim; I have rights as a victim.

But the police are suspicious that the victim is, at minimum, committing mischief and maybe has perpetrated the crime himself. How is this bill going to act in those circumstances?

Mr. Mackintosh: The police or any justice official would act accordingly, and the individual would not be accorded rights, presumably. The individual, then, would have to go and make a complaint, and there would have to be that kind of independent review, whether it is to the crime victim or Ombudsman or to the Department, so there would be those checks and balances.

Of course, none of the nomenclature in this bill would have any impact whatsoever on a determination by a court as to whether a crime occurred. Just because someone was called a victim under one act does not mean that indeed they had been victimized as a matter before trial.

* (11:10)

Mr. Praznik: Just to follow that through for the benefit of the record for those who may read this someday. If in fact that happened, if an individual had made a false complaint, was treated as a victim for a period of time, given information on the status of the investigation, police officers realized that they had maybe stolen from themselves and blaming another person, cuts them off from access to information at some point. They make a complaint. It does turn out in the end that they were the party who filed a false complaint. Would they be considered being charged with an offence at some particular time?

Mr. Mackintosh: Well, if it was the offender who was claiming to be the victim, the law enforcement agency, if they had information to that effect, if they acted on a reasonable basis and said, no, you were not entitled to information under this act, then that is wholly within their right. As I say, the remedy would be then for the alleged victim to take remedies, and it would be dealt with–

Mr. Praznik: The next step, of course, would be if there is sufficient evidence that charges would be laid against that person for mischief or whatever the appropriate offence would be. I mean you could not just get away with making false accusations against people.

Mr. Mackintosh: If there is evidence of mischief and someone alleging criminal activity when none has occurred, if there was evidence to support that then presumably charges would follow, but law enforcement has that ability. It does happen from time to time, and Prosecutions then follows up.

Mr. Praznik: Would Mr. Penner have any more comments? We will accept the amendment.

Mr. Chairperson: Amendment–pass. Shall clause 4 as amended pass? We have more amendments to clause 4.

Mr. Mackintosh: I see clause 4 is a huge clause. It is the essence of the Bill. I move

THAT the proposed section 12, as set out in section 4 of the Bill, be amended by adding the following after clause (k):

(k.1) the possible application by a Crown attorney to the court to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code* (Canada);

Motion presented.

Mr. Chairperson: The amendment is in order.

Point of Order

Mr. Praznik: Mr. Chair, are we at that point in the clause by clause by the Bill yet? We are. It is all definitions. Okay.

Mr. Chairperson: I am told that this is all clause 4.

* * *

Mr. Mackintosh: This amendment and one I will be proposing after are to deal specifically with what are called dangerous offenders. I want to commend the Department for identifying this. This arose as a result of ongoing discussions with victims, one family victim in particular, who raised this matter and it triggered in our mind the need for some improvement here.

The Crown may apply to the court to have an offender designated as a dangerous offender and sentenced to indefinite incarceration. This application is reserved for only the most violent and dangerous offenders in the country, although we have had a few lately. I can think of two or three in the last year or two in Manitoba, a couple of them anyway, three of them.

Indeed, with the new Criminal Organization and High Risk Offender Unit, we have, as one of the designated functions of that unit, work to identify some of these people who continue to be a threat to Manitoba's safety. For the application we need quite a lot of research and background done. We think that, by that kind of concentrated work at the prosecution level, we can increase these kinds of applications.

Now in Manitoba eight offenders have been declared dangerous offenders and sentenced to an indefinite term of imprisonment. However, police and prosecutors have identified an additional 48 offenders who could be the subject of a dangerous offender application if they commit another violent offence. You can see the potential of the section. I think it has been underutilized. The federal government is now completing a study on high-risk offenders, but a previous review by my staff revealed that these offenders included a mix of sexual aggressors, pedophiles, and other violent offenders. Their victims suffered a range of physical injuries in addition to the psychological effects of their victimization. Weapons used by these offenders against their victims range from knives or other stabbing objects to car lighters, hammers, and other objects. The majority of offenders had multiple child and adult victims.

So this amendment is to ensure that victims are informed by prosecutors about the legal process for designating someone as a dangerous offender in particular, including the role of the victim in that process.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed. I believe we have another one.

Mr. Mackintosh: I move

THAT the proposed section 13, as set out in section 4 of the Bill, be amended

(a) by adding the following after clause (e):

(e)(1), the date, time and place of an application by a Crown attorney to the court to designate a convicted person as a dangerous offender under subsection 753(1) of the *Criminal Code* (Canada); and

(b) in clause (f), by adding ", including the outcome of an application by a Crown attorney to the court to designate a convicted person as dangerous offender under subsection 753(1) of the *Criminal Code* (Canada)" after "prosecution".

Mr. Chairperson: It has been moved by the Honourable Mr. Mackintosh–dispense.

The amendment is in order.

Mr. Mackintosh: If requested by a victim, the prosecutor must ensure that the victim is provided then with the date, time and place of a dangerous offender application before the courts, but prosecutors must also ensure that a victim is informed about the outcome of the dangerous offender application conducted under the provisions of the Criminal Code. Of course, this kind of information and involvement of the victim may occur some years after an initial offence. So I think this is an improvement. It is a strengthening, and I think it is a first to be recognized in any victims' rights legislation that we know of.

Mr. Chairperson: Amendment–pass. Clause 4 as amended–pass. Clause 4 carries over to page 20.

Clause 5–pass; clause 6–pass; clause 7–pass; clause 8–pass; clause 9–pass; preamble–pass; table of contents–pass; title–pass. Bill as amended be reported.

* (11:20)

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act

Mr. Chairperson: Bill 33. Does the Minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): We do have one amendment here that flows from comments made by one of the presenters the other day. In respect of the provisions about second or subsequent seizures within five years, there was an allegation by MARL that the provision did not take into account the fact that a previous impoundment that may have been revoked is in the Bill or that the provision does not take into account a situation where an officer released the vehicle under section 242(1)(4). Now that statement is incorrect. If an impoundment has been revoked, it cannot count and traditionally has not been counted as a prior seizure, but that practice and that common sense, I suppose, that administrative action is not actually in the wording of the legislation. Just out of an abundance of caution, just to make sure there is a clear expression of the law and the operation of this statute, we will propose an amendment just to clarify that point.

Mr. Chairperson: Does the critic from the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): Yes, Mr. Chair. We are very glad to hear that, and that amendment would be acceptable to us. There is one issue that my colleague the Member for Steinbach (Mr. Jim Penner) raised. I would ask if the Minister has given any thought to it. We may in fact want to make an amendment at third reading, or the Minister may in fact want to consider this amendment. It occurred to us, in cases where a vehicle is being impounded and taken away, that it, of course, is incurring charges, and the impoundment may be for a long period of time. If, during that period of time, the owner of that vehicle wanted to sell that vehicle, have the vehicle released and have the Crown continue to hold the money for that vehicle, this way at least the impoundment charges are not running up necessarily.

Perhaps that owner is obviously very likely not going to be able to be driving the vehicle anyway, may want to sell it, get the maximum value for that particular vehicle. Of course, if it is being impounded for a long period of time, the model year, things change, the value is, of course, declining. The concern was raised that they should not sell it and get the money. Would the Attorney General have some thought on, if the vehicle could be sold, which would end the racking up of impoundment charges, the Crown would hold the proceeds until the period of impoundment had expired so that the owner of the vehicle would not benefit from the sale of the vehicle and have it? Of course, the impoundment charges would not be racked up unless that is meant to be some additional penalty, which may in fact have some constitutional issues but would in fact allow that person to get rid of their vehicle, perhaps maximize their value on that vehicle at that time, and the Crown would hold the money until the release date, would be perhaps better for all. So we would ask if the Minister had any thoughts on this particular area. It is an area he might consider providing for in the legislation.

Mr. Mackintosh: What I can assure the critic of is a policy review of that proposal. I put this on the record: This legislation is undergoing an extensive review. It is our hopes that in fall or winter there will be some significant changes brought in to deal with impaired driving that are markedly different than the current regime. As part of the move to extend impoundment periods, the question raised is a legitimate one. If we are looking at impoundment periods of a year or so, those issues can arise and may not have arisen earlier. We also have to guard against, of course, mischievous offers to purchase from family members in order to, perhaps, get around the purpose of the legislation.

I think what we need here, this is what happens in my office, an idea is put out and the Department will go and they will look at the pros and cons and there will be some considered debates and discussion on a proposal. What we will do, I can assure the members, is put that proposal into the works for consideration as the legislation is developing for the fall or winter. We will, at that time, either have a provision, or we will explain why we do not. If that is satisfactory to the members, we are prepared to ask staff now to consider that and advise the members accordingly.

Mr. Jim Penner (Steinbach): Mr. Chairman, I thank the Minister for that remark. I just felt that, in the first year of a vehicle's life, the depreciation often involves about a 25% loss of value.

That would be an unintended punishment on a person losing his car for a year. So that if the car could have been resold while it had retained its value, not intending for the person to obtain the proceeds of a sale, but simply that the unintended punishment would not exist. I appreciate the Minister's remark.

I also would like to ask about the insurance process. When the vehicle is impounded, is it the vehicle owner's responsibility to maintain the insurance on the vehicle?

Mr. Mackintosh: No, the vehicle owner is not required to maintain insurance during the period of impoundment.

Mr. Praznik: On that point, if during the course of impoundment the vehicle suffers damage, then I take it the Crown is responsible for that damage?

Mr. Mackintosh: The answer to that would depend on the circumstances of the case. If there was negligence on the part of the garage keeper, for example, there could be liability to the garage keeper. It would just depend on the facts of the case.

Mr. Praznik: That somebody deliberately breaks into the compound and damages the vehicle, it is in the care and control of the Crown. It has been impounded by the Crown. The Crown is the party who has contracted, assuming you are using a private operator, to look after the vehicle. The Crown has taken that individual's vehicle. That individual's action, I would suggest, is against the Crown.

The problem we have here is you have a vehicle and you have impounded it. A person has breached law; you have impounded their vehicle. They cannot have access to drive it. So it is an unfair penalty to have them maintain insurance on that vehicle. It is in the care and control of the Crown. If the vehicle is damaged through a malicious act of a third party, et cetera, it is in the Crown's control.

It could be a very unintended penalty to have your vehicle have ten or twenty thousand dollars damage. It may be as simple as a lightning strike on a neighbouring tree and a branch comes down and smashes it. I am just saying anything could happen. It could be an act of God. The point is, that person has now not only suffered the loss of the vehicle, which was intended by this Legislature, but they have now lost the vehicle and its value, which is not intended by the Legislature. So who would be responsible for making up that loss?

Mr. Mackintosh: The situation currently in place in Manitoba is that the Province pays to garage keepers, as defined in The Garage Keepers Act, for them to have care and control of vehicles that are impounded. The garage keepers, I understand, actually welcome legislation that increases impoundment periods, and certainly increases some source of revenues for them.

Under The Garage Keepers Act and the arrangements entered into, it is the garage keepers that are to be responsible for the keeping of those vehicles and would have responsibility for maintaining insurance coverage.

* (11:30)

Mr. Chairperson: We thank the members. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered.

Mr. Mackintosh: I might, just to correct a piece of information, it is not the Province that actually pays from general revenues to the garage keepers. It is from impoundment fees.

Mr. Chairperson: If there is agreement, we will proceed by blocks of clauses. Shall we go to clause by clause? *[Agreed]*

Clauses 1 to 2(2)–pass; clauses 3 to 4(2)–pass; clauses 4(3) to 4(5)–pass; clauses 4(6) and 4(7)–pass; clauses 4(8) to 4(12)–pass; clauses 4(13) to 4(15)–pass.

Mr. Mackintosh: I move,

THAT subsection 4(15) of the Bill be amended by adding the following after the proposed subsection 242.1(7.1.2):

Effect of revocation of previous seizure
242.1(7.1.3) For the purposes of subsections (7.1.1) and (7.1.2), the seizure of a vehicle shall not be considered as a previous seizure if

(a) the vehicle was released under subsection (1.4), (3.1) or (13);

(b) the seizure was revoked under subsection (5) or (6);

Mr. Chairperson: Before we deal with this amendment to 4(15), is there agreement to pass clauses 4(13) and 4(14)? *[Agreed]*

Motion presented.

Mr. Mackintosh: The purpose of this amendment was described earlier and that is to ensure that any previous revocation or vehicle released by an officer is not then considered as a prior seizure.

Mr. Chairperson: Amendment to clause 4(15)–pass; clause 4(15) as amended–pass. Clause 4(15) carries over to page 10.

Clauses 4(16) to 4(18)–pass; clauses 4(19) to 5(1)–pass; clauses 5(2) to 8–pass; preamble–pass; title–pass. Bill, as amended, be reported.

Bill 36–The Summary Convictions Amendment Act

Mr. Chairperson: Does the Minister have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): To address the concerns of the critic at second reading, we are prepared to move an amendment to allow a justice at a hearing de novo to waive the fee in exceptional circumstances to allow for those cases where an individual may have been default convicted under circumstances beyond their control, if we can get the amendment distributed.

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, I am very pleased that the Attorney General has responded in that way, and we certainly will concur on the amendment.

Mr. Chairperson: We thank the members. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. With the agreement of the Committee, the Chair will call the clauses in blocks with the understanding the Chairperson will stop at any particular clause by movers of questions or a wish to move an amendment. Is there agreement that all amendments moved are considered to be moved with respect to both the French and English languages? *[Agreed]*

Clauses 1 to 2(3)–pass. Shall Clauses 2(4) to 4(4) pass?

Mr. Mackintosh: If we can pass 2(4), we can then deal with the proposed amendment to 3.

Mr. Chairperson: Clause 2(4)–pass.

Mr. Mackintosh: I move

THAT the following be added after proposed subsection 17.1(2) as set out in section 3 of the Bill:

Reduction or waiver of penalty
17.1(3) Despite subsection (1), a justice may reduce or waive a penalty at a hearing de novo requested under subsection 17(6) if the person satisfies the justice that exceptional circumstances exist.

[French Version]

Il est proposé que soit ajouté, après le paragraphe 17.1(2), énoncé à l'article 3 du projet de loi, ce qui suit :

Réduction ou annulation de la peine pécuniaire
17.1(3) *Malgré le paragraphe (1), un juge peut, au cours d'une nouvelle audience demandée en vertu du paragraphe 17(6), réduire ou annuler une peine pécuniaire si la personne le convainc de l'existence de circonstances exceptionnelles.*

Motion presented.

Mr. Chairperson: The amendment is in order.

Mr. Praznik: Just for clarification, does this deal with the circumstance where maybe the individual is guilty of the offence but did not receive the notice? So, all the issue is, is do they pay the extra $35 because they have ignored the offence? I do not want to set it up that you may have committed the offence, you missed the

notice for some reason, perhaps you did not get your mail everyday. You missed the notice; you are guilty. You are not asking for a hearing de novo on the issue, but you were not guilty of deliberately not responding to the notice. So I am asking the Attorney General to consider. There has to be some provision to appear before a magistrate, et cetera, and just have the $35 penalty waived. Does this do that? In reading this, I get the impression this is only possible if you are appearing on a hearing de novo on the issue. So I am asking the Attorney General for clarification.

Mr. Mackintosh: This really is a release valve of sorts, I suppose. If there are some circumstances that, on evidence, can be supported before a judge, there can be a waiver or a reduction. So the circumstances are not limited.

Mr. Praznik: So, just to clarify, if the person did the offence, admits to the offence, is not wanting a new trial on the offence, did it–if I got the notice, I would have gone down and pled guilty, but I did not get the notice, and now I have had a default judgment. I did it, that is fine, I do not want to have that retried. I only want to not pay the $35 penalty. Will this provision allow them to go before a judge and say, judge, I am sorry I did it, I will accept the fine, I just do not want to pay the $35?

Mr. Mackintosh: I think we are going on the mail theme again here. The difference here is that when you get a ticket, you actually are hand delivered a ticket and with the ticket comes the summons. So I do not know where that defence could ever arise where someone could say, well, I was not advised of the summons. The summons comes with the ticket.

Mr. Praznik: Mr. Chair, case in point. Someone used false identification or gave the wrong name or wrong information on the card. It was not I. That is the perfect example. I have known that to happen in my youth with a number of brothers who, before the photo ID on their driver's licenses–but someone could be from another jurisdiction. I will give you another example of a case, I guess it would be a parking offence, but I am just asking is there any circumstance where that, in fact, would be a problem.

Mr. Chair, I take it that this is for more than just highway traffic offences as well. I mean there are offences under environmental acts and other things. So I am just asking. A person could have given the wrong name, wrong identification deliberately, could have used the Member for Flin Flon's (Mr. Jennissen) name and ID, and he ends up getting a default notice at some point. I just do not know. I am asking, given that this is not just highway traffic offences but all summary conviction offences, there are a host of statutes for summary conviction offences, do they all involve personal delivery? Do you actually know you are getting photo ID like a driver's licence? So there are possibilities I would imagine where it would happen, could happen.

* (11:40)

Mr. Mackintosh: I have made the point often that the justice system is very much a human system, that if there are glitches or breakdowns, it is not mechanical in nature, that there are errors of judgement or there is some mischief on the part of offenders, and that would be a matter that would be dealt with in a hearing. It is important for the justice system to get the right person. If there is a wrong person that has been identified in a ticket or a summons, then there would certainly be cause for a hearing and determination.

Mr. Praznik: It comes back to my original question about this amendment. If, let us say, it is an environmental offence under The Environment Act, somebody has put a well too close to a sewer, whatever, right, and the environment officer serves a notice, serves it on the wrong person, a summary conviction or a default judgment is entered, it was their property, but they never knew that it was being served on them. All they want to do is have the $35 penalty waived. Do they have to have a trial de novo, to come to the trial and plead guilty just to ask for the $35? Is it not possible that they could go before a magistrate and say yes this is me but I did not receive the notice? It was given to my neighbour who never gave it to me, et cetera, all I want is the $35 waived. I just do not want to have the remedy so costly that it just becomes silly, because the remedy may just be that I did not receive the notice, but, yes, I committed the

offence. Yes, I have to clean it up. Yes, I have to pay the fine. Why would I need a trial de novo just to make that point? Why could I not just go before a magistrate to deal with that one particular issue which is the $35 surcharge?

Mr. Mackintosh: Well, first, just going back, the Member is correct in that this bill and this particular amendment apply to all summary convictions, offences that include the examples cited by the Member. Where there are mistakes, as the Member uses in the example, the matter would not be proceeded with. There would be a correction, but it would not be necessary in this usual practice for the individual to have to come down to the court. It is in the interests of the Crown to advance that matter and have the court dispense with it, and that is the practice, that would continue to be the practice. But, that, of course, was an issue, that was a circumstance that pre-existed this particular bill. That is a problem that arises from time to time and is dealt with accordingly.

Mr. Praznik: The Minister has recognized that, first of all, he is imposing an additional penalty on somebody, in the case of a default judgment, than they normally would have, and what we want to ensure is that if that person has been wrongly assessed that extra penalty because they did not receive the notice, they were in default for legitimate reason, even though they may in fact be still the offender, they are not assessed the additional $35 as a penalty for being in default. There really are two offences that we are making here. One is the original offence that the person may have committed. The second is that they did not respond to the summons and they were in default. Each needs a vehicle to be redressed.

What concerns me with the amendment is we are tying the two together. What I am looking for is a simple vehicle, not the good will of the Crown to take it forward and have it waived by the judge, but I am looking for more than good will. I am looking for the right of that person to be able to go before a magistrate and say: listen, yes, it is me. I broke the Environmental Act. By the way, I did not receive this summons. This was not me; it was not my signature. Whatever it was, I can prove that the day it was served on me I was in Toronto. So it was served on someone else who did not give it to me. I just want the $35 waived. Because we are talking about such a small penalty, but for an individual who feels they were wrongly assessed the $35, they should have a right to have that addressed without having to go through the process of requesting a trial de novo.

What this Attorney General is forcing them to do to get their $35 is to ask for a whole new trial on the subject matter. So, they will say okay, I want a trial de novo. A trial date will be set. They will go before a judge, and the judge will say are you guilty. They will say, yes, I am guilty. Then why are you here? Well, I am here because I did not get the summons and I want my $35 back. Meanwhile, it has cost me half a day off work, maybe, all the time to get this done, and it has cost the court system. I just see a judge being very frustrated.

What I am asking the Attorney General to do is with respect to the issue, the penalty for the offence of not answering your summons, which results in a default judgment, the ability to go before a more minor court officer, might even be a clerk, but a magistrate, I gather, to make the case just on the simple matter of whether or not I had a reasonable excuse to be in default. I think those matters should be separated.

If the Minister would undertake to provide that amendment in third reading, we will pass the Bill on. I just do not want a whole new trial to have to take place on the matter of a $35 penalty. It seems like we are really saying to people just forget it. Pay us the $35 because your means of getting redress is so costly and so complicated that you really are not going to do it. Justice should not work like that. That is how people lose confidence in the justice system.

If we are going to impose an additional penalty for default judgment, we should have a simple way for that to be adjudicated. I would imagine in many cases, particularly under a host of regulatory acts that have summary conviction offences, that the person may in fact have done the thing, but never got the summons.

I can see that happening under The Environment Act. In the area I represent, there are a host of rules around where you put your septic tanks

and septic fields in relation to wells. I am not sure if that scheme results in charges that result in summary conviction offences. It may. If it does, you may not be there at all. You might not be there all winter, and somebody else gets the summons and does not give it to you. So, now you have got to deal with The Environment Act penalty on default judgment. Fine, you are guilty. But, you get the $35, and again you have a real excuse why you should not be assessed it.

So, if the Attorney General would like to commit to another amendment in third reading, we could deal with that there if he wants to move this bill on. I do not think this particular amendment, it is saying you could have a whole new trial. So if you were innocent and now you are asking for a new trial, then you can also argue that default judgment question. But what about the person who is guilty? Fine. Does not need a whole new trial, just needs to deal with the $35. We should have a vehicle for that.

Mr. Mackintosh: Well, we are just trying to figure out circumstances that would arise where a person would say I am guilty of the offence, but I am not guilty of the default, because at the time of ticketing and the advice of the offence being committed there would have been the summons. So I am not sure I understand the example, and maybe we can just take it from that particular example.

* (11:50)

Mr. Praznik: Mr. Chair, correct me if I am wrong, but are there not a number of statutes, regulatory statutes, where the offence may not be committed by the person, but they may be committed on the person's property? For example, under The Environment Act, the placement of a septic field within 50 feet of a neighbouring well. I mean, I do not know if that is one of those statutes, but are there not regulatory statutes in a variety of departments? I am thinking of the Department of Labour, for example, under Workplace Safety and Health. You might have the owner of a company who may be in violation of The Workplace Safety and Health Act and a summons may be served on the wrong person, on the wrong company, the wrong law firm. It may be very rare.

All we are saying is that if you are going to have this additional penalty then why not just allow a person to appear before a magistrate on that issue and not have a trial de novo. But within the whole realm of the legislative scheme of the Province of Manitoba, how many hundreds of statutes we have, there are statutes, I am sure, where offences are committed, where a summons may be delivered. They may not be to the individual right on the site at the time of the offence. Again, I am thinking of agricultural statutes. For example, I cannot remember the statute, but we have penalties for burning of straw, for example, at wrong times. You may have somebody who is burning straw in a neighbour's field and--

An Honourable Member: Let us not talk burning today.

Mr. Praznik: Yes, we will not talk burning today. *[interjection]* Yes, okay. But there may be penalties where the penalty is determined after the fact. The offence is by the property owner, in essence, and it is served on the wrong person. The property owner has never gotten the summons, but maybe they did do the offence. Maybe they did do the burning and never got the summons. It was served on the neighbour who ignored it.

There are lots of statutes. I have not had time to research it. I am asking the Attorney General if he has, as well. I think what we are just simply asking is if we would like to pass through this bill without this amendment with a commitment from the Attorney General that he is prepared to go back and look at this. All we are asking is a simple vehicle to deal with this. I am sure within the Statutes of Manitoba there are going to be cases where there are offences that occur where the individual may be responsible for them, because they occur on his or her property but may not be the person who receives the summons. Errors take place.

I know if we pass this through today, within six months either the Member for Flin Flon (Mr. Jennissen) or the Member for Elmwood (Mr. Maloway) or one of us is going to have a constituent who runs into this, and they are going to be in there. All we are going to be able to tell them is they need a whole new trial, unless the Minister can guarantee me that there are no such statutes in this province that would

fall within that category. All I am looking for is just a simple way of solving this issue if, in fact, it arises. Maybe it will only arise once in 10 years, but we have an obligation to provide for it. That is all I am suggesting.

Mr. Mackintosh: Well, we will certainly look at the remarks and consider the examples given. Our understanding is, if there was someone who was wrongly provided with a ticket, that the Department, Prosecutions would not proceed, and there would be a waiver of any subsequent fees. It is not in the interests of the Justice Department to proceed against any wrong individual.

I think that is probably what happens in the usual course, but we will provide definitive answers to the members concerned.

Mr. Praznik: Mr. Chair, given that the time now is five to twelve, would the Committee like to adjourn and give the Attorney General a chance to look at this? We obviously have some other bills to do that we are not going to complete between now and noon, and we can deal with this matter. This is our only issue with the Bill, and if he can report back the next time we meet, next time he calls this committee as Government House Leader, then we can move on it, but rather than deal with it in third reading, I would just suggest we adjourn with three minutes to go, and then he can report back.

Mr. Mackintosh: That is fine with us. That leaves us with Bills 36 and 23, and we do have some proposed amendments on 23.

Mr. Chairperson: There is an amendment on the floor, but we are just going to leave the business where it is now.

Mr. Praznik: Just to clarify, I would suggest, yes, that amendment is on the floor. It is in order and when we next reconvene, that will be the matter of business with which we will deal.

Mr. Chairperson: When this committee next meets, we will be considering the amendment. Committee rise.

COMMITTEE ROSE AT: 11:55 a.m.