First Session - Thirty-Seventh Legislature

of the

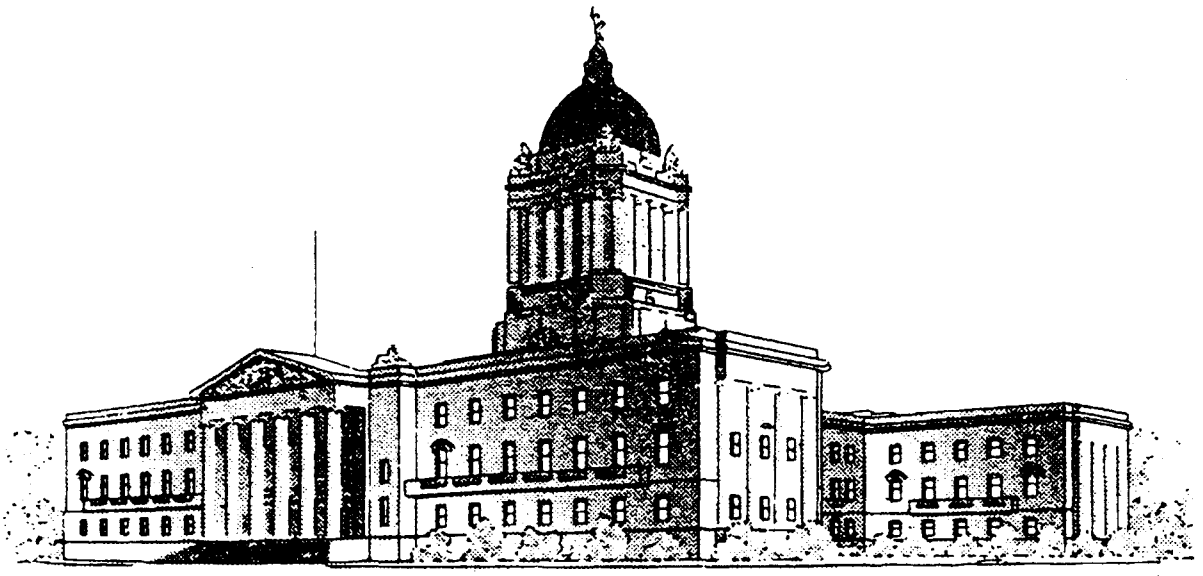
Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson
Mr. Thomas Nevakshonoff
Constituency of Interlake



Vol. L No. 9 - 10 a.m., Wednesday, July 26, 2000 (REPRINT)

ISSN 0713-9586

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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Wednesday, July 26, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Tom Nevakshonoff (Interlake)

VICE-CHAIRPERSON – Mr. Conrad Santos (Wellington)

ATTENDANCE - 10 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Mackintosh, Hon. Ms. McGifford

Mrs. Dacquay, Messrs. Nevakshonoff, Pitura, Praznik, Reimer, Rondeau, Santos, Struthers

MATTERS UNDER DISCUSSION:

Bill 36–The Summary Convictions Amendment Act

Bill 23–The Jury Amendment Act

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Madam Deputy Clerk (Bev Bosiak): Good morning. Will the Standing Committee on Law Amendments please come to order. The first item of business before the Committee this morning is the election of a Chairperson. Are there any nominations?

Mr. Stan Struthers (Dauphin-Roblin): I nominate the Member for Interlake to be Chair of the Committee.

Madam Deputy Clerk: Mr. Nevakshonoff has been nominated. Are there any further nominations?

An Honourable Member: I nominate Mr. Santos.

Mr. Conrad Santos (Wellington): I respectfully decline.

Madam Deputy Clerk: Mr. Santos has declined. Mr. Nevakshonoff, would you then please take the Chair.

Mr. Chairperson: Good morning. The next item of business before the Committee is the election of a Vice-Chairperson. Are there any nominations?

Point of Order

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair. We had a Chair in place and a Vice-Chair. I just wonder if they resigned. Did I miss something in the interim? For those of us who have joined this committee today, I know it has been hearing a number of bills and changing members, but perhaps the Chair could just bring us up to date. There were resignations, I gather.

Mr. Chairperson: Those individuals are no longer members of this committee.

* * *

Mr. Chairperson: As to the nomination of the Vice-Chairperson, are there any nominations?

Mr. Struthers: Mr. Chairman, I take it there will be unanimous support for the nomination of the Member for Wellington (Mr. Santos) for Vice-Chair.

Mr. Chairperson: The Member for Wellington, Mr. Santos, has been nominated. Are there any further nominations? Seeing none, Mr. Santos is elected Vice-Chair.

Mr. Santos: You did not ask me if I accept.

Mr. Chairperson: Do you accept, Mr. Santos? Okay. You are elected Vice-Chair then.

This morning the Committee will be considering the following bills: Bill 23, The Jury Amendment Act, and Bill 36, The Summary Convictions Amendment Act. Did the Committee wish to indicate how late it is wishing to sit this morning?

An Honourable Member: Until 12 p.m., if required.

Mr. Chairperson: Until 12 noon, if required, then? Agreed and so ordered.

Did the Committee wish to indicate in what order it is wishing to consider these two bills?

Mr. Praznik: Mr. Chair, I believe when we last adjourned considering these bills that we were in the middle of a discussion on Bill 36 with respect to an amendment that had been moved by the Honourable Attorney General. We were having some discussion about that amendment. He had undertaken to give some consideration to our particular concern and to report back to the Committee, and then we would finish that bill and proceed to The Jury Amendment Act, Bill 23.

Mr. Mackintosh: I am prepared to continue on that basis.

Bill 36–The Summary Convictions Amendment Act

Hon. Gord Mackintosh (Minister of Justice and Attorney General): When we last left, the critic had a concern, where an individual had been default convicted and admitted guilt but disputed the default penalty, that there be a summary or quick, easy way to have that matter dealt with. The amendment that we proposed allows for that, and, since we last met, there have been some discussions with the court.

Just to go through it, I can explain. At present, justices accept guilty pleas and make dispositions when an individual attends the court office within the time set out in the summons, before default conviction. However, a default conviction is a judicial determination. Therefore, the only way to contest a default conviction is by way of a hearing de novo, so I think we all accept that. Presently hearings de novo take place in the courtroom in front of either a judge or a hearing officer, and the accused must file a written request by mail or attend to the court office first to set the date and then to the court for the hearing.

Now to respond to the issue raised by the Member for Lac du Bonnet, to enable an accused who wishes to admit guilt but contest the penalty, justices will be designated by the Chief Judge of the Provincial Court to take guilty pleas at a hearing de novo and, with the amendment that is before us, will be able to reduce or waive the penalty, but the person will be able to appear before a magistrate at a court office if he or she wished to plead guilty at the hearing do novo. The person will not have to schedule a trial for hearing de novo if they intend to plead guilty. If the person wishes to plead not guilty at the hearing de novo, a trial must be scheduled before, of course, the Provincial Court judge. So what has taken place is that we have the assurance now from the Chief Judge to designate magistrates to hear people contesting the penalty, and that can take place at the counter.

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, we thank the Attorney General for that information. I think it clarifies our concern, and we are prepared to accept this amendment and move on with the passage of this bill.

Mr. Chairperson: Moved by the Honourable Mr. Mackintosh

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.

Amendment–pass; section 3 as amended–pass; section 4(1)–pass; section 4(2)–pass; section 4(3)–pass; section 4(4)–pass; section 5–

pass; section 6–pass; preamble–pass; title–pass. Bill as amended be reported.

* (10:10)

Bill 23–The Jury Amendment Act

Mr. Chairperson: At the July 19 meeting of this committee, opening statements had been completed; therefore, clause-by-clause consideration will now commence.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Mr. Chair, just to go back. I think some unfortunate comments have been made publicly in the sense that the public has been led to believe that certain consequences would follow from lack of action on the part of an individual citizen when a jury summons is sent. What is unfortunate about it is that, in one sense, it is surrealistic. The application of this act and its provisions were explained at the last committee meeting in the sense that there has never been in Manitoba, nor would there be in Manitoba, under the current regime of administration of jury summons, a charge against an individual, unless the individual had acknowledged receipt of a jury summons and refused to attend. In other words, there has to be that wilfulness, there has to be evidence of mens rea, if you will, of snubbing the jury process.

So, if one does not check the mail, one does not go to jail, and indeed jail would never be asked. I think it is unfortunate though because it does denigrate, I think, the justice system. It is not the system that is in place. I think, with some imagination, one can look at the particular statute and say, well, this could perhaps be the consequence. In this situation, the complaint would not be to a law enforcement agency. The charging body would be the Department of Justice itself.

Under the contemplated system of jury summons, as appeared in the original bill, was a mail notice, a deemed receipt, and then that would trigger subsequent administrative action of another letter and then a telephone intervention. That is the reality of it. That is how it works. Now, having said that, we have had further discussions with departmental staff. I also have considered even the appearance of the offences provision in here as a concern. I think it is important that the provision reflect practice. A practice develops over many, many years, and indeed, was the practice under the former government that there would not be a charging of an individual, even where they received registered mail and there was clearly a receipt and an acknowledgement personally by the individual, and the person said they would be coming to jury duty. We do not have that experience in Manitoba of convictions under this section, because Manitobans have been very vigilant. They have been eager to take part in the justice system, I think, by serving on juries.

I think it is important now to clarify the application of the legislation and have that experience reflected in the wording.

I am prepared to introduce two amendments to the Bill. First, I should note that with these amendments a summons must be personally served or the juror must acknowledge receipt of the summons before any prosecution can take place for failure to attend. As I said, that is the practice now, that is how the Act is administered, but this now will make it clearer. There will not be some mischievous speculation as to how the Act would actually affect Manitobans if we make that clear.

This takes into account the situations of those individuals who may have irregular mail service of course and are not picking up their mail on a regular basis, whether because of being on a trapline or away from their homes for an extended period of time or for whatever reason. It also allows the court to pursue those individuals though who after having been properly notified refuse or neglect to attend court.

It is this balance that is required. None of the amendments change the ability of an individual who is being prosecuted for failing to attend to be able to show good cause though why they did not attend. The Act presently provides a juror with a minimum 12 days' notice before they are required to appear. To be able to provide a juror notified by mail with the same notice, the minimum number of days to send a summons by ordinary mail has been set at 17 days. This allows 5 days for mail delivery and 12 days notice.

As in the current legislation, at any time under special circumstances a judge of the Court of Queen's Bench can order other provisions for summoning jurors. Past experience shows us that Manitobans are very conscientious when it comes to being summoned for jury duty. The majority of individuals respond promptly to the summons or after having been contacted by jury co-ordinators. These amendments allow for the diversity of the everyday living and working situations of Manitoba while maintaining the ability to prosecute those who are wilfully avoiding their jury summons.

So with that, I have distributed advance copies of the amendment to the Member for Lac du Bonnet, so if we can proceed clause by clause, and there may be some questions on the particular amendments.

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, before I make some remarks, I have a question for the Attorney General, a clarification question. The definition of ordinary mail, and I understand one of the amendments changes section 22 to provide for sending a notice to a prospective juror by ordinary letter, the only reason I asked for this clarification is the term "ordinary letter." To me, at least, it means by way of a paper letter through Canada Post, but we live in a time now where e-mail, electronic letters, are becoming more and more common.

My concern is that, at some point, does this, without a definition in this provision, become interpreted as electronic mail, and does that have some effect? So I just ask the Attorney General, for the sake of clarity: Is there a definition of ordinary letter that would be what this committee intends it to be today, which is a paper letter by way of Canada Post? If there is not a definition, if there is just sort of an accepted term, then we would be comfortable if the Attorney General then perhaps would provide a definition to that by way of amendment, whether it be today or, if it requires some time to prepare, at report stage. It is just one of those issues that comes up in a quickly changing world as to what ordinary letter means. I would not want it to be confused. I suspect that this act is not likely to be amended again for many years, and it is just one of those kind of oversights that could cause some difficulty in the future. So I ask the Attorney General for clarification before I make my comments.

* (10:20)

Mr. Mackintosh: The intention and the wording used are to connote that we are referring here to the ordinary written paper letter. Nothing would suggest otherwise. Nothing would suggest that it is electronic. Specific legislation that is currently before the Legislature and the other committee actually deals specifically with electronic mail, electronic delivery, and the wording used here is the same wording that is used by Canada Post, I understand, which does describe not electronic mail but the ordinary paper mail.

Point of Order

Mr. Praznik: On a point of order, and I am asking the Chair really for a ruling on this matter. For the interests of clarification, I would not want to see this bill passed and then be challenged some day for whatever reason. By the way, I should indicate to the Minister that these amendments, I think, meet our concern. So I am not challenging the intent. I think he has done a very admirable job in accommodating the concerns that we have raised. So we are not in opposition to his amendments, but I do raise this point for a ruling by the Chair. That is, given that this bill came to the Legislature with really one substantive provision, and that being to serve summons by ordinary mail, mailed within five days and it deemed to have been received, that these amendments remove substantially what the Bill was and replace it with another scheme, in essence.

Now, I could make the arguments both ways as to whether or not these amendments would be in order or not within order. I am always in the interest of insuring that we do things correctly in this Legislature so that they are unchallengeable. Now, I know the Attorney General perhaps has not yet moved those amendments, but it may be worth, if he is in agreement, having a ruling on these amendments in advance just to see if they in fact, in their current form, would be within order because they are substantially changing. I mean, we have, in essence, a three-clause bill, of which the substantive clause is No. 3, and we are deleting it and replacing it with something

significantly different and, I must say, one change that we are in support of. But if the Attorney General is in agreement, I would appreciate it, if for the interest of future clarity, that we have an advance ruling by the Chair on these amendments because, if they are not, is there another way in which to ensure that we are in fact within order?

If the Chair should make that ruling that these are in order, and that they in fact are, I think that just takes the issue away, and then we can move on to accepting the amendments and seeing the Bill through. But I think it is important, in the interest of accuracy and clarity, that that point in fact be spoken to, to ensure that we are not in fact putting forward amendments that would not be in order because they may substantially be changing the Bill, and so not be within the purview of the power of the Committee to do.

Mr. Mackintosh: I am not sure if the Member was arguing that it is out of scope or not, but he did make the comment. I think he was just asking for a ruling, but he did make the comment that the amendments were substantially different or changed the Bill significantly. I just wanted to urge consideration of this. I think it is important that we look at what the purpose of the Bill was to start with. That was to deal with the elimination of registered mail for jury summons. Of course, the explanatory note, that is set out. That does not have legal authority, but it does explain what this bill was all about. The amendments are still about just that. It is about moving to a system that is not based on registered mail as a result of changes by Canada Post and other considerations, including financial ones. The amendments put in place a different system that is currently in place. Therefore, I would argue that the Bill is within scope, and indeed it is entirely the same subject matter as was brought into the Legislature at second reading. I will leave it at that.

Mr. Chairperson: On the point of order raised by the Member for Lac du Bonnet, I do not do advance rulings.

* * *

Mr. Chairperson: We need the amendment first. Is the Minister of Justice prepared to move his amendment?

We will deal with the amendment when we get to it in clause 3. Prior to that, clause 1–pass; clause 2–pass.

Mr. Praznik: Mr. Chair, I would just like to make the point that our caucus does not support those two clauses without the amendment. So we are not objecting to them because the amendment is coming, but we want on the record that without amendment, we would not support those clauses.

Mr. Chairperson: Duly noted, Mr. Praznik. Shall clause 3 pass?

Mr. Mackintosh: I move

THAT section 3 of the Bill be struck out and the following be substituted:

3 Section 23 is repealed and the following is substituted:

Minimum notice
23 Unless the judge in special circumstances orders otherwise, a summons served under section 22

(a) if delivered under clause 22(a), must be delivered at least 12 days before the day the appearance must be made, and

(b) if sent under clause 22(b), must be sent at least 17 days before the day the appearance must be made.

Point of Order

Mr. Praznik: Yes, Mr. Chair, although we are in support of this amendment, in the interests of ensuring that this bill is properly handled by the Committee and that the amendment is within the scope of this committee, I would ask for a ruling of the Chair whether this is in order, on the basis that it is significantly changing the scope of the Bill.

Although the general purpose of the Bill is to change the manner in which summonses are sent, by ordinary mail as opposed to registered mail, the original bill set up a very clear scheme in which the summonses were to be sent by ordinary mail and were to be deemed to have

been received by the person in question five days after being mailed by the Department of Justice. It provided for a limited set of arguments that could be put forward as a defence for not answering for that particular summons. The amendment puts a completely different scheme in place where it simply indicates that it must be sent certain days before and certainly not with the same penalty or the same effects at all.

I admit that this may, in fact, be on the borderline of whether it is in order or not. I would appreciate a ruling, just for the purposes of clarity, so that we know in fact that, by passing this amendment, we will not be operating without the scope of this committee. Again, I would make the point that we believe that this amendment is a good one and without it this bill should be withdrawn or defeated. This is a saving grace, but it is a saving grace to us because it provides a completely different scheme, a completely different set of rules for sending jury summonses by ordinary mail than the one originally contemplated and proposed by the Attorney General, which he has now rejected and basically taken out of the Bill in its entirety. So we would ask for that ruling.

* (10:30)

Mr. Chairperson: I am ruling that the amendment is in order. Citation 689-2 states: "The committee may so change the provisions of the Bill that when it is reported to the House it is in substance a bill other than that which was referred. A committee may negative every clause and substitute new clauses, if relevant to the Bill as read a second time."

* * *

Mr. Praznik: Mr. Chair, we accept that ruling. Just to comment on the amendment, as I have indicated, this is a totally different scheme than what the Attorney General had proposed and contemplated. We are most pleased to see this amendment, because the original scheme, as we indicated, did not take into account the realities of many Manitobans in receiving their mail.

Although the Attorney General, I think, rightfully pointed out what the practice has been within the Department of Justice over the years with respect to prosecuting failure to answer a jury summons, one should always be mindful of the fact that even if the practice is different than the written law, it is the written law that stands on the books of the Province of Manitoba. Citizens of our province should be able to rely on the written law of our province and not have to rely for fairness on the good will and practice of the Department in how that law is prosecuted.

I think why, in fact, this particular issue caught on somewhat with the public–and again, a housekeeping bill, and some of the Attorney General's own colleagues have recognized that whenever we hear as ministers and parliamentarians the term "housekeeping bill," we are always reminded that we should perhaps be extra cautious. My colleague the Member for Lakeside (Mr. Enns) often made the comment to us, when we were in government, and I am sure if the former member from Brandon East were with us in the Legislature today, he might also share this view, that we politicians are here to remind our departments what the public will not accept.

I think, with that particular issue, what caught on somewhat with the public, and I have had a number of calls and people speaking to me about it, and it may seem like one of those small issues that kind of takes on some life of its own, but it is just the reality that people do not like to think that they can be on the wrong side of the law simply by not picking up their mail. The realities of the receipt of the mail for most Manitobans today are very different than the home delivery that our urban colleagues in part of the city of Winnipeg and some small rural towns may still have. For anyone out of that in suburban areas, in rural constituencies like mine, the realities of day-to-day life and receipt of the mails are very different.

So the lesson for all associated with the original bill should be that sometimes we make assumptions about people's lives that when flagged with them they certainly do not accept. Is this bill the end of the world? Certainly not, but I want to thank the Attorney General for recognizing the problem and bringing forward amendments that we can accept. As I have indicated, we will be supporting this amendment.

Mr. Chairperson: Amendment–pass; Shall clause 3 as amended pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Praznik: Our support, again, for this bill is dependent upon both amendments passing. So I would just so note that we will not be commenting with respect to section 3 until the amendment 3.1 is in fact adopted by this committee.

Mr. Chairperson: Clause 3 as amended–pass.

Mr. Mackintosh: I move

THAT the following be added after section 3 of the Bill:

3.1 Clause 46(a) is amended by adding ", having been personally served with the summons or having acknowledged receipt of it," after "who".

Mr. Praznik: As I have indicated, this amendment, I think, is a good one that confirms that people cannot be prosecuted for failure to respond to a jury summons unless in fact they have had it served on them personally or have acknowledged receipt of it and then thereby not proceeded.

But I do have a question to the Attorney General on this particular amendment, that even if they have acknowledged receipt of it but were not able to attend for health reasons or some emergency, would that be a defence that could be offered up on that particular matter and how would that fit into the scheme?

Mr. Mackintosh: In the Act, there is a provision which provides the opportunity to such an individual to show cause why there was no attendance. So any defence can be advanced at that time. It is my understanding, too, though that this provision has been applied most reasonably.

Mr. Praznik: I would like to thank the Attorney General for the answer.

Mr. Chairperson: Clause 3.1–pass; clause 4–pass; preamble–pass; title–pass. Bill as amended be reported.

That concludes the work of the Committee. Committee rise.

COMMITTEE ROSE AT: 10:37 a.m.