

THE LEGISLATIVE ASSEMBLY OF MANITOBA

8:00 o'clock, Thursday, December 8, 1966

MR. SPEAKER: Having regard to the discussion before the supper hour, and in particular the sub-amendment to the amendment of the Honourable Leader of the Opposition in the Throne Speech debate put forward by the Honourable Leader of the New Democratic Party, after due consideration and in accordance with practices of our House, I am of the opinion that the sub-amendment proposed by the Honourable Leader of the New Democratic Party is in order.

MR. McLEAN: Mr. Speaker, in taking part in this debate may I join with the others in my congratulations to you upon your election to the Speakership of this House and wish you happiness and contentment in the onerous duties which you have undertaken. I am certain, Sir, that your election reflects upon your own great qualities for that position and brings credit and distinction to the people of this province who you have the honour to serve as a member of the Legislature.

During the address of the Honourable the Leader of the New Democratic Party this afternoon, and in the sub-amendment which he was pleased to present at the conclusion of his address, he made one of the reasons for asking that we be denied the confidence of the House, the alleged failure to meet the needs of the people of Manitoba in the social, educational and economic problems of this day. Therefore, if I may direct my remarks, Mr. Speaker, this evening to that part which refers to the social problems, I would like to say something about that on that particular heading at this time.

In the Speech which His Honour was pleased to present to us at the beginning of our session he had this to say, "It is the intention of my Ministers to place before you certain proposals respecting a civil remedies code for the protection of the rights and liberties of citizens in the modern state". I would like at this time to expand, Mr. Speaker, on that particular portion of the Speech from the Throne, and I am going to, with your permission, read the presentation that I wish to make at this time since it contains a statement of proposals which form the background of and explanatory material with respect to that portion of the Throne Speech to which I have just made reference. I would now like to read the statement that I would wish to make at this time.

The Government proposes to introduce legislation providing measures for extending remedies and relief provisions more adequately to protect the citizens of Manitoba in the circumstances of contemporary society. This White Paper indicates the scope of the proposed measures, and the reasons leading to their consideration.

With the increasing pace and complexity of commercial and social relationships, the existing safeguards of the private person are not adequate to protect him in many of the situations in which he is increasingly involved.

The more specific areas requiring consideration are: (1) Protection of the Credit Consumer; (2) Compensation to Victims of Crime; (3) Provision of Legal Aid to Indigents; and (4) Investigation of the complaints of a private person, who feels he is suffering injustice as a result of faulty administration on the part of a department of government, by a Legislative Commissioner for Administration.

There are special considerations associated with each of these areas. In some instances legislation presently exists; this will be updated and extended. Each general subject may be mutually exclusive of the others but in total they will provide a code of remedies and relief to be available to all citizens.

CONSUMER CREDIT

It is of paramount importance that ways and means be instituted to place the credit consumer on the same plane or basis as the credit grantor, and to protect the consumer from unscrupulous sellers and lenders. More effective than penalties and prosecutions of offenders are remedies available to the buyer or borrower which will limit the seller or lender in his traditional recourse against the consumer. In this respect the principle will be: Let the seller exercise caution when he extends credit.

A number of important statutes in this field have already been enacted. It is proposed to consolidate these in this part of the new legislation.

Included are provisions pertaining to: (1) Unconscionable Transactions; (2) "Seize or Sue" Alternatives under Time Sale Agreements; (3) Assignee's responsibility to the Buyer under a

(MR. McLEAN cont'd) Time Sale Agreement being the same as the Seller's; (4) "Cooling-off" period for Direct Sales; (5) Basic Form and Content of Time Sale Agreements; and (6) Standardized Forms for Real Estate and Real Property Mortgage Transactions.

It is proposed that the new legislation will extend these provisions by requiring in all credit transactions; (1) Full disclosure of the cost of borrowing including annual interest rates, where practicable; (2) Prepayment privileges; (3) Notices to the buyer or borrower before re-sale on seizure; (4) Relief against acceleration and forfeiture; (5) Protection against inappropriate seizures; and (6) Statutory standard conditions of all conditional sale contracts.

REGULATION AND LICENSING

It is proposed that certain commercial firms and individuals, presently operating in the consumer and credit granting areas, be regulated and licensed. These will include: (1) Direct Sellers; (2) Credit Grantors and Lenders; (3) Collection Agencies; and (4) Credit Counselling and Debt Adjustment Agencies.

In addition, the licensing and regulation of Real Estate and Mortgage Brokers will be brought under this administration, and existing legislation amended and consolidated accordingly.

CENTRAL REGISTRY

It is proposed that a central registry of personal property transactions be established to protect consumers in acquiring title to goods and chattels purchased by them, particularly motor vehicles.

A province-wide Central registry will also be established for the registration of Garage Keeper's Liens. Provision will be made to enable Garage Keepers to keep their lien rights against a vehicle alive for 90 days by filing a statutory form of lien claim, thereby permitting the vehicle to be released without jeopardy.

CONSUMERS PROTECTION BUREAU

It is proposed to provide specific assistance, guidance and relief to consumers through the establishment of A Consumers Protection Bureau. Within the framework of the Department of Provincial Secretary, the Bureau will have an Administrative Board, a Registrar of Consumer Protection and appropriate staff.

All matters of consumer protection will be administered by the Bureau. This will include disseminating information; the supervision, investigation and reporting on abuses; regulating those required to be licensed, and acting as a central registry of personal property transactions and garage keepers' liens.

It is proposed that the cost of administering the Consumer Credit provisions will be supported by the charging of appropriate fees.

ORDERLY PAYMENT OF DEBTS

The Orderly Payment of Debts enabling legislation enacted by The Parliament of Canada will be appropriately adopted to be effective within Manitoba. This is welcome legislation having been petitioned for by the Government of Manitoba following the declaration of the previous Provincial Legislation, on this subject, as ultra vires. These important protections to debtors unable to manage their affairs will be useful in alleviating many consumer credit problems.

COMPENSATION TO VICTIMS OF CRIME

There appears a need to alleviate hardship which many crimes of violence are inflicting upon innocent people. Not only is there presently no compensation by the province, but action at Civil law for damages against the wrongdoer, who is likely in prison, or untraceable, is usually unsatisfactory for the complainant and frequently produces nothing but a substantial bill for costs.

The increase in crimes of violence in recent years has focussed attention on this need. The Government proposes to consider fulfilling it by the introduction of legislation establishing a scheme of compensation to victims of crime.

SCOPE OF THE SCHEME

It is proposed that a claim may be made by any person who sustains an injury after the commencement of the scheme; (1) directly attributable to a criminal offence; or (2) to an arrest or attempted arrest of an offender or a suspected offender; or (3) the prevention of an

(MR. McLEAN cont'd. . . .) offence or when giving help to a police constable if such offence occurs in Manitoba.

It should also be a condition that the circumstances must have been reported to the police or have been the subject of criminal proceedings in the Courts. It is our opinion that it should not be necessary for a claimant to prove a conviction before an award can be made provided the compensation board is satisfied that a criminal offence has been committed.

It is proposed that the claimant be excluded from receiving compensation in the following types of cases: (1) where the victim is a member of the assailant's family, including a "common-law" wife living with him; (2) in motoring offences (including offences involving impaired or drunken driving) except where the motor vehicle has been used as a weapon, such as a deliberate attempt to run the victim down.

It is proposed that the victim, before being eligible to receive compensation under this scheme, must exhaust all legal remedies and all other forms of public assistance.

Provocation by the victim or where he has contributed to his own injuries may reduce the amount of compensation. Deductions will also be made in respect of public funds which the victim has received. In addition, any moneys recovered from an insurance policy, or from the offender by way of damages, must be used to repay the amount of any compensation under the scheme.

It is proposed that the scheme be administered by an administrative tribunal to be known as "The Criminal Injuries Compensation Board" having a Chairman, members and appropriate staff.

It is further proposed that the decisions of the Board will not be subject to appeal or Ministerial review.

While it is anticipated the Board -- once created -- will set its own procedure, it is intended that hearings by it be as informal as possible, and in private.

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It is proposed that the basis of compensation will be that of common law damages. Medical examinations can be called for by the Board if required. Lump sum awards may be made, but unless the gravity of the injury is deemed by the Board to warrant an award of \$150, or more, or three weeks loss of earnings, no award will be made. The amount of the award will not be limited to the lump sum, but loss of earnings will not be assessed at a rate of more than twice the national average earnings figure at the time of making the award. There will be no element comparable to exemplary or punitive damages in any award and there will be no award for loss of expectation of happiness.

We are aware that The Manitoba Bar Association has interested itself in the problem of compensation to victims of crime and we will welcome the advice and assistance of The Bar Association and other interested groups and citizens, in the preparation of a sound, fair and workable plan.

PROVISION OF LEGAL AID TO INDIGENTS

It is proposed to introduce Legislation to provide legal aid to indigent persons. This portion of this White Paper will deal with the reasons for this decision and the nature of the assistance it is proposed to provide.

In criminal matters, it is a fundamental right of a person charged with an offence to have the protection of competent legal counsel to conduct a proper defence to the charge and its prosecution. If an accused person does not have the financial resources for this purpose,

(MR. McLEAN cont'd. . . .) counsel should be provided for him.

Since 1949, this service has been provided to accused persons in the Province by members of the Law Society partially on a voluntary, gratuitous basis, and latterly under a plan of payments by the Manitoba Government. However, the scope and volume of cases, coupled with the seriousness of offences with which indigents have been charged in the last number of years, leads us to the view that the plan of legal aid should be expanded.

The recommendations made by The Law Society of Manitoba and The Manitoba Bar Association to the Standing Committee on Statutory Regulations and Orders of the last Legislature have considerable merit, and these will be taken into account in preparing the legislation.

The present system in Criminal Matters will be discontinued, and a new system will replace it. It is proposed that the administration and management of the system be the responsibility of The Law Society of Manitoba.

Legal aid will be available: (1) To all persons charged with an indictable offence; (2) To all persons charged under Section 33 of The Juvenile Delinquents Act; (3) To all juveniles charged with a delinquency which is an indictable offence; (4) To all persons charged with a summary conviction offence, including offences under a Provincial or Federal Statute, the conviction for which might involve imprisonment or would likely endanger the employment of the accused and work a hardship on himself or his family;

In habeas corpus, certiorari and prohibition applications arising out of the charges set out in (1), (2), (3) and (4), that I have just read; (6) In appeals with respect to summary conviction offences, appeals to the Court of Appeal and to the Supreme Court of Canada, when certified as proper cases for appeal; (7) To persons who have been charged and who seek advice in connection with criminal law.

It is proposed that the costs of the System be paid from the Consolidated Fund.

Lawyers participating in the plan will receive remuneration on the basis of a percentage of ordinary charges. A Tariff will be established by The Law Society of Manitoba and the Government.

Counsel undertaking a defence under this new legal aid system will be reimbursed for all necessary out-of-pocket expenses made by him in connection with the defence of the accused person, including costs of investigation, witness fees and travelling expenses.

A Director will be appointed by The Law Society of Manitoba, after consultation with the Attorney-General, to supervise and manage the operation of the scheme. The Director or Assistant Director may refuse legal aid in any case, subject to a right of appeal to an Advisory Committee.

Assistant Directors may be appointed in each Judicial District. An Advisory Committee will be appointed by The Law Society of Manitoba which will organize and supervise the operation of the plan, including rosters of lawyers prepared to participate in the system.

The present system of providing free legal aid to needy persons in civil matters by members of the Law Society of Manitoba appears to be effective. The volume of cases handled in this manner is significant, and the results to date have been satisfactory.

However, it is considered that gratuitous services being rendered by lawyers under the system should not include out-of-pocket expenses. It is proposed to reimburse all costs incurred by the solicitor in handling an indigent's case and not recovered from the adverse party, on approval by the Director of Legal Aid.

Indigent applicants for relief in divorce matters will no longer be discouraged only on the grounds that the relief they seek is a "legal luxury". Solicitors will be appointed to both prosecute and defend divorce proceedings.

Because of the increasing number of applicants with financial problems, most of whom do not have sufficient assets to cover the fees of a Trustee in Bankruptcy, it is proposed that the Government pay the fee of the Trustee for those applicants who, in the opinion of the legal aid committee, should exercise their rights under the Bankruptcy Legislation.

The costs of administering the legal aid plan, in both criminal and civil matters, will be by an annual grant from the Consolidated Fund.

Annual reports on the operation of the system, both criminal and civil, in all its aspects will be made by The Law Society to the Attorney-General who, in turn, will report to the Legislature.

In proposing this plan of Legal Aid in Criminal Matters, we are not unaware of the extent of the contribution made to citizens of the Province by members of the legal profession to date. Nor are we unmindful of the continuing work of that profession in civil matters. The

(MR. McLEAN cont'd. . . .) proposals herein should take up where this important service has left off, extending protection to needy persons who require counsel on a more beneficial basis where the rights of these citizens must be paramount.

LEGISLATIVE COMMISSIONER FOR ADMINISTRATION

Consideration is being given to the introduction of legislation for the appointment of a Legislative Commissioner for Administration. This part of the White Paper explains the reasons for this proposal.

The interests of the citizen who is affected by a decision of Government are already safeguarded in a number of ways. He may have an opportunity of putting his case at an inquiry held before administrative action is taken. He may have a right of appeal to a tribunal against the decision. He may have a remedy before the courts.

These arrangements, however, cannot cover every instance where a private person feels that he is suffering injustice as a result of faulty administration on the part of a Government Department.

Under the British system which has been adopted in Manitoba, the Legislature is the place for ventilating the grievances of the citizen -- by history, tradition and past and present practice. It is one of the functions of the elected Member of the Legislature to ensure that his constituents do not suffer injustice at the hand of the Government. The procedures of questions, and debates on supply have developed for this purpose under our pattern of Parliamentary government; and Members are continually taking up constituents' complaints in correspondence with Ministers, and bringing citizens' grievances, great or small, to the Legislature, where Ministers individually and the Government collectively are accountable. It is not proposed to create any new institution which would erode the functions of Members of the Legislature in this respect, nor to replace existing remedies. Our proposal is to develop those remedies still further. It is proposed to give Members of the Legislature an additional instrument which they may use to protect the citizen, namely, the services of a Legislative Commissioner for Administration.

Under these proposals, the Commissioner will be an independent officer, whose status and powers will be conferred by statute. He will be appointed by the Crown; his salary will be a charge on the Consolidated Fund; and he will be secure from dismissal, except by motion of the Legislature. He will report to the Legislature each year, and otherwise as occasion requires.

Consideration will be given to designating the Registrar of Consumer Protection as the Legislative Commissioner for Administration.

It is proposed that the Commissioner will act only at the request of a Member of the Legislature and on a complaint of personal injustice suffered by the complainant. It will be for the Member to decide whether the complaint appears to be one appropriate for reference to the Commissioner. In the first instance the complainant must bring his complaint to the attention of the Member who represents the constituency in which the complainant resides. If the Member declines to refer the complaint to the Commissioner, or fails within a reasonable time to do so, the complainant may then approach any other Member of the Legislature.

Most complaints will come from private individuals, but companies or other corporate bodies - other than those under publicly elected or appointed authority - will not be excluded. The Commissioner will be authorized to consider any complaint sent to him by a Member of the Legislature from anyone lawfully resident in Manitoba. Visitors from outside of Manitoba will be included if the complaint relates to something which happened while they were lawfully present here. So will persons living outside of Manitoba if their complaint is about the administration of the individuals' rights or obligations arising here.

Except for some exclusions which are set out hereunder in this paper, the field for the Commissioner will be the whole range of relationships between the private person and the Provincial Government, and all public authorities under the jurisdiction of the Provincial Government.

Consideration will be given as to whether the role of the Commissioner should be extended to include municipal governments and school authorities.

The exclusions which we propose to make from the Commissioner's field of investigation are those where there are dominant considerations of public interest - namely, the exercise of powers in relation to investigating crime or determining whether a matter shall go to the courts. The Commissioner will not normally pursue matters which are within the

(MR. McLEAN cont'd. . . .) competence of the courts; he will have discretion to act if he thinks that the remedy open in the courts is not one which the complainant could reasonably be expected to use, but this will not affect anyone's right of access to the courts. He will not pursue issues already covered by tribunals or other quasi-judicial bodies, nor will he look into appointments by the Crown or by Ministers. He will be excluded from investigating actions of Government Departments in personnel matters. The actions and decisions of Crown Agencies, Corporations, Boards and Commissions will be excluded from the Commissioner's field of investigation.

We intend the Commissioner's procedure to be as informal as possible, subject to the requirement that if he takes up a case he must give to the person against whom the complaint lies the opportunity to comment on it. He will be empowered to decide whether the parties can be legally represented, but legal representation will be the exception, not the rule. Legal aid will not be available. The commissioner will be able to call for oral or written evidence; and he will have power to compel production of documents, including minutes of Government Departments, but excluding Cabinet or Cabinet Committee documents. The Government will always retain the right to refuse the production of documents. The Government may, in its discretion, provide a document to the Commissioner on a confidential basis. He will have power to take evidence on oath, although we would expect this power to be used infrequently. In this connection the sanction to be invoked in the event of defiance of the Commissioner will be to refer the matter to the Court of Queen's Bench.

The Commissioner will have discretion to refuse to pursue a case where he thinks there are insufficient grounds for the complaint or where he does not regard it as within his scope. He will not normally pursue a case where the matter complained of had been known to the complainant more than twelve months previously but he will have discretion to do so.

The Commissioner will be concerned with faults in administration. It will not be for him to criticize policy, or to examine a decision on the exercise of discretionary powers, unless it appears to him that the decision has been affected by a fault in administration. If he finds nothing wrong, he will inform the Member of the Legislature who has approached him. If he finds that there is justifiable cause for complaint and the Department responds to his invitation to put it right he will inform the Member. So far as the Commissioner is concerned, this will be the end of the matter, save for a possible reference to the case in his annual report to the Legislature. If the Department does not act to the Commissioner's satisfaction, it will be open to him to report his conclusion to the Legislature in his annual report.

It may be found convenient for the Legislature to appoint a Committee to consider these reports in the first instance. This Committee would have the usual powers of a Committee to summon witnesses (including Ministers) and to take evidence and report to the Legislature.

It will be for the Legislature, with the help of the Committee (if one is appointed), to consider what action should be taken on the annual reports of the Commissioner. The Commissioner in his annual report may comment on defects in the system which have come to his notice as a result of investigating individual complaints.

We do not intend that a reference to the Commissioner should automatically hold up action on the case by the Government; sometimes this might be contrary to the public interest. Ministers will have discretion to proceed with a case even where it is being examined by the Commissioner. They will also have discretion to prevent disclosure of information by the Commissioner where the public interest makes it necessary to do so.

The fact that we are proposing this scheme does not mean that we think that the administration of Government Departments is open to serious criticism or that injustices are frequently suffered by individual citizens. Far from it. We are in no doubt that the tradition of integrity and impartiality in our public administration is being fully maintained. But our proposal should increase confidence in that administration - by enabling complaints about administrative action to be fully and impartially investigated, so that, if a grievance is justified, it may be remedied, or if it is unjustified, this may be demonstrated. It should also result, as has proved to be the case in other countries, in the further improvement of administrative standards and efficiency.

In formulating our proposals we have paid regard to two important principles. First, that this new institution should serve to develop and reinforce our existing constitutional arrangements for the protection of the individual. Secondly, that the scope of the scheme must be made as clear as possible, so that everyone may know as plainly as may be what cases the Commissioner will be able to take up and what their rights and obligations will be in relation to his inquiries.

(MR. McLEAN cont'd,)

FINANCIAL IMPLICATIONS

There can be no proper or adequate consideration of the proposals outlined in this White Paper without a careful assessment of the financial costs involved. The method of financing the various measures, as well as their priority in relation to other government commitments and obligations, must be carefully weighed. It is proposed therefore that the cost factors be given equal consideration to the legislative framework.

PUBLIC CONSIDERATION

Because many of the proposals in this White Paper are new in Manitoba, and indeed elsewhere as well, it is hoped that there will be the widest possible public discussion and consideration in order that practical and workable measures will be designed for the benefit of the citizens of Manitoba.

Mr. Speaker, that concludes the formal presentation that I wish to make. May I just add one or two further comments. May I say first that this White Paper will be printed and distributed to all of the members separate and apart from its appearance of course in the Hansard of the House, and I would anticipate that copies would be available hopefully within the next day or two.

May I say also that we are in the process of drafting legislation at the present time. It has proven a somewhat more difficult task than we had anticipated but we have engaged draftsmen and they are busily engaged in drafting legislation which arises from these proposals, and it is of course intended that at as early an opportunity and as suitable an opportunity in the proceedings of this Legislature that the legislation that is drafted will be presented to the members for consideration.

May I also report to the members that some time ago the Honourable Mitchell Sharpe, Minister of Finance in the Government of Canada, indicated the interest of convening a meeting of provincial representatives to discuss the general topic of consumer credit and interest disclosures and asked if the Province of Manitoba would be prepared to participate in such a meeting. I was pleased to inform him that we would do so and this afternoon received a telegram from the Honourable Mr. Sharpe informing us that the provincial conference of ministers and officials on consumer credit and interest disclosure will be held in Ottawa on Monday, December 19th, and the agenda includes disclosure of the rate of cost of credit, rate regulations, retail instalment sales and other business, and as I say, we have informed Mr. Sharpe that we will be pleased to attend and I shall be heading the Manitoba group that will be attending that meeting on December 19th.

Finally, Mr. Speaker, may I just say that at an appropriate time in the proceedings of this Legislature I would propose to present for consideration of the members a resolution which would refer the White Paper that I have presented this evening to a Committee of the House for consideration and of course also legislation that may arise at this session from the White Paper.

MR. CAMPBELL: Mr. Speaker, might I ask the Honourable Minister who has just spoken a question? Might I ask the Honourable the Minister if it is anticipated that he will be the Minister in charge of all the matters that are covered by the White Paper?

MR. McLEAN: Mr. Speaker, not necessarily. In fact I could say no. When one is referring to legal aid to indigents, compensation to victims of crime, it is entirely possible that those matters will be within the jurisdiction of the Attorney-General or perhaps some other Minister. It does not necessarily follow that all matters will be under the jurisdiction of the one department.

MR. SPEAKER: The Honourable Member for Rhineland.

MR. FROESE: Mr. Speaker, if no one else wants to speak, I beg to move, seconded by the Honourable Member for Inkster, that the debate be adjourned.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried.

MR. ROBLIN: Mr. Speaker, I notice that we have come to the end of government business and there are a very impressive number of private members' resolutions on the Order Paper to be discussed. Naturally if any member is prepared to proceed tonight we would wish to hear him, but my experience has been that at this stage in the game usually members are not ready to go ahead, and if we could have some indication on this it might save you the necessity of going through all these ten or fifteen resolutions to find out what the position of

(MR. ROBLIN cont'd. . . .) the mover might happen to be. I rather take it that it might be agreeable to the House if we adjourned now, but I do not wish to do that if there is any private member's resolution on which the proposer is prepared to go ahead.

MR. PAULLEY: Mr. Speaker, I might say that as the first resolution following the debate on the Speech from the Throne is held in the name of one of my group, it is the intention of our group to ask indulgence for all of the resolutions standing in the name of members of this group to stand. So that is an indication to you, Sir, of our position, and please be governed accordingly.

MR. MOLGAT: Mr. Speaker, that would suit our convenience as well.

MR. ROBLIN: My intuition is working fairly good tonight. Mr. Speaker, I beg to move, seconded by the Honourable the Provincial Secretary, that the House do now adjourn.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried and the House adjourned until 10:00 o'clock Friday morning.