LAW AMENDMENTS COMMITTEE

8.00 p.m. Wednesday, May 22, 1974

CHAIRMAN: MR. D. JAMES WALDING

MR. CLERK: Gentlemen, if I may have your attention and your indulgence for a moment. Mr. Jenkins, your former Chairman, is no longer a member of the Committee. It is therefore necessary to elect a new chairman. Are there any nominations?

MR. ADAM: Mr. Walding.

MR. CLERK: Mr. Walding? Any further nominations? I'll ask Mr. Walding to take the Chair then.

MR. CHAIRMAN: Order please. The Committee will come to order. The Bills before Law Amendments Committee are as follows:

No. 5 - an Act to amend The Garnishment Act
No. 6 - an Act to amend The Surrogate Courts Act
No. 7 - an Act to amend The Civil Service Act
No. 11 - an Act to amend The Insurance Act
No. 13 - an Act to amend The Boxing and Wrestling Commission Act
No. 14 - an Act to amend The Amusements Act
No. 15 - an Act to amend The Queen's Bench Act
No. 16 - an Act to amend The County Courts Act
No. 17 - an Act to amend The Attorney-General's Act
No. 18 - an Act to amend The Highways Department Act
No. 20 - an Act to amend The Highway Traffic Act
No. 23 - an Act to amend The Liquor Control Act
No. 27 - The Lotteries Act
No. 36 - an Act to amend The Public Schools Act
No. 48 - an Act to amend The Liquor Control Act (2)
No. 49 - The Child Welfare Act
No. 62 - an Act to amend The Financial Administration Act (2)

-- (Interjection) -- No. 5 and No. 6. Do you want me to read the numbers again? Are there members of the public wishing to make representation to the committee? If so would you come up to the microphone please and give your name and the bill you wish to speak on and whether you are from the city or from out of town.

MR. WALSH: Mr. Chairman, I am Paul Walsh and I am here as counsel to the Children's Aid Society of Winnipeg and I'd like to address certain remarks to The Child Welfare Act, if I might. Thank you. Bill No. 49.

MR. CHAIRMAN: 49. Thank you.

MR. LIBITKA: Mr. Chairman, my name is Victor Libitka. I represent the Children's Aid Society of Eastern Manitoba. I also wish to address certain remarks to Bill 49.

MR. CHAIRMAN: What was the last name again please?

MR. LIBITKA: I'll spell it. L-I-B-I-T-K-A

MR. CHAIRMAN: Thank you.

MR. RITCHIE: Walter Ritchie, counsel for the Manitoba Government Employees' Association. I wish to make a submission with respect to Bill No. 7.

MR. CHAIRMAN: Thank you.

MR. FRASER: Mr. Chairman, my name is Bruce Fraser. I'm representing the Children's Aid Society of Central Manitoba. I would like to address a few remarks to Bill 49.

MR. CHAIRMAN: Are you from out of town Mr. Fraser?

MR. FRASER: Portage la Prairie.

MR. VEITCH: Mr. Chairman, my name is Veitch, Manager of the Manitoba Trucking Association. I would like to possibly comment on Bill 20.

MR. CHAIRMAN: That was Mr. Bates was it?

MR. VEITCH: Veitch.

MR. CHAIRMAN: Thank you.

MR. CHAIRMAN: Is that all wishing to make representation to the Committee

(MR. CHAIRMAN cont'd) . . . . .this evening?

MR. JORGENSON: . . . that the proceedings of this Committee be recorded and transcribed.

MR. CHAIRMAN: Note that the proceedings be recorded and transcribed. Is there any discussion? Agreed? (Agreed)

Mr. Fraser, Bill 49. Would you like to address the Committee first?

MR. FRASER: Mr. Chairman and members of the Committee, some of the other representatives of Children's Aid Society are going to be addressing remarks to various sections. My remarks are confined to amendments to 99 (2) and (3), particular 99(3).

First of all I want to say that in representing a rural area I am in complet agreement with the intent of the proposed amendment, that I am all in favour of workir towards a more equitable balance of resources and of babies available for adoption anc the time having to be awaited by adopting applicants.

My concern is particularly centered around 99(3) which I feel is of concern because it puts into legislation what I think could be more adequately dealt with on a regulatory basis would be my principal concern. I think it will add to the red tape that all of us are trying to avoid. One of the main objectives in the proposed new legislation I believe was to reduce red tape and to increase effectiveness. I think that by putting it into specific legislation it becomes much more inflexible than it would be as a regulation and cannot be readily changed to meet changing needs.

The problem that we're trying to solve with this legislation is in relation to the waiting periods of adopting applicants yet the proposed solution in effect would use children. The solution to my way of thinking should be in the realm of the applicants' list rather than the children awaiting placement.

The proposed solution would invite - may - would demand crisis planning. The Director could not approve a placement until adoption consents had been signed and the selection process could not begin before that time so there would constantly be a crisis to plan around.

If the control was over the list of applicants where the problem is centered rather than in the availability of children coming up for adoption the applicants could be given the Director's approval on a much longer range basis and could be adjusted according to the prevailing needs. For example the applicants who had waited on the list for twelve months or more could be cleared first of all and the number who had waited that long as it was reduced new names could be added to the approved list and gradually as we begin to achieve equity in terms of waiting periods that people have to wait the waiting period could be moved down. Whereas if it's fixed in legislation like this that no child under the age of two can be approved, his placement can be approved, we're always stuck with that two-years thing and every child is going to have to have a centralized decision before normally a straightforwar decision could be made. -- (Interjection) -- 99(3). It's perhaps an amendment that's being proposed to what you have. I'll just read it.

The motion is that subsection 99(2) and (3) of Bill 49 be struck out and the following subsection substituted therefor: Suitability of Applicants 99(2). Upon receiving an application under subsection (1) the child caring agency shall undertake to ascertain the suitability of the applicants as adoptive parents and upon being so satisfied it shall forward to the Director the relevant particulars respectir the applicants and the Director shall enter the names and particulars of the applicant in a central registry to be maintained and kept in his office. Placement subject tc prior approval of Director.

99(3). All children of the age of two years or under that are placed with a child caring agency for adoption shall not be placed in a home for adoption except with the prior approval of the Director and in accordance with the provisions of the regulations.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: All I'm asking is that if the gentleman has a proposal for an amendment which he obviously has just read I wonder if it can be given to the Clerk and at least be photostated so that we at least can have it to be able to make reference to it.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, it's the amendment that I mentioned I would be introducing at Law Amendments and I think that since it's being discussed that perhaps it should be distributed. I wasn't aware that the gentleman was going to make a

(MR. MILLER Cont'd) . . . . . submission on the amendment that hadn't yet been introduced.

MR. SPIVAK: Well just on the point of order. Is this an amendment the government will be introducing?

MR. MILLER: Yes. I mentioned in the House I would be. -- (Interjection) -- Yes, might as well. He's talking on it.

MR. CHAIRMAN: The copies of the proposed amendment are being distributed to members. Mr. Paulley.

MR. PAULLEY: Are we going to hear presentations only tonight and if they are presenting amendments that we will have an opportunity of considering and studying the amendments prior to the passage of legislation. Now I think it would be proper as the Member for Morris has suggested that the proceedings be transcribed and recorded or recorded and then transcribed. I think it would be proper following that suggestion that we hear presentations tonight and that we do not meet again on specific bills where amendments are suggested until such a time as the members have had an opportunity of studying proposed amendments before studying the transcripts and consider the suggestions.

MR. CHAIRMAN: Mr. McKenzie. Order please. Mr. McKenzie.

MR. McKENZIE: Just for clarification. Are we to accept this as Mr. Fraser's amendment or the Minister's amendment?

MR. JORGENSON: It doesn't matter. Let's go on with the presentation. May I suggest, Mr. Chairman, that we go on with the presentation, ask questions of Mr. Fraser until he's concluded, then we'll hear the next witness and we'll continue hearing witnesses until we have heard them all.

MR. CHAIRMAN: Thank you. Mr. Fraser.

MR. FRASER: Well, Mr. Chairman, I rather gather I've jumped the gun. I only came into knowledge of this this morning and due to an unavoidable prior commitment I haven't had any opportunity to draft any alternative proposal. But the matter was of considerable concern to me and I wished to draw to your attention that concern. So I have nothing further to present. I would be quite happy to answer any questions.

MR. CHAIRMAN: Thank you. Have you seen this amendment by Mr. Bilton?

MR. FRASER: I have a copy here. I think that's what I read.

MR. CHAIRMAN: Any further questions? Mr. Jorgenson.

MR. JORGENSON: Mr. Chairman, Mr. Fraser, you have specifically addressed yourself to 99(3) and if I caught the tenor of your remarks you were concerned that the wording of Section 99(3) as in the Act at the moment is not flexible enough and I don't know how you can improve upon the flexibility of a clause that says "upon being satisfied of the suitability of the applicant the child caring agency may place a child in the home of the applicants for adoption." It seems to me it provides a considerable amount of latitude and I wonder just why you feel that that is not flexible enough.

MR. FRASER: I think what I'm addressing my remarks to is an amendment, a proposed amendment to that and the amendment has not as yet been made.

MR. CHAIRMAN: Are there any further questions to Mr. Fraser? Mr. Johnston.

MR. FRANK JOHNSTON: Mr. Chairman, through you to Mr. Fraser. The bill that we are discussing is Bill 49, that we are discussing. You obviously are not in agreement to some sections of that bill, especially number 99(2) and 99(3). Now, Mr. Chairman, I would like to ask Mr. Fraser through you to explain his opposition to those sections. He has obviously - he's submitted some changes to it and I would like to ask him to do this: to ask Mr. Fraser if he would explain his reasons for opposing 99(2) and 99(3) as it is in the bill.

MR. FRASER: Mr. Chairman, my remarks have not been addressed to the wording of 99(2) and 99(3) as they read in this document although I would concur with the intent of a motion or an amendment to those clauses which is to put some control over the distribution and the waiting periods of time that applicants for adoption have to go through. There is apparently an inequity primarily between the applicants in the City of Winnipeg and those in other areas where those in the City of Winnipeg have been fortunate enough to have babies placed in their homes three, four, six, seven months from the time of application whereas in the rural areas, in particular in some other areas the waiting lists are eighteen months, twenty-four months and I believe that the proposed amendment is designed to bring some equity into that situation.

My concern is that the solution is creating as many problems as it's resolving, of a different nature. That it would bring equity as far as the waiting

(MR. FRASER Cont'd) . . . . . periods are concerned but it would be so cumbersome in terms of administration and would in fact have the effect of delaying the placements of individual babies. Every single one would have to be centrally decided upon. And it's that which is the area of my concern.

MR. CHAIRMAN: Are you finished Mr. Johnston?

MR. FRANK JOHNSTON: No. Mr. Chairman, I would like to - I think we're in an area of clarification here. If through you, Sir, I could just mention that in the City of Winnipeg, Mr. Fraser, through the Chairman, let's take my constituency. At Sturgeon Road . . .

MR. JORGENSON: It's under water.

MR. FRANK JOHNSTON: . . . we have a cut-off which comes under the Winnipeg Child Welfare Act and people in Winnipeg could adopt children faster than let's say those on the other side of Sturgeon Road in the area of Westwood which could come under another area. Now quite frankly the Minister's motion here would seem to make it equal to or help making it equal to those people outside of the Winnipeg area to be able to adopt children faster than we now have.

MR. FRASER: That is correct, Mr. Chairman, Mr. Johnston, and I have stated that I am in agreement with the intent of this proposed amendment. I just believe that there are sounder ways of achieving it, that through controlling the list of awaiting applicants which is much more directly related to the problem area, would be better than controlling the placement of every individual child under the age of two years.

MR. FRANK JOHNSTON: Well, Mr. Chairman, I ask Mr. Fraser again for clarification, he is in agreement that there are some inequities at the present time.

MR. FRASER: Yes.

MR. FRANK JOHNSTON: And that the amendment of the Minister will - in the bill and then he has a motion here - will help many of those inequities for people who have had to wait a long period of time versus those who haven't had to wait a long period of time because they are in certain boundaries.

MR. FRASER: Yes it will achieve that result. I still think that it's at considerable cost which could be avoided.

A MEMBER: How can it be avoided?

MR. CHAIRMAN: Order please. I'll put you on the list, Mr. Patrick. Mr. Miller. Before we proceed can I ask any member speaking to speak into the microphone and then we can all hear what you have to say. Mr. Miller.

MR. MILLER: Mr. Fraser apparently you do agree that the present system is not the fairest system in that not only outside of the City of Winnipeg but in the City of Winnipeg as well, depending on where the child is born, that particular CAS takes over. In other words parents, potential or adoptive parents who live in the far west end or other parts of Greater Winnipeg or outside in rural Manitoba or in Northern Manitoba therefore have to wait sometimes ten, twelve, fourteen months and not have a child because there aren't enough children born within their CAS district, whereas those who are fortunate to live in an area, to live in a CAS area where the childbirth is high are able to get children with a shorter waiting period. So don't you agree that it's fair really to try to give adoptive parents the same opportunitie and this is really all we're trying to do here, by making it necessary to have the information centrally. The Director will make known to the various CAS agencies those parents who have been waiting, on a rotating basis will have an opportunity to adopt. Naturally they have to be able to adopt, they have to pass the various criteria for adoption and so on.

The question about the two-year-old is really - it's very simple - there's no problem getting children two years or under to be adopted. It's in dealing with older children that it is difficult very often to find adoptive parents as you know. Everybody wants a blue-eyed, blond haired two-month-old baby and they're snapped up like anything and it's very easy to place them. As a result many parents have found that they wait literally two years but there just aren't enough children born within their Children's Aid Society district.

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: Mr. Chairman, Mr. Miller, yes I'm in agreement with your summation of the situation. My suggestion would be that the Director could approve or place on an approved list those that are okay to proceed with or place with the adopting applicants, that the control could be within that sector rather than legislate any specific dictums around the infants. It is the supply of adoption applicant that you want to bring into equity so why achieve that by in effect manipulating the conditions under which a child under two years of age can be placed. The practical concerns are that the mother cannot sign her consent until the child is clearly ten

(MR. FRASER Cont'd) . . . . . days old which could mean that the child has been on this earth for some portion of twelve days. At the present time we're able to place infants when they're fourteen days of age. If we couldn't initiate any action until after the consent was acquired then it would be several days and perhaps a week before the Director's approval could be obtained for proceeding with the placement. With that child being listed through a central process at that point in time rapid decisions would have to be made, all of which could be avoided I think if the adopting parents or the adopting applicants for example started on a priority basis and those that had been waiting for over twelve months for example were cleared for placement and then all infants would have to go through one of those families, one of those couples. And when that backlog had been caught up with then the ages could be lowered and kept in harmony with the actual need situation. But if you legislate that every child under two years of age has got to have a centralized clearing decision made it's going to encumber the procedures and I'm quite certain will slow down the placement or the potential placement of every child.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Fraser, firstly it's known that the child is going to be born weeks and months ahead so that a great deal of this concern that you have about the administrative procedure I don't think will come about.

I can also tell you that in the Province of Alberta they have this system just as is and it has been working out satisfactorily without undue delay.

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: It would be helpful to know where the voice came from. Oh Mr. Miller. It's known that an infant is going to be born but it isn't clearly known that the infant is going to be available for adoption until the mother has actually signed the adoption consents and it is more clearly known that couples are indeed wanting to adopt a child and what kind of child, whether they want a boy or girl, all of these factors are known months and months in advance.

MR. CHAIRMAN: Do you have another question, Mr. Miller? Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman. Through you to Mr. Fraser. I have to express a rather bit of surprise when you suggest that we take stuff out of legislation and put it into regulation because we have had many representations made at various times where the citizenry at large feels that it would be better if it was in the Act rather than in the regulations. You have given us some concerns that you express over this but really is your concern more with the regulations or with the intent of the Act?

MR. FRASER: Mr. Chairman, I agree that the Act should specifically give the Director of Child Welfare a mandate to set controls. My reason for preferring regulation is that something - the way it's worded here "at the age of two years" that's set down in print and that's it until considerable effort has been extended to change it and the Act itself or the proposed amendment does end up by saying "and in accordance with the provisions and regulations". But it's before that it specifies two years. And it's the legislating of a procedure which will mean more red tape on the placement of every child in a crisis time, at a time when the adoption consent is being finally decided by the unmarried parent and it isn't until she's signed it that we would be free to do anything and then and only then could we approach the Minister to get clearance to place the child. I'm quite certain that if the list of approved homes was controlled that that would be a more adequate way.

MR. GRAHAM: How would you propose to control the list of homes?

MR. FRASER: Well as it says in 99(2) there would be a centralized list and I believe that the Director could filter down the names of those couples or applicants who were cleared and approved in terms of their waiting period quite easily.

MR. GRAHAM: You would like to see that clearance or that decision made at the Director's level or would you like to see it made in the field level.

MR. FRASER: Well the problem is that there is not a state of equity in terms of these waiting lists now so it would appear that it's necessary to have a centralized control. It could be controlled by monitoring a waiting list, there are various ways of doing it. I don't want to oppose the intent of the proposed amendment though in terms of establishing the control. I just feel that the actual decision around the placement of an individual child should clearly be at the field level rather than at a central level for the whole province. It would be a very difficult and very unnecessary and cumbersome procedure.

MR. GRAHAM: Well then, Mr. Chairman, through you to Mr. Fraser. Really

(MR. GRAHAM Cont'd) . . . . . what you are saying then is that you feel that the final decision should be made at the field level rather than at the Director's level. Is that correct?

MR. FRASER: Within the Director's control of what applicants can be considered for placement. That's true.

MR. GRAHAM: No more questions.

MR. CHAIRMAN: Mr. Patrick.

MR. PATRICK: Mr. Chairman, I did have a question for Mr. Fraser. Mr. Fraser, a minute ago you mentioned the difficulty in adopting can be overcome and the difficulty that we have in the City of Winnipeg at the present time. If we have two prospective parents in - I'll use my constituency of Assiniboia - where the people will make application, prospective parents will make application for adoption today and parents from another part of the City of Winnipeg will make application the same day, while in Assiniboia they may have to wait two years or anywhere from a year and a half to two years while other parts of the city will get their order, let's say, in a matter of three months or six months. And the reason we have to wait in Assiniboia so long because we're told you're in the Interlake area. The problem here is why isn't the whole province in one area and the people should go by a rotation of the waiting list or you know there must be a better method. You mentioned that that difficulty can be overcome. I wonder if you can give us some explanation how can this difficulty be overcome?

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: The problem, Mr. Chairman, is that there is no control, no centralized control of the waiting periods that applicants can or must wait and I'm quite in agreement with the principle of getting equity as far as the waiting periods are concerned. However I do believe that our primary concern is the adoption placement of the child and I believe the proposed 99(3) impinges upon that and that the more sound solution or alternative in my opinion would be to control, to place a control on the applicants that are pending placement such as to say that nobody who has waited for less than twelve months can have a child placed with them until those that have waited longer have cleared through and had a child. And I believe that this control could be handled either directly through the Director of Child Welfare's Office in a very centralized decision-making way or it could be on a policy basis and monitored by him.

MR. PATRICK: But you agree that it's not fair for one set of parents to be waiting say two years while somebody else, a matter of one mile away in the city . . .

MR. FRASER: Certainly I agree with that and as I stated there are many adopting in my own area, Central Manitoba, that are in exactly the same position as your constituents and I in no way want to deter that principle from being effected.

MR. CHAIRMAN: Are you through, Mr. Patrick? Mr. Spivak.

MR. SPIVAK: I think the problem that we have here is that the amendment that is proposed which would take care of part of what has been discussed and what you've said only provides the fact that there be registration of the applicants, that is they would be placed in a central registry. There is nothing to indicate that priority would be given to registration, in effect that one couple having registered before another from another area would necessarily be given priority because they've registered earlier. Now it's also obvious that the procedure that has to be followed in one application may not be the same as the other before judgment could be made. So we're getting down to a point where no matter what happens a discretion is going to have to be exercised by somebody at some point. And the difficulty that I see is that what you're really saying is that the reason 99(2) is not satisfactory is that there is no limit on that discretion and what you're saying is the limit on the discretion will be that if an application is made and has been approved and has waited twelve months as an example it would get priority no matter what happens over everybody else. In other words whether it be twelve months or six months it really doesn't make any difference. What you are basically saying I think at one point wherever the application may have come from that will have priority having applied for and being investigated and the procedures having been followed no matter what happens a priority comes at that stage. And if that's the case then the problem here with this amendment now is that it doesn't set that out, it's still a discretionary procedure to be followed through I would assume by regulations or by general practice that will be determined by the Director I guess or -- yes, by the Director. So I think the problem would be if you were to change this you're not saying that it's just on the basis of priority of application because obviously the applications take

(MR. SPIVAK Cont'd) . . . . . different procedures to - or different times to process. But you are saying that there has to be a certain basis and is a year the limit or are you saying six months or eight months or are you prepared to give an indication and I'm not sure that the government would be prepared to live with it either.

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: Well, Mr. Chairman, I believe that the time limits or criteria should be flexible and should be relevant to the existing need and that the Director of Child Welfare should have the power to change that according to the current situation. I agree that 99(2) as it is written here does not go specifically far enough to give any actual meat but I believe that would be the intention of the proposed 99(3).

My concern is that the proposed 99(3) is not the best means of putting teeth into 99(2).

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: But surely, Mr. Fraser, the problem is once you say that the Director should have some discretion which means that you're not prepared by legislation to sort of set the rules under which procedures are to be followed then what you're basically saying is that a discretion has to be exercised and in effect the proposed amendment really allows that. I don't know what the regulations will say but the fact is that in effect what you are asking for is really being given by legislation at this point.

MR. FRASER: Well at this point which is now there is no control over the waiting lists. Now are you saying at this point in reference to the existing proposed Act, Bill 49.

MR. SPIVAK: No, I'm talking about the new Act. I'm assuming that the new Act will become legislation.

MR. FRASER: Well Bill 49 - are you referring to Bill 49, 99(2) and 99(3)?

MR. SPIVAK: No, no. I'm assuming that the government has already indicated that they're prepared now to bring in these amendments and these amendments now having been adopted by the Committee, and assuming that they were, is this satisfactory at this point? And if it's not how would you change the amendment?

MR. FRASER: Well 99(3) is the only thing I'm objecting to.

MR. SPIVAK: How would you change it? You've already indicated that there should be a discretion exercised.

MR. FRASER: I would put the onus on the waiting list and the control of the waiting list of adoption applicants rather than any arbitrary fixing of the age of the child at which a special centralized procedure would have to be implemented.

MR. SPIVAK: Well again I put it to you: are you saying if parents who have been processed and who have been approved and have waited six months will be a priority over everyone else? I mean at one point someone is going to have to you know specify and either you give an indication of what you think is reasonable at this point or you're going to have to allow the Director the discretion which is really what this section does.

MR. FRASER: Are you saying 99(3) gives them that discretion?

MR. SPIVAK: Yes.

MR. FRASER: Well I see 99(3) as saying that every child under two years is going to have to have special clearance in order to be placed.

MR. SPIVAK: Well it simply indicates that the Director has the discretion.

MR. MILLER: Power of approval, the power of approval.

MR. SPIVAK: But the power of approval is the discretion that we're talking about. Power of approval is the discretion we're talking about.

MR. FRASER: I didn't hear that clarifying remark.

MR. SPIVAK: Well my understanding is that the power of approval that the Director has is the discretion that you were talking about. The only thing that I think has any disagreement - not any disagreement but anything that is not clear in this legislation, which is left to regulation, is specifically the criteria or the guidelines which the Director should follow. And unless you're in a position to indicate what that should be - and I don't think you are because you're indicating essentially that it would depend on the circumstances and the waiting lists and probably availability as well - but unless you're prepared to do that I don't know how you can spell that out in specific legislation at this time. Unless you were prepared to say that it went on the basis of priority of registration in the central registry and you're not prepared to do that because . . .

MR. FRASER: Well the only way I'm not prepared to say that is I don't think you can absolutely say that No. 1 shall get the next child regardless of whether it's a boy, girl or what have you. But there certainly can be priorities in general

(MR. FRASER Cont'd) . . . . . groupings, like all those that have been waiting fourteen months, anything over fourteen months be given priority. I haven't answered your question.

MR. SPIVAK: Yes you have. The only problem is that I don't know what the basic minimum limitation should be, six months . . .?

MR. FRASER: Well I think it would have to vary according to the - right now we're in a situation where you could easily say fourteen months. But there are so many more children in Winnipeg that within a relatively short time that backlog could be caught up with and then you'd be saying those that have been waiting for twelve months or more and then those who have been waiting for eleven months or more. So that's why I'm saying that it needs to be flexible.

MR. SPIVAK: It is flexible, it is.

MR. CHAIRMAN: Do you have another question, Mr. Spivak?

MR. SPIVAK: No thanks.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: Mr. Chairman, through you to Mr. Fraser. This is just a general observation and I noticed in Mr. Fraser's remarks at one point that he said that the child could be adopted fourteen days after birth. I wonder if he could explain briefly, in the interests of the child is that sufficient time to determine as to whether or not its health and its other facilities are in proper order and what have you. Is it in good health and insofar as the foster parents are concerned I'm sure that their qualifications are well thought out over the months but I wonder is this fourteen-day period from the date of birth to the adoption of the child in the interests of the child as a whole?

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: Mr. Chairman, in answer to the honourable member I would say that to delay placement of the child arbitrarily for further investigation would not be in the interests of the child. We discuss adoption and the risks of adoption the same as the risks of any parenthood with our adopting applicants and I would say that 95-99 percent of them are quite prepared to have a child placed with them and take the ordinary risks of parenting. If there's an obvious medical or mental problem they would know it at that point in time and they could made a decision yes or no. Many parents have adopted children that have medical defects and because they've considered this in advance as a possibility they feel just the same as any other parent would and I certainly wouldn't want to lengthen the time at which the child could be placed for adoption for those reasons.

MR. CHAIRMAN: Mr. Bilton.

MR. BILTON: One more question. Mr. Fraser are you a member of the Civil Service? Do you work for the Department?

MR. FRASER: No, Mr. Chairman, I'm Executive Director of the Children's Aid Society of Central Manitoba. We are not civil servants.

MR. BILTON: Well I hesitate to ask you this question but possibly it will come from another direction. Does the Department take any responsibility when a child is adopted at fourteen days old, fourteen days of age does it take any responsibility for the health of that child? For a given period?

MR. FRASER: The Director and through us the Director has a responsibility for the child until the child is - adoption is finalized. A family can terminate or withdraw from the adoption any time during the first six months in the proposed legislation, at the present time it's twelve months, so that they can go back on their decision. They're not saddled with something that they have to assume full responsibility for.

MR. BILTON: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, through you to Mr. Fraser . . .

MR. CHAIRMAN: Into the microphone please.

MR. SHERMAN: Mr. Fraser as I understand it with respect to the decision to place a child for adoption you have no objection to the discretionary power lying with the Director, vested with the Director, is that correct?

MR. FRASER: I have concern about the decision for each and every child having to be made centrally by the Director of Child Welfare. At the present time that is delegated to the executive directors of Children's Aid Societies, the regional directors within the province where they are providing the child welfare services. They're subject to provincial standards and processing.

MR. SHERMAN: Well do you think that this proposed legislation, with or

(MR. SHERMAN Cont'd) . . . . . without the amendments as proposed and particularly with the amendments as proposed places too much power - places too much discretionary power in the hands of the Director?

MR. FRASER: I think, Mr. Chairman, that the proposed 99(3) places the wrong kind of discretionary power in the hands of the Director. I would prefer to live in a system in which authority and power could be centralized as much as at all possible. If the government feels that that is not possible then I would be quite prepared to operate within the Director having that kind of centralized power. But I really do believe that it should be in relation to the list of applications rather than make special regulations required by law for all infants, all children under two years of age so that each placement coming up would have to go through a hurry-up kind of decision-making process in the selection of a home at that time.

MR. SHERMAN: Mr. Chairman, through you, Sir, to Mr. Fraser. Mr. Fraser you have said that you would prefer to see the onus in this case put on the waiting list, the control to be on the applicants to adopt and not on the children. But if that were so, if there were an amendment that you or your colleagues proposed that shifted that onus would you then be satisfied that the discretionary power vested in the hands of the Director was not too great and not too arbitrary?

MR. FRASER: Yes. You'd have to see the regulations I suppose to answer that completely.

MR. SHERMAN: So essentially you're not concerned with the amount of power vested in the hands of the Director?

MR. FRASER: No.

MR. SHERMAN: It's just the . . .

MR. FRASER: The nature of it.

MR. SHERMAN: And you don't feel that 99(3) implies the kind of onus that you're seeking. You don't feel that that's implicit in the wording in 99(3) right now, that the Director would obviously by implication have the right to process waiting lists of applicants. You don't feel that that's implicit in that.

MR. FRASER: No, I feel that what's implicit in 99(3) is that he would have to clear and approve the placement of every child under two years of age.

MR. SHERMAN: Yes but what is the clearing and approving of that? Does that not consist of the reviewing of the waiting list?

MR. FRASER: I assume it would, Mr. Chairman, but why not put it in those terms rather than specify a regulation by law for all children under two. It's the whole nub of my concern.

MR. SHERMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, to Mr. Fraser. In 99(2) the agency is still required to ascertain the suitability of the applicants as adoptive parents. So to that extent the agency is certainly as involved as ever with regard to the adoptive parents and their suitability, the screening of them, the interviewing them and everything else. That information in accordance with the amendments would flow to a central registry where that information is then available. As children become available then very quickly at age fourteen days the Director having all this information available can then make placements.

Working in the other way the central office would have to try to make available on a current basis to every child caring agency and every child placing agency throughout Manitoba, they'd have to be feeding out constant information about children that are coming up for adoption and parents who are seeking adoption and would constantly have to be trying to keep score on it and to try to keep it up-to-date. Whereas this particular flow, the way it's working now still gives you the same rights as you have now to ascertain the suitability of the applicants and that of course is what you're all about. That's your concern and that's your responsibility. No one is taking that away. It's really a question of making sure that there is rotation and the only way you can make sure is if it's going through one office. If it's spread over 25 different places in Manitoba there's no way you could control it.

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: Mr. Chairman, I would submit that the outflow of information from the Department that the Minister speaks of would be equalized on the opposite flow if every child under two being considered or available for adoption would have to flow to the Director, there'd be just as much information going to him. He would have to deal with it immediately rather than under consideration with much less severe time pressure. If he controlled the list of cleared adoption applicants and all of the agencies had that and knew that they had to place a child with one of those

(MR. FRASER Cont'd) . . . . . families they could in anticipation of the birth they could have selected two or three of those homes any one of which would be approved and suitable and the decisions could be made on the basis of that. Those would be field decisions; they would be faster decisions; there would be less red tape involved in them and yet the Director would still have the control over the waiting periods that parents had to wait.

MR. CHAIRMAN: Thank you. Before we proceed can I just remind members that this portion of the proceedings is for asking questions. The time for debate comes later. Do you have another question Mr. Miller?

MR. MILLER: No.

MR. CHAIRMAN: If there are no further questions -- Mr. Brown.

MR. BROWN: I have a question to ask of Mr. Fraser which is possibly in a little different area. But the Act seems to be rather indefinite as to definition of an unmarried mother. For instance you have at 18 years of age a mother decides whether her child is going to be placed for adoption or whether she will keep the child. Now let's say we have a mother of 14 years of age, her parents make all the decisions and the mother apparently has no decision whatsoever. I understand that some of the provinces in Canada at the present declare any unmarried mother no matter what age she is an adult. Now has this posed any problems within Manitoba?

MR. FRASER: Under the existing legislation, your honour, all unmarried parents are considered adults in making the decision to relinquish the child for adoption. My colleagues from the Children's Aid Society of Eastern Manitoba have specific concern around the clause that the member draws attention to and I would prefer to let them respond to that because they have given considerable thought to it. They also have a proposed amendment consistent with the concern I've been expressing around 99(3).

MR. CHAIRMAN: Mr. Brown are you finished? Mr. Osland.

MR. OSLAND: I just want one, Mr. Chairman, to the gentleman. I feel that there's something still missing here and I would like to possibly suggest that Mr. Fraser could reword the 99(3) to his satisfaction and submit it for our consideration later on. I don't think you're quite happy with what is in there; I'd like to know what he would like to put in instead.

MR. CHAIRMAN: Mr. Fraser.

MR. FRASER: I would be pleased to comply with that opportunity.

MR. OSLAND: I think it's agreeable with everybody.

MR. CHAIRMAN: If there are no further questions, thank you Mr. Fraser.

MR. FRASER: Thank you very much, Mr. Chairman and members, for your indulgence.

MR. CHAIRMAN: Mr. Walsh.

MR. WALSH: Mr. Chairman, as I indicated when I approached the microphone previously I am the solicitor and general counsel for the Children's Aid Society of Winnipeg and prior to coming this evening we had an opportunity to meet with the Minister and his assistants in his office this afternoon and some of the deep concerns which we expressed about the Act at that time were responded to very affirmatively by him and I understand that certain amendments are going to be forthcoming responsive to those representations.

I would like to address myself to the remarks that were made by the speaker previous about Section 99. There seems to be two misconceptions that are taking place regarding the present wording of the section and the proposed amendment. And those misconceptions are that right now within the Children's Aid Society of Winnipeg that those applicants who qualify are allotted children on a first come first served basis and that's not the case. It may be that even within the Children's Aid Society of Winnipeg parents who apply are not given children on a first come first served basis. There is no obligation on the part of the Society to provide children on location and consequently if five people apply the fifth parent or the fifth applicant may be awarded the first available child because that parent may be the best parent. The Children's Aid Society of Winnipeg attempts because of the shortage of children and the overabundance of parents to find the best family for the child rather than the first family that applied.

The Director of the Society, even as big a society as ours, knows his workers reasonably intimately. He understands their appraisals of prospective families and when families apply he can look over the recommendations of the social workers and see that even though all five applicants may qualify, meet a certain level of acceptability, that the applicant who applied fifth in line may be the best applicant on

(MR. WALSH Cont'd) . . . . . the list.

Secondly our statistics show that the Children's Aid Society of Winnipeg places more children outside of its jurisdiction than it places inside of its jurisdiction which may attest to the effort it is making to place children in the most suitable home for the children.

What I'm saying is that the proposed amendment of Section 99 is a centralizing amendment. The Director of Welfare will get names and ratings I suppose although it doesn't specify that ratings will be channelled upwards as well and the decision as to which parent is allowed to adopt will be made centrally rather than locally. Because just because a thousand people may qualify according to certain basic norms doesn't mean that the thousandst applicant may not be the best applicant. If you're looking for the welfare and the best interests of the child it shouldn't be first come first served if you pass the basic tests. It should be best come first served. And that's the concern of the Society in Winnipeg, that the discretion not be passed upwards and more remote, that it be kept decentralized and at the local level. I appreciate the argument that's made that if you live on one side of Sturgeon Road and not the other side of Sturgeon Road you may wait for a longer time. But the same argument could be made if you live next door even in the same house as another applicant, you may wait and never receive a child while everyone else in the house who has applied may receive children because they're better suited even though they applied later.

So maybe there should be a compromise between those two fundamental approaches. And it's of deep concern to the Children's Aid Society of Winnipeg that the balance not shift remarkably either way.

So those are my comments relative to Section 99, if they can be heard.

I would like to secondly address myself to the Section 15(1) and I'll go in some order to express certain deep concerns which the Children's Aid Society of Winnipeg have regarding this bill.

Section 15(1) of the proposed bill provides that an unmarried mother who has not attained the age of majority cannot consent to have her child adopted and that proceedings therefore have to be taken under Section 16 and her child under Section 16 subparagraph (f) therefore has to be declared by a court and a judge to be in need of protective guardianship and only then can the child be placed.

The Children's Aid Society of Winnipeg welcomes the change from the concept of neglected child to the concept of a child in need of protective guardianship. But what Section 15 (1) does to the child of an underaged mother is makes a waiting period of some two months minimum before that child can be placed. Now the speaker before me, Mr. Fraser, indicated that he was concerned about a waiting period of a week over the ten days. But if a young lady not 14 but 17, for the purposes of bringing it into a little more realistic framework, has a child that she wants to place for adoption, presently that child can be placed immediately after the ten-day period. But if you follow Section 15(1) you'd have to make an application to have the child placed in protective guardianship that would be heard by the court after the mother was advised of her rights and one would assume that she wouldn't come to court before she was physically able to do so and that would take some weeks after the delivery of the child and then the child couldn't be placed until the appeal period had lapsed from that order of finding a protective guardianship. Because the Act specifically provides that you can't place a child until the appeal period has lapsed because she could appeal if she decided that she didn't like that proceeding.

I only ask the question and point out the difficulty, what is wrong with the method presently used of the Society responding to the legitimate desire on the part of an underage mother to place her child for adoption and consulting with her parents usually and making sure that her desire is genuine. All I can say is that all that 15(1) does is provide the maximum protection for the mother, underage, to make sure that she does nothing that isn't ratified by the court and in so doing, very properly so - I don't say that that's an improper motive - but on the other hand the waiting period before the infant is placed is lengthened from ten to fifteen days to two months and maybe more.

All I can say about those things is it's not that we're so much anxious to have a change but those are deep concerns felt by the Society and will create considerable difficulty in its administration of this Act.

I would next like the members if you would to refer to Section 17 of the Act on Page 13 of the bill. I understand by Mr. Miller and through the Director of Welfare that there will be an amendment to Section 17 so that there will be

(MR. WALSH Cont'd) . . . . . subparagraphs (1) and (2) of it and that in the old Act under Section 81 I believe it was - I don't have the old Act with me but I'm very familiar with the section - a worker for an agency could apprehend any child whom that worker believed to be neglected, as the term was used in the old Act. That concept should be retained and I understand is going to be retained by a prospective amendment in the new Act so that a worker who believes a child is in need of protective guardianship can be apprehended without a warrant. I won't belabour that point but I understand that an amendment is coming in to that end and it's one of the deep concerns we expressed because when we received the bill we saw Section 17 being a naked section without any qualification and would have deprived us of an avenue of access to children which we need very much. But I understand that that is going to be changed and therefore my comments further on that point need not be made.

However Section 25(7) is a section of momentous importance to the Province of Manitoba. And what it says is that in the course of hearing on the issue of whether a child is in need of protective guardianship that child may be provided with a lawyer. I find that concept to be astounding.

What does the parent do? The adversary system between the Society and the parent as it develops into such at the time of the hearing is changed into a three-cornered adversary system. And the parent can turn to its child and say, child what can I do to make things right and the child says, well talk to my lawyer. I suggest to you that that concept is absurd. Either you place the faith in the Children's Aid Society and the Director of Welfare and the agencies to represent the interests of the child and recognize that within the adversary system of parents on one hand being represented and the Society on the other hand being represented, that all of the range of possible dispositions will be placed before the court and the court may approach the child directly to inquire of the child what its wishes may be. But to go the one step farther and say that the child may have legal counsel appointed for it is a fantastic departure from the norm and I wonder how the profession would respond to that. How could I take instructions from a thirteen-year-old?

It would be a much more interesting Act, Mr. Pawley, if that total departure had been made and the adversary system stayed away from altogether in this Act but you haven't seen fit to go that far and arguments could be made that you should. But restricting my comments to what you've done here, I strongly believe that it is impossible for a person who has not attained the age of majority to instruct a lawyer. And how is the lawyer supposed to respond to the wishes of a twelve-year-old? Is he to say, yes I'm your lawyer and I'll do whatever you want or I'm your lawyer and I'll weigh your best interests as I see them. How can a lawyer be responsive to instructions of a twelve-year-old or a thirteen-year-old or even a fifteen-year-old? The whole idea of having a children's aid society is to obviate that necessity. So think about that. It's a deep concern that the Society has about that section and it's a very dangerous departure to ask members of the legal profession to represent people who by law do not have the authority to do very much without a guardian ad litem or some legal representative to have a lawyer appointed when the whole thrust of the Act is that the agency, the Director and so forth represent the best interests of the child.

I've made my point I believe on that and I would like to go on then to Section 30.

Section 30 subsection (1) creates another departure from the previous Act, a departure that causes the Society deep concern. And that departure is that as the Act is presently structured a judge has the authority after hearing a case to make one of three orders.

Firstly, to just return the child to the parents and find that there hasn't been a case proven by the Society and say that there isn't enough evidence or there isn't the kind of case that would warrant the making of an order.

Two, the judge can award the child to the Society permanently so that it can be placed for adoption.

Thirdly, there can be a temporary order of a fixed period. Not of an indeterminate period but of a fixed period, three months, six months, twelve months. Under the old Act if the Society felt that the length of order didn't prove in the final analysis to be needed they could move to have the order set aside before its natural termination. However as Section 30 subsection (1) is now worded parents at any time can come to the court for a review of a temporary order. And this was not the case under the old Act. What that means is if the parents are adjudicated and found that they shouldn't have custody of their children for a temporary period of let us say for example nine months, they don't have to wait the nine months, they don't have

(MR. WALSH Cont'd) . . . . . to follow any pattern and show themselves to be worthy to recover their children after nine months, they can apply in three months and say, I've rehabilitated myself, I've met the criteria imposed by the court in a shorter time. Now while that may have some beneficial effects, the net result will be to make no order of the court abided by, that it will multiply litigation and that the efforts of the Society to work out a plan over a period of time will be destroyed because that period of time will never be certain.

An analogy would be if the court were to sentence an offender to one year in jail to rehabilitate him and to deter others but the offender could apply to the court at any time for a shortening of his sentence saying, I've served three months and it's even worse than I thought it would be so I'm rehabilitated now, I don't need the other nine months, take it away. I think that that's an appropriate analogy.

If the court when it hears the evidence originally decides that there should be a temporary order of a fixed period the court we can assume had good justification for doing that. If the Society agrees with the parent that the child should be returned at an earlier date nothing prevents the Society from either just doing that while maintaining the order so they can take the child back or applying to the Court to terminate the order. But now when the parent can apply at any time, parents well advised by their lawyers will never wait out the natural term of an order, they will take the high point in their preparedness to take the child back and if they are parents who have found their children to be in need of protective guardianship will find themselves at certain high points in excellent circumstances to take the children back and will make application at those times. And the wait and see provisions of a temporary order won't be fulfilled.

This causes the Society deep concern because a judge who adjudicates at the time of the hearing and makes an assessment will always have his assessment appealable by a judge at the same level who two months later can say that my brother judge was full of beans and he shouldn't have ordered a one year, he should have ordered a two month and I'm giving you your child back. There are appeal provisions in the Act and if a parent feels that the length of temporary order is too long then the parent should appeal. But you shouldn't allow the parent to come back and shorten that temporary order. The temporary order has been deemed adequate by the judge who heard all the evidence and if the Society and the parent can agree that it should be shortened then it should be shortened.

Now carrying on to Section 32, an enormous departure has been made from previous conduct and, Mr. Chairman, an enormous departure has been made from the conduct of cases in Manitoba in both civil and criminal nature. What Sections 32 says, of the bill, is that to appeal a decision of a family court judge you go directly to the Court of Appeal of the Province of Manitoba. In all summary conviction offences - if you're convicted of a speeding offence, if you're convicted of a liquor offence, if you are convicted of assault on summary conviction, if you are convicted of any summary conviction offence you have a right to appeal to a county court judge by a trial de novo because you have been dealt with summarily and the concept of summary proceedings without pre-trial discovery has been enacted so as to provide an appeal by way of a new trial because of the nature of the initial summary proceedings.

The only instance that I have ever seen of this type of direct appeal to the Court of Appeal is in cases of theft under $200.00 and what are known as absolute jurisdiction offences. And it seems to me that the rights of parents, not the rights of the Society are being short-cut by an appeal directly to the Court of Appeal. Because before the parent comes to court in a proceeding under this part the parent does not know the case that is going to be presented against him or her by the Society or agency. If you take away the right to trial de novo you have a summary proceeding whereby the parent may not be able to present the defence the first time round because it doesn't know the nature of the evidence that will be presented and has no second time round. So if you enact Section 32 please think very carefully because you're making a tremendous departure from what has been the standard of legal proceedings in civil and criminal cases in the Province of Manitoba to this date.

And what was wrong with the trial de novo? The only people who were against it were the judges in the family court who felt that any judgments they made could be appealed by way of a new trial and therefore it derogated from the importance they wished they had. Now if they're the only persons who are against it think very carefully before you change it.

MR. BILTON: Did you tell the Minister this this afternoon?

MR. WALSH: I told the Minister everything I'm telling you, sir.

MR. CHAIRMAN: Order please.

MR. WALSH: I told the Director, Mr. Minister, but not you directly. I'm sorry.

MR. MILLER: I'd like that clarified thank you.

MR. CHAIRMAN: Will you continue, Mr. Walsh, please.

MR. WALSH: Thank you. I would ask that you consider very carefully the Section 32.

There are certain sections as I say before that Mr. Green made note of and discussed with the Minister and as I said before we received a - or the Director of Child Welfare. . .

MR. SIDNEY GREEN: Everybody thinks you're talking about me. They think that there is only one.

MR. WALSH: I'm sorry. They are probably very close to the truth.

MR. CHAIRMAN: Order please.

MR. WALSH: The final section about which I would like to comment is Section 115 subsection (1) on Page 42 and I understand that amendments are going to be brought in to adjust that particular section and subsection.

As it presently reads which is the same as it's reading in the previous legislation - and there is no appeal from this Section 115. I understand that will be changed as well. A family court judge could appoint a guardian for your child upon the application of anyone else in the community and as presently enacted you would have no appeal. This is a carry-over from the old Act and I understand from Mr. Green - the other one - that there are going to be changes in that area.

I would ask and plead with you that on the areas particularly of the appeal provisions and on the child's right to counsel and on the right of a parent to terminate a temporary order by application at any time, that you give very careful consideration to those provisions. Because to redirect the entire thrust of child protection legislation, to abridge and to encroach upon those things that the Society believes to be the best interests of the child, . . replaces them instead with an undue concern on the approaches parents might make to the courts.

I'm ready to answer your questions if you have any.

MR. CHAIRMAN: Are there any questions of Mr. Walsh? Mr. Johnston.

MR. F. JOHNSTON: Mr. Walsh I'd like to compliment you on your presentation. You've gone through several sections of the bill but I'd like to talk to you about one basic section which was discussed before, the 99(3), and listening to your presentation I would draw a conclusion that you are saying - and I don't want to put words in your mouth - the child welfare worker in any other area - we mentioned Sturgeon Road and I might say I'm concerned about that area, it takes in my constituency - the welfare worker on say the west side of Sturgeon Road, their opinions or their conclusions may not be as valid as somebody on the east side. What I'm suggesting that the central registry system should listen to all workers of child welfare and I would say that the capacity of those people would be checked out before they made recommenations so what's the difference as to whether somebody on one side or the other or in rural Manitoba or Winnipeg, if the welfare worker says this family is a good family and should receive a child. It seems to me - I'm saying why would you have the differential as to a recommendation from a worker rurally or a recommendation from a worker in the Winnipeg area.

MR. WALSH: I don't dispute the fact that you're going to have to come to terms with two values. The first value is saying that a person who lives in Grand Rapids or on the other side of the road that you mention should have the same rights as the person on the other side of the road insofar as priority in granting children for adoption. I think that's one value.

On the other hand you have not an incompatible and not a mutually exclusive value of children not being placed in order of priority of application but in order of suitability of applicant and the farther away the decision is made from the worker on the spot, the more remote the decision is, the more centralized the decision is the more it operates to cure the deficiency that you're concerned about but the more it operates to take away the local control, the local knowledge of the local conditions. You see the worker is a human being. The Director knows who that worker is and knows that worker's preferences and knows that worker's attributes and knows that worker's inclinations. But by the time the decision is made by the central Director in Winnipeg or if it's decentralized in Brandon or wherever they place that central Director he doesn't know the worker who made the decision on the spot. He's not as able to evaluate the decisions that that worker on the spot made. And the proposed amendment just says that the central Director has a discretion. It doesn't even answer your

(MR. WALSH Cont'd) . . . . .objection about rotation because nowhere does it say that that discretion is going to be exercised to solve the problem of rotation.

But let's assume that it does. That's only one problem. It may be that the applicant who applied last is the best. Would you then place more emphasis on the order in which people apply as opposed to the child getting the best parent? And that's the dilemma that you're in. I think goodness it isn't me, it's your dilemma. If you want to serve your constituents you'll be able to tell them that I passed this amendment so that you're not any worse off than the people on the other side of the road and I've created equity for Manitoba for the parents. But how about the children? Should they be provided with parents who qualify on a first come first served basis or should the decision be made at the local level as to who is the best parent no matter when they applied - taking into account also who has been waiting.

MR. F. JOHNSTON: Mr. Chairman, I'm just a little bit amazed. I don't think that I or anybody here or this Act is discussing if it's - so we have an order of rotation, first come first served. But the worker in the field is the person who has been given the job to evaluate. That person has had that position by qualification of some kind. But it seems to me that I don't even know what we're talking about when somebody says that we're going to take first come first served. I would assume that if somebody makes an application to adopt a child and they are not capable or they do not have the proper home for that child whether they're first, tenth or fiftieth they will be rejected. And I'm saying that the qualification of the worker - and then you say the Director will make the final decision and I would suggest that the Director may have to exert a situation to make a final decision but are you saying that we are going to place children by 1, 2, 3 or are we going to place children by 1, 6, 7, 8 according to the ability to create a good home for that child? Nobody I don't think is - or this bill doesn't say that we will accept them in order if the family is not capable of taking care of that child.

MR. WALSH: Yes but your point seems to be that once you meet the qualifications - I agree with you that if you don't meet the qualifications you won't even be considered - but once you do meet the qualifications then are you accepted in order that you applied or are you then willing to acknowledge that, we'll say that there are twenty teams in the National Hockey League. That means that you need so many players. That means that so many people are qualified to play in the National Hockey League. You'll agree with me that they all aren't equally capable and that if you had to select a team to meet the Moscow Selects that you would pick out people on the basis of the coach at the scene knowing who's best, not on the basis of who applied first. I'm saying to you that while the analogy is not perfectly applicable, that while certain parents qualify and certain parents don't, that even amongst those who qualify there could be great differences in ability to parent. And if a child has a special need and if a child would be better placed with the applicant who applied last albeit that all qualified, should the child go to the parent best able or should the child go to the parent who first applied assuming that they all meet the basic minimums. I'm assuming, sir, that all the people who will be considered will have met those basic minimums. Once you accept that then do you say to meet your problem that they be accepted in order of rotation because they have met the basic minimums as decided by some social worker or do you say that the people who are closest to the scene are going to be able to make the best decisions. You have the classic conflict between the centralizing fairness as opposed to the decentralizing ability of a person at the local level to cope with the special needs. I say that is a classic conflict and one which you have to deal with not only in the implementation of a child welfare act but on a variety of issues.

I'm saying that once again I don't propose to come out dramatically on one side or the other. Parents who live in Grand Rapids should have an equal chance to adopt with parents who live in Winnipeg or somewhere else. On the other hand are we worried about the rights of parents or are we worried about the rights of children? That's your decision. All I'm saying to you is that Section 99(1),(2) and (3) as presently in the bill unamended is perfectly acceptable to my Executive Director of the Children's Aid Society of Winnipeg who tells me that he places more children for adoption outside of his jurisdiction than within and he is concerned, he is the man on the scene, he is concerned that if the decision is raised one level away from him and one level higher it will be one level more remote and one level less able to determine - although it will be directed to determine - what is in the best interests of the child and that's what he tells me. He's the man on the spot, I assume he knows.

MR. CHAIRMAN: You have no further questions Mr. Johnston? Any other member?

MR. F. JOHNSTON: Mr. Chairman, I have one other question. I am wondering

(MR. F. JOHNSTON Cont'd) . . . . . if I should even ask it. But I think that I want to know the answer, that what you are basically saying, that the qualifications of parents could be good but those qualifications of a parent might not be right for a child.

MR. WALSH: That in part is right or they might be not as good as other parents.

MR. F. JOHNSTON: And you know you made quite an explanation why this applie but how do you really rationalize this in a baby which nobody knows the personality of to that great extent and you do know that the family is a good family.

MR. WALSH: Even if one accepts your premise and it will be applicable in many instances that the baby is a neutral factor and doesn't know whether it's a rural baby or an urban baby or a Ukrainian baby or a Polish baby. It doesn't know and would be just as happy in any one of those homes. It may be that the person who applied last has just better qualifications, meets the basic qualifications but is just better suited, is better placed by all the criteria that the social workers use, not that lawyers use, but social workers use in judging suitability and the most suitable doesn't mean the first in line. I am just saying that that applies to everything in life. There is no reason why it shouldn't apply to parents.

MR. F. JOHNSTON: Mr. Chairman, I don't think that the bill says it's the first in line, if they qualify is it.

MR. WALSH: That's right, but I'm just saying that that's the problem that you raise and I don't think that this section either goes far enough to answer your problem or should be implemented necessarily. I'm not trying to make a decision for you sir, and I'm not taking one side of the motion or the other except in response to your questions. I'm just trying to dramatize if I can, some of the problems inherent in the opposition to your position.

MR. F. JOHNSTON: Well the other area we've mentioned - now I'm not, I would mention several sections of the bill. I wanted to ask him that one and I'm sure maybe somebody has some questions on the other section he raised in the area of thirty. If a person, well there is a Judgment brought down by a Court, I think that everybody would agree that it should be lived by but if there is a circumstance where there is an application made to have the child back, I think we're in an area here of parent and that they should have possibly that right.

MR. WALSH: Yes but once you give them that right, you open the door to the other ninety nine whose right will not be as valid and who will thereby destroy the kind of system you are trying to build. I'm not saying that in the individual case you may not be right, but what I'm saying is that do you have faith in your agencies or do you not? And if you do, in the case where the parent will be right in applying for a termination at an earlier date, maybe he should be able to convince the society, or the agency or the director that he's right and if he can do that then there's no problem, if both sides agree the child will be returned. In every situation under Section 30 subsection (1) where the parent applies, one assumes that the society or agency will continue to be opposed and will spend half of its litigating time not in the getting of orders which it may vitally need, but will spend its time in just holding the orders it already has and that seems to me to be a waste of energy and money.

If a Judge says a nine month order, if the parent thinks it should be shorter, the Society doesn't, then let them both live with the original order or appeal, but shouldn't come back after four and a half months with two litigation cases rather than one; but if the Society is convinced along with the parent, then they can wipe it out just by consent, there's no problem.

MR. F. JOHNSTON: Thank you.

MR. WALSH: Thank you sir.

MR. CHAIRMAN: Thank you. Mr. Green. Pass the microphone down please.

MR. GREEN: Mr. Walsh I'm just interested in one feature of the presentation which rather intrigued me and that was relative to the Appeal provision to the County Court from a Family Court Judge, as in Summary Conviction Offences which you've described. Now I take it that under the old Act and under the new Act, an application could be made to the Surrogate Court or a Queen's Bench Judge or a Family Court Judge, any one of the three.

MR. WALSH: No, the Child Neglect provisions as they were then and the Protective Guardianship provisions, as in the new bill, provide for an application to a Judge, meaning a Judge as defined in the Act and a Judge as defined in the Act is in the definition section and that definition section (m) means a Provincial Judge within the meaning of the Provincial Judges' Act, so that all proceedings in cases of Protective Guardianship in the new bill and in Child Neglect in the old bill,

(MR. WALSH Cont'd) . . . . . always came at first instance to the Family Court.

MR. GREEN: I see, I was looking at Section 118 which I guess is not the one you're referring to.

MR. WALSH: No.

MR. GREEN: Which Section then are you referring to that deals with the Court of Appeal?

MR. WALSH: Section 32.

MR. GREEN: Oh I see, away down there.

MR. WALSH: Section 32 is the appeal provision for part 3, which is the Child Protection part and it says "under this part, Section 32, an appeal lies in the order of judge or his refusal to the Court of Appeal" so you have a summary proceeding at its initial phase which thereby skips over the trial de novo phase and goes directly to the Court of Appeal and coupled with that Mr. Green, you have the right of the Family Court Judge to completely disregard the rules of evidence, allow Affidavit evidence to in any way abridge the proceedings that he or she may see fit under Section 25 (8) and consequently an appeal to the Court of Appeal is hardly going to be meaningful, because if the Court of Appeal is going to say the judge at first instance had the parties before him, could judge credibility and unless the judge erred on a question of law, you're effectively taking away the right of appeal.

MR. GREEN: Wouldn't the Family Court Judge on appeal have the same jurisdiction as the Family Court Judge under 25 (8) when he was hearing the trial de novo?

MR. WALSH: Yes, but it would be by transcript, there would be no problem with the hearing. The appeal to the Court of Appeal would just be on the record as you know.

MR. GREEN: No, no. I'm sorry, I'd like to see whether we both understand the trial de novo provisions. As I understand it, a trial de novo becomes another trial and the transcript is available, but it is not evidence. It is a transcript that is transmitted from the magistrate to the County Court judge but at the County Court Judge level, it is a trial de novo in the true sense, which means that it is a full trial.

MR. WALSH: Yes, as if the first trial had never taken place.

MR. GREEN: Right, so that the transcript is a document which I suppose can be looked at, which you're not supposed to know exists, but can be looked at and you can cross-examine on it, but in other respects, the Country Court Judge would have all of the same powers as the magistrate has under 25 (8).

MR. WALSH: Yes but the litigants would have had the first trial in the Family Court and would be able to use the evidence as discovery.

MR. GREEN: Oh I understand all of that, I'm just trying to see whether under 25 (8) a Judge of the County Court would have the same,

MR. WALSH: Oh undoubtedly,

MR. GREEN: Would have the same, he would be able to admit the affidavits that you're talking about and do the other things that you indicate that a magistrate can do. Now as I understand it, what is attempted here, and I'm not sure that I agree or disagree, I was intrigued with your suggesting that it's a very enormous I think, departure from the normal standards. I would suggest that there are other cases where magistrates are given jurisdiction to try certain things such as wages recovery or other small civil actions where an appeal lies directly to the Court of Appeal, rather than through a second trial at the County Court level, but I don't want to make a big point of that. I am trying to figure out whether it is better to have two full trials or to have one trial which makes a little bit more sense, because under Section 118 and 119 and this refers to Guardianship, it doesn't refer to the Neglected Child's provisions, the same thing has been done. Under the old act it said that "where there is an appeal from the Queen's Bench or Surrogate Court that it goes to the Court of Appeal, where it is from a Family Court, it goes to the County Court." Now that has been eliminated and it says in the case of an order made under those sections, it goes straight to the Court of Appeal.

MR. WALSH: Yes, but in those cases, an applicant can always hoist you from the lower court into the Queen's Bench and get the rights of discovery.

MR. GREEN: Well is it then, you see I am not intrigued, and I'm just asking you the question, and I don't wish to argue with you, with the two trials. To me they never made sense. You go to a magistrate and he conducts a trial and then you go to the Country Court Judge and he conducts the same trial. It's not a trial on evidence. It's not a question of law, it's another trial. Would it satisfy you if the Family Court proceedings provided for some form of discovery.

MR. WALSH: Yes.

MR. GREEN: In which case you wouldn't have to go through the two trials and without, you know without being sensitive to the feelings of the judges one way or the other, and I assure you that I have not been in my practice, that it really doesn't seem to make a great deal of sense for a judge to sit and hear a whole trial and then have another judge do the same thing. The first judge often feels that - what is the purpose of him going through this procedure and the litigants have to go through two trials and pay lawyers twice sometimes, I mean if they have lawyers. Would it be a better suggestion from your point of view if the Family Court Judge proceedings permitted discovery?

MR. WALSH: I think that in answer to your question directly and then generally, yes. Generally speaking I think that the Law Reform Commission in the Province has a pilot project going with a Family Court at the County Court level which hears family matters and matters that could have been brought at the County Court level at first inception. It seems to me that Mr. Green's point is very well taken about two trials. In order to facilitate the ends of discovery and pre-trial procedure . . .

MR. GREEN: It could be four trials. It could be the first trial, the second trial de novo, Court of Appeal, Supreme Court of Canada.

MR. WALSH: Yes, but two would be trials and two would be appeals on just hearings on evidence.

MR. GREEN: redundant type of proceedings, that's what is attempted

MR. WALSH: To avoid the redundancy, it seems to me that a person should be able to apply directly to the County Court or directly to the Family Court but there should be some provision and I haven't sought it out, either for an Examination for Discovery or for provision of particulars as to names of witnesses and the evidence that they will give, so that . . .

MR. GREEN: Well, what if Discovery, was the . . .

MR. WALSH: Then that would clearly place the Family Court on the same footing as a Queen's Bench Trial, where the litigants have - since the object of the exercise is to discover the truth, not to take the other party by surprise, over the years we've built up a system of allowing the other side to get at the truth from the opposite party. If you're not going to allow a trial de novo, you should at least provide for that basic protection and that is the point I wanted to make.

MR. CHAIRMAN: You have no further questions . . .

MR. WALSH: Well that, unfortunately you see when you have a trial de novo you take the time of the child and that child waits to determine, it becomes almost ludicrous in a three month order that the appeal might not even be heard for three months. So what should be done is that there should be a pre-trial, some sort of discovery whereby you could oblige both parties to come and be examined under oath. You may not wish to have that, if you think that thoroughly, because then the parents would have to come and be examined under oath and the Society would be able to prove its case through the mouth of the parents. You see there's something quasi criminal about these proceedings that even though the best wishes of the drafters of the Act have wished to take away from it, still exist; I believe that parents will still not respond to the new term "Protective Guardianship" as warmly as the drafters of the Act hope and there will still be a reluctance on the part of parents to have their children put in protective guardianship, although the term "neglect" is a very abusive and pejorative term but this is a point that really has to be sought out Mr. Green, because if you have Discovery then you allow the Society to sit back and cross examine and examine parents for Discovery and maybe they shouldn't be obliged to give evidence against themselves, if there's any quasi criminal aspect of these proceedings at all. If there isn't then they should be allowed to do that, but that's a point that has to be thought out in its full ramifications. But taking away the trial de novo and just putting in an appeal to the Court of Appeal should be looked at very carefully and not just say, well there's an appeal provision and let's pass on to the next section, because you're taking away a tremendous right from parents to protect themselves and to present their best case to the Court.

MR. CHAIRMAN: Thank you. Mr. Miller, did you have a question?

MR. MILLER: Not on that one, I'll let the lawyers sort that one out. Section 30 Mr. Walsh, you made reference to the further hearings by Judge and you said that at the present time there exists a provision whereby a fixed period is established We are eliminating that fixed period which could lead to multiplicity of legislation or litigation rather and that parents would keep coming back, or keep appealing to

(MR. MILLER Cont'd) . . . . . other judges or ask that the length of time be reduced because they feel that they can now look after the child and you're concerned about that. Isn't the present procedure where the Society can appeal to the Judge to have the time that he established of 9 or 10 months, that the Society has the right to appeal to the Judge to reduce that length of period.

MR. WALSH: Yes.

MR. MILLER: Now you're saying Society has that right, but you wish to deny to the parents a right that Society has.

MR. WALSH: Yes, the Society has many rights under the Act that the parents don't have and the parents have many rights that the Society don't have. I don't think it's a trade-off Mr. Miller. I think that you're looking at the reason for giving the right. The reason that the Society is given the right is because the Society has the obligation to attend to the best interests of the child during the term of the temporary order and when the Society sees that there's no further point in continuing on with the temporary order, then surely the parent will agree. But when the parent decides that that's the case, it is not always true that the Society will agree and therefore you're going to have litigation resulting out of that, so when both parties agree the Society will make an application because it will be in agreement or just return the child. So the effectiveness of giving the Society the right and not giving it to the parents at the present stage means that when the Society exercises that right, it is exercising it on behalf of both sides of the question. But when the parent would purport to make an application, that application would be contested and all I can do is draw on my experience in the last two and one half years as Counsel for the Society and say to you that in every case the Society is asked for an early termination of a temporary order, the parents have not opposed and it's been granted because . . .

MR. BILTON: How many cases have you had in two years?

MR. WALSH: I think that there's been 178 cases. Don't ask how many we've lost.

MR. CHAIRMAN: Any other questions, Mr. Miller?

MR. MILLER: No I just wanted to get that clarified. Thank you.

MR. CHAIRMAN: If there are no further questions, thank you Mr. Walsh.

MR. WALSH: Thank you very much.

MR. CHAIRMAN: Mr. Libitka please.

MR. LIBITKA: Mr. Chairman, honourable members - I wish to place the Children's Aid Society of Eastern Manitoba on record as supporting the representations made by my learned colleague, Mr. Walsh. However, during the representations made by Mr. Fraser and Mr. Walsh, with specific respect to Section 99 I understand that during conversation between Mr. Fraser and the Executive Director of the Children's Aid Society of Eastern Manitoba, Mr. Lugtig, certain proposals have been arrived at which Mr. Lugtig with the permission of the Chairman wishes to present to this honourable body. Do I have the Chairman's permission to introduce Mr. Lugtig?

MR. CHAIRMAN: Please go ahead.

MR. LIBITKA: Thank you Mr. Chairman. Mr. Lugtig.

MR. LUGTIG: Mr. Chairman, gentlemen: Mr. Fraser and I did work on a possible amendment which we think would answer the problem that everyone has been concerned about. The main concern as I see it and I really feel quite strongly about this, is that other things being equal, a person in Flin Flon or Gypsumville or St. James, or St. Boniface, or Winnipeg, should have an equal opportunity to adopt a child. I really believe that, taking into account the interest of the child and the various children that come into care and I don't think by dealing with that situation that we are in any way abridging the rights of children. I do think the proposed amendment giving a centralized approval to the Director on each individual child is not the answer to this problem. We have had experience, I have personally had experience with centralized adoption practices, both in Manitoba, the aftermath of that because it was done here many years ago, and in other jurisdictions, namely Minnesota and if carried to extreme, centralized approval does create a backlog and it creates a lot of complications that don't work in the interest of children.

I think an amendment that could deal with this particular problem which really is everyone being treated fairly - I think that's what it really boils down to.

MR. GREEN: I wonder if I could interrupt the delegate for a moment. I just want to inform Committee with regard to proceedings, that there are only two more representations after this one, so I presume that there is no great pressure that we not continue. There'll be this gentleman and two further ones.

MR. CHAIRMAN: Proceed Mr. Lugtig.

MR. LUGTIG: Thank you. Now if I may, I'll just read this. I have a little trouble, I don't have all my teeth and I might have a little trouble reading.

"99 (3) The Director may from time to time establish general regulations governing a minimum waiting period, which shall elapse from the time of approval of applicants to the placement of a child with the approved applicants."

The reason we suggest "may" is that it may not be necessary to do this all the time you know - this should be a flexible thing and it shouldn't be necessarily mandator The reason we say "time to time" is that the supply of a given group of children and a given group of applicants fluctuates and can fluctuate quite markedly. For instance, the problem right now is the group of infants - most of the applicants want infants and it's been said that applicants in say, the City of Winnipeg, may get an infant placed with them after they've been approved for say six months and somebody in Flin Flon or Thompson has to wait two or three years. Well, other things being equal, I don't think that should happen but I think if the Director could in consultation with the agencies establish a minimum waiting period for a group of children which would be decided amongst the agencies and the director, from time to time. For instance in the case of infants, maybe no one should be able to adopt an infant unless he has waited a year and this might level out the supply of infants and level out the applicants and at least we could say that everybody's been treated fairly.

Now the children who are not infants or who are handicapped or you know, some other situation occurs, well they wouldn't pertain to this waiting period for wanting parents we'll take people as soon as we can for those particular placements but for these situations where there's a problem of over supply of applicants and under supply of children, this proposal would allow the director in consultation with the agencies to make regulations on that point, and I don't know if regulation is quite the right word, perhaps guidelines or some other acceptable word, but something that could be raised or lowered.

For instance, supposing all the applicants that had been waiting twelve months were placed with across the province, it might be that you'd cut the waiting period down to 11 months, but it also might be that in the meantime the supply and demand situation had changed, and the waiting period would be 13 or 14 months. You know, we're in a situation where there is a dearth, a small number of certain children and we've done such a good job in interesting applicants in adoption that we've got a lot of people that are interested and I think that really if the director had the power in consultation with agencies to set a minimum waiting period which would apply across the province then this inequity situation would at least be dealt with. In other words, if one of your constituents came to you and said, well I've been waiting for 8 months or a year, you can say, yes that's right, the people in Flin Flon have to do that too, other things being equal, for this particular group of children and I think this might, at least if it were tried, it could be seen whether it would work or not. I do think though, in all honesty, that the supply of infants is going to diminish statistically and the number of applicants may increase so maybe the waiting period will be two years, you know, but we have to live with that. I mean that's a reality, not something we can do anything about, I don't think. So that would be, we have it worded here and if you like we could type it up and submit it to the Chair for consideration.

MR. CHAIRMAN: Thank you Mr. Lugtig. Are there any questions, Mr. Osland.

MR. OSLAND: Mr. Chairman, could we have the gentleman just re-read his wording there, just for the moment I would like to get the notes down.

MR. LUGTIG: "The director may from time to time,"and we were going to say in consultation with the Child Care Agencies, the child caring agencies you know which are referred to, "establish general regulations governing a minimum waiting period which shall elapse from the time of approval of the applicants to the placement of a child with the applicants." For instance, well that's it.

MR. CHAIRMAN: Do you have another question Mr. Osland?

MR. OSLAND: No thanks, thank you very much.

MR. CHAIRMAN: Any further questions? If there are none, thank you Mr. Lugtig. Mr. Ritchie.

MR. RITCHIE: Gentlemen, as I indicated my name is Walter Ritchie and I'm representing the Manitoba Government Employees'Association with respect to Bill 7. Mr. Metcalfe, the Executive Director of the Association has some copies of our Brief which he's going to distribute. It is fairly lengthy but if I could, I suppose if the Association could have its wish it would like to see only two matters dealt with in this bill, namely the matter of political activity and the matter of the change in the size of the Commission, and we have some comments with respect to those

(MR. RITCHIE Cont'd). . . . . but the other amendments are the ones that cause us greater concern. Since the proceedings are being taped, I would just like to put on the record a letter that I wrote to the Honourable A. R. Paulley concerning certain matters of draftsmanship in the proposed bill. I'll just paraphrase some of it.

In reviewing the bill we wish to draw to your attention certain matters of drafting which you may wish to consider before the bill goes to Law Amendments Committee. They are as follows: Section 1 of the bill would amend the Civil Service Act by striking out clause (1) C (c) which is the definition of Term Employee. Thus if the amendment were passed there would be no definition of Term Employee. However, under the Civil Service Superannuation Act, Section 2 (e) (ii) refers to and I quote "any person who is employed with the government in seasonal employment or as a term employee". The words "term employee" are not defined in the Civil Service Superannuation Act and 2 (ii) of that Act indicates in effect that you look to the Civil Service Act for the definition and the proposed amendment is that the term "term employee" be deleted. It would therefore appear that if the words "term employee" are to be deleted from the Civil Service Act, amendments to the Civil Service Superannuation Act may be required.

Then the second point was, as they're no doubt aware, the words "term employee" are used in the current collective agreement between the government and the MGEA and the deletion of this term from that act raises the very serious question as to the status of such employees if the amendment is passed and section 3 of the bill would add a subsection (5) to section 5 of the Act and since this proposed new subsection involves definitions, I suggest wouldn't it be better to have that in the definition section.

More importantly though is the use of the words "temporary employment" in Section 5(5) (b) we are concerned how this definition might be interpreted in the light of Section 2(1) (iii) of the Civil Service Act which excludes from the meaning of the words Civil Service "persons employed to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Assembly or the government."

And the fourth one we just question which I'll deal with in my brief. In any case we wrote that letter to the Minister. He replied, we met with the minister and went over the items we had raised and I understood that he was referring the letter to the Legislative Counsel.

Now dealing then with our brief, I'll just proceed to read it.

As the recognized bargaining agent for the employees in the Civil Service, the Manitoba Government Employees' Association (referred to as the Association) is vitally concerned with some of the amendments being proposed in Bill 7 presently before the legislature. The Association is of the view that some of the proposed amendments in Bill 7 adversely affect the position of Civil Servants generally and seriously undermine the basic philosophy of equality in the public service of Manitoba. It appears that many of the proposed amendments to the Act are intended either by intent or by lack of consideration, to give Management Committee and individual Ministers a wide discretion concerning such matters as the changing of pay classifications, the appointment of temporary employees, the pay to be received by employees who are demoted for other than disciplinary reasons, and selection appeals. The Act of course supercedes our collective agreements and many of these amendments appear to remove from the collective bargaining process items that are covered by agreements currently in force between the Association and the Government.

Dealing with Sections 1 and 3 of the Bill,

Section 1 of the Bill removes all reference to "term" and"casual" employees in the Act, even though "term" employees are covered in the Civil Service Employees' Agreement. As the classification "term" employee is being removed from the Act, or it is proposed to be, it would appear that all these employees by the stroke of the pen are to be unilaterally removed from the current binding collective agreement. It would appear that the present classifications of "casual" and "term" employees are to be included in the new category of "temporary" employee as defined in Section 3 of the Bill. This we presume was the intent that they were, but the bill doesn't deal with that and without it dealing with that, then "term" employees would be taken out of the agreement.

That section proposes to define the category of "temporary" employment as an "employee who is employed for an assignment of a temporary nature as defined in the regulations." Once again, at least for the first time I'll be drawing your attention throughout the brief to this concern that we have as defined in the regulations, this does concern the association.

(MR. RITCHIE Cont'd). . . . .

By virtue of Section 13 of the Bill the Commission is given the power to make regulations respecting categories of employment under the new proposed Section 5. In other words, the Commission will have the power to determine by regulation, what assignments are of a "temporary" nature. If the regulation passed pursuant to the Section excludes employees who are presently within the definition "term employees" then it would appear that, in the absence of specific amendments to the Civil Service Employees' Agreement, the Association will be stripped of its bargaining rights regarding said employees. Furthermore, under the Civil Service Superannuation Act specific reference, and I've dealt with that, concerning the term; then furthermore there would be confusion if the classification of "term employee" is removed from the Civil Service Act and the regulations passed pursuant to the proposed amendments to Section 57 (1) of the Act do not define "temporary employment" in a like manner.

Section 1 of the Bill proposes to amend Section 2 (1) (e) (v) of the Act by excluding from the definition of Civil Service, and I want to emphasize this as strongly as I can, "any person paid by fees" which is in the existing Act or "hired on a contractual basis". The potential effect of these few additional words could result, I submit, in the total destruction of the Civil Service as we now know it. The Government of the day could use this section to completely bypass the Civil Service Commission and the Association by hiring all future employees on a contractual basis. It has been noted that there is to be no limitation on the terms and conditions of the contract, e.g. it's unlimited in amount and it's unlimited in term. The way I read the section it would mean that an employee could be hired for who knows, 25 years, 50 years, at whatever salary might be decided upon, which wouldn't be a negotiated salary or one that the Association would have power to insist that it bargain for and we consider this a very, very serious matter. The Association's right to bargain for an employee would be substantially if not totally removed.

It could be used as an instrument to discriminate between employees and erode their hard won terms and conditions of employment. And so I can't emphasize that too strongly. The present definition excludes any person paid by fees. We don't even like that, but at least that would appear to have some restriction, perhaps restricted to professional people that do charge fees but you would open it up completely with the unlimited definition of just somebody who's hired on contract.

Section 2 of Bill 7 proposes to amend Section 4(1) of the Act to state the Civil Service Commission is to consist of not less than three members. The Association feels that if the number of persons on the Commission is increased, then the Act should prescribe a quorum which would be able to sit at any one time and hear a specific matter brought before it, as well as a maximum number of members.

We would have no objection to the Commission sitting in panels provided there was a quorum.

The Association commends the Government for its intent in enlarging the size of the Commission to include female representation. In addition, the Association strongly suggests that consideration be given to making the Civil Service Commission more independent and free of any suggestion of bias (no matter how unjustified such suggestion might be). The Association's recommendation in this regard is that the Civil Service Commission should be appointed by and be responsible to the Legislature.

Item 3 - This section proposes to amend Section 9 of the Act by the addition of clause 9 (1:1) which in essence states that where an employee's classification has changed, whether it be upward or downward, he shall not be paid higher than the maximum salary for his new classification unless the Cabinet prescribes a rate of pay which is in excess of the maximum pay for the newly assigned classification. The Association is concerned about the power given to the Cabinet to approve salary rates for certain selected individuals in excess of the maximum pay for the new assigned classification. The Association is of the view that where classifications of employment are changed, the pay to which the employee is entitled when his classification is changed should be determined by objective criteria, equally applicable to all employees so affected or potentially so affected and be the subject of the collective bargaining process. It is respectfully submitted that the potentiality for favouritism by the Cabinet is a dangerous amendment to introduce into the Civil Service. Furthermore, this proposed amendment may be in conflict with provisions of the Equal Pay Act and of the Human Rights Act.

Dealing with item 4 in Section 5 of the Bill. This section proposes to repeal the present Section 11 (6) of the Act and substitute a new Section in its place. The proposed wording of the new Section appears at first glance to be substantially the same as the present Section 11 (6). However, the new Section provides that where an employee is demoted through no fault of his own, and those are the words,

(MR. RITCHIE Cont'd) . . . . . he could receive a rate of pay that is considerably less than he earned in his previous position. This could not happen under the existing Section 11 (6) which ensures the maintenance of the employee's salary when he is the victim of a forced demotion under these circumstances. That is a demotion through no fault of his own.

Discretion is again given to the Cabinet to approve a rate of pay for individual employees that is in excess of the maximum rate of pay applicable to a particular classification to which an employee is demoted. This again would grant the Cabinet the right to reward a favourite employee and to punish others of the Civil Service. Individual employee appeals to the Commission can be envisaged by an employee who has been demoted and feels that he should have received a rate of pay in excess of the maximum for the new classification. As a basis for his appeal he would probably be able to cite precedent set by Cabinet in granting some other employee such a reward under similar circumstances.

Once again this proposed amendment could be in conflict with the provisions of the Equal Pay and Human Rights Act. The Association's position is that the present Section 11 (6) should not be amended.

Dealing with Section 6, point No. 5 - this Section would repeal Section 13 (7) of the Act and substitute in its place subsections (7), (8) and (9).

The proposed Section 13 (8) provides that where an unsuccessful candidate for a position is of the opinion that the appointment of another person to the position was based on matters other than merit, then the employee may in writing appeal to the Minister, whereupon the Minister must appoint a person to enquire into and investigate the matter and submit a report back to the Minister; and I might pause there for a moment, because if I read the Civil Service Act, Minister is defined and it simply says "Minister means a Minister of the Crown" so the way we're reading this section is that it would be any Minister of the Crown, whereupon the Minister must appoint a person to enquire into and investigate the matter and submit a report back to the Minister. Thereafter, the Minister is given the power to decide the appeal and his decision is final. This proposed amendment must be read in light of Section 8 of the Bill, which would repeal Section 31 (1) of the Act and substitute a new Section in its place.

Under the Act as it is presently worded any employee who is dissatisfied with a decision of the Selection Board or of a Minister with respect to vacant positions, may appeal said decision to the Commission. However, the proposed re-wording of Section 31 (1) reads as follows:

> "Subject to any other provisions of this Act and accordingly we suggest that the amendment to Section 13 would be another provision of the Act, relating to appeals and, subject to the regulations, an employee may appeal to the Commission, a decision made by an employing authority that is subject to appeal and the decision of the Commission thereon is final."

The proposed Section 13 (8) would clearly come within the exception "subject to any provisions of this Act", in that an appeal would not now be made to the Commission with respect to selections for appointment to vacant positions, but rather to the Minister whose decision is final. The "Minister" is clearly an "employing authority" within the meaning of Section 2 (1) (k) of the Act, Section 1 (a) (i) of the Civil Service Employees' Agreement, and Section 1 (g) of the Departmental Employees' Agreement, and the decision of such "employing authority" will not now be subject, would not now if the amendment went through, be subject to appeal because this decision under the proposed amendment is expressly stated to be final. Section 31 (1) will clearly grant the right of appeal from a decision of an employing authority that is subject to appeal. Accordingly, the combined effect of the proposed Sections 13 (a) and 31 (1) is to only allow an employee the right to appeal to the Minister and not to the Commission as was formerly the case. This procedure is totally unacceptable to the Association because it allows an elected official to be the sole judge of which employee within the Civil Service will ultimately be promoted or appointed to a vacant position. Existing agreements clearly provide that decisions of employing authorities are subject to appeal to the Commission as the final step in the grievance procedure. Existing collective agreements expressly provide that an employee appealing any decision to the Commission has the right to be accompanied and represented by a member of the Association or any other person of his choosing. The proposed amendments to the Act with respect to selection appeals would appear to deny such right to an employee. It certainly doesn't give him that right.

(MR. RITCHIE Cont'd)

Further it would appear that the person who will enquire into and investigate the matter and report to the Minister will have complete discretion in the manner in which he conducts his investigation. The proposed Section 13 (9) gives the investigator appointed by the Minister under the proposed Section 13 (8) all of the powers of the Civil Service Commission as outlined in Section 6 of the Act with respect to holding investigations. It is interesting to note that an investigator will be reporting his findings to a Minister, who may well be the Minister that made the initial decision which led to the appeal being launched. In essence the Minister could be hearing an appeal from his own decision and an affected employee is not likely to accept that a Minister in such a position would be inclined to revoke his original decision. Furthermore, there is no provision for the employee or his bargaining agent to have access to the report of the investigator. As it is often said, justice must not only be done, but must seem to be done, and under these sections we'll submit that it certainly doesn't seem to be done.

The proposed amendments to Section 13 of the Act amount in reality really to there being no appeal. In other words, if you have a Minister making a decision and then your only right of appeal is to that Minister, we say that amounts to no appeal. This is totally unacceptable to the Association. In the interests of amicable relations between the Government of Manitoba and its own employees, the right to appeal a decision of this nature to the Commission and the right to be represented thereon should continue to be embodied in the collective agreement which has resulted from the collective bargaining process. Therefore, this right should not be removed through an Act of the Legislature. To do otherwise could result in a denial of the principles of natural justice and of fair and impartial selection for promotion, based on ability and qualifications.

Item 6 dealing with Section 44 of Bill 7. The Association is on record as favouring the granting of the right of Civil Servants to participate actively in politics at the Provincial and Federal levels, by being a candidate or serving as an elected representative if successful in an election. However the Association is deeply disappointed that there is no provision in the Bill that spells out clearly that a person who seeks political office will not in any way be discriminated against or intimidated by reason of his exercising his rights under the Section.

The Association is also greatly concerned about the ramifications of the proposed Section 44 (2) which is still another example of the apparent effort to legislate executive control over the Civil Service. The Association's position is that the words "and such other classes or groups of employees as may be designated or set out in the regulations" should be removed. This would also take care of the Association concern about the word "or" as used in the phrase that the Association recommends should be deleted. I have to believe it was meant "or" should have been "as" about the word, wait a minute - this should have read, "as may be designated as set out in the regulations". Surely there wouldn't be two alternatives, one as designated or as set out in the regulations. In any case, we submit that this is too broad a power. It would permit the government of the day to, if they were so disposed, to pick and choose who should be eligible and who should not. Pardon (Interjection)... well, classes or groups, maybe we've got an amendment to take out groups now, but we can understand where it says Deputy Ministers and we can understand there may be certain other persons, people who are in confidential positions, of that nature that should be excluded but we say they should be spelled out in the Act and not the broad brush of anybody that's put down in the regulations.

And in that regard, another point that may be just in drafting in dealing with that section, I take it from the Bill that under 44 (1) it was intended that this refer to all political activity, be it Federal, Provincial or Municipal and if that's so, I'm concerned about 44 (2) which says subsection (1) does not apply to Deputy Ministers and such other classes of employees . . . 44 (5) a person who is permitted by this Section to become a candidate in any Provincial or Federal Election and succeeds in being elected forthwith to resign his position as an employee of the Government or of the Government Agency as the case may be. - (Interjection) - And this is what we wanted to have clear. Yes I think I've got it now. Was it intended that under 44 (2) you could, or the government of the day could prevent people from running, Civil Servants from running in Municipal elections. That was my concern and that could just be clarified. I don't think that is the intention.

(MR. RITCHIE Cont'd)

Now point 7, page 8, dealing with Section 12 - The proposed addition of Section 47 (5) appears to be totally unnecessary. Everything referred to in this proposed new Section is we believe already in the hands of the Executive Council or a Committee thereof by virtue of Section 61 (1) of the present Act. The Association is of the opinion that the addition of this Section will only serve to create greater confusion. Mind you, we'd like to see a lot of the powers under 61 (1) reduced but...

Now point 8, dealing with Section 13 - the proposed amendment to Section 57 (5) of the Act will exempt regulations made pursuant to the Act from the requirements of The Regulations Act. And this is a very serious one here. When considering this amendment you must read it in the light of the proposed amendments referred to in Sections 3, 8 and 44 of the Bill as well as the many sections of the Act, the present Act, under which regulations can be made. With certain exceptions, the Regulations Act requires that all regulations are to be filed with the Registrar of Regulations in that a regulation comes into force on the day it is so filed. In addition, the Regulations Act prescribes that a regulation that is not published is not valid as against a person who has not had actual notice thereof unless a Minister or the Cabinet on a particular matter specifically dispenses with the necessity of publication. Under Section 57 (1) of the Act, the Commission is given the power to pass regulations concerning many matters affecting the employment of Civil Servants. And quite frankly, gentlemen, we think this is a shocking situation. We don't know the reason why these particular Actions would be, and the regulations would be, excepted from the application of The Regulations Act.

If it is proposed to dispense with the necessity of publishing regulations pursuant to The Regulations Act, then the Association respectfully submits that Section 57 (2) of the Act be amended to require the Commission to hold a public hearing respecting the proposed regulation and not to leave it to the discretion of the Commission to hold or not to hold such a public hearing. Employees in the Civil Service and particularly the Association as their bargaining agent should at least have the right to be present and make submissions with respect to the making of regulations which may affect the terms and conditions of employment of employees in the Civil Service. In fact, the Association takes the view that all terms and conditions of employment should be the subject of collective bargaining.

Furthermore, when considering this amendment you must read it in the light of the proposed amendments referred to, now we've done that.

Thus the Bill would not only grant tremendous executive control but would also prevent or at least drastically inhibit the opportunity of any interested party to know the manner in which such control was being exercised.

Item 9, Section 14 - Section 14 amends Section 61 (1) (a) of the Act in that the Executive Council or a Committee thereof (i.e. Management Committee) is given the power to administer all those Sections which it presently administers under the Act in addition to the proposed Sections dealing with categories of employment, the pay of an employee where the classification has changed pursuant to the proposed Section 9 (1:1), thus further limiting the powers of the Commission.

With respect to reference to subsections 5(4) and 5(5) that should be respect, the reference to subsections 5(4) and 5(5) is obscure and needs to be clarified. There is no reference in these proposed subsections to the Commission. Perhaps it might be worthwhile to read the existing section 61 so that it follows "Notwithstanding this or any other Act of the Legislature, the Executive Council or a Committee thereof shall administer the presently agreed Section 7, 8, 10, 11, 12, 20 and 22 " and it was proposed that 5 (4) and 5 (5) as in the Bill be put in that section and all 5 (4) and 5 (5) deal with are these new classifications and the definitions of the classifications and as I indicate the Commission goes on to say"And where in those Sections or subsections reference is made to the Commission the reference shall be deemed to be to the Executive Council etc." and I really don't know the background or the purpose of that. I see 5 (4) says"a person may be employed in the Civil Service in any one of the following categories of employment: (a) Regular (b) Temporary (c) Departmental."

Now I would hope that when it says the Executive Council administer that, that's the whole of the Civil Service and the same 5 (5) "The categories of employment mentioned in subsection (4) are defined as follows" and I don't know whether it's an oversight or what the purpose is, but I sure hope that it doesn't just say everybody in those categories now are administered by the Executive Council, because we don't ... the Act, and 9 (1.1) that of course deals, specifically mentions the Lieutenant Governor in Council and we of course don't like that section because of the power it gives the Cabinet.

(MR. RITCHIE Cont'd) . . . . .

The proposed amendment to Section 61 (1) (a) appears to be in direct contradiction to the recommendations of the Government's task force commissioned to enquire into equal opportunities in the Civil Service of Manitoba and who reported in January 1974. Their recommendation on page 44 of that report is as follows:

> "That the present divided central authority for personnel administration should be integrated by restoring to the Civil Service Commission the powers and function for a total personnel program in the Manitoba Government. Further, that staff members, records, and facilities of Management Committee should likewise be transferred to the Commission."

Now, Summary - The Association submits that the publicity given the aspect of Bill 7 which would grant the right to political activity to Civil Servants has obscured the potentially disastrous effect of several other amendments. We submit that the effect of the proposed legislation will be as follows:

1. Section 1 and 3 of the Bill, by exempting therefrom employees who were formerly covered by the terms of the agreement will dramatically alter the scope of the Association's present collective agreement. In addition, this amendment will permit Government to hire even more, if not all, employees outside the terms of the Act and thereby not be governed by the Civil Service Commission or covered by the existing collective agreements, and I can't stress that strong enough.
2. While Section 2 of the Bill proposes to enlarge the Commission to permit female representation, the maximum number of members should be specified in the legislation and members should be selected by and as well as be responsible to the Legislature.
3. Section 4 which gives the Executive sweeping powers where classifications are changed upwards or downwards is most objectionable and the Association submits that in the interest of equality in the Civil Service the reference to approval by the Lieutenant-Governor in Council should be removed from the proposed amendment and such matters left to the collective bargaining process in such instances. This is a complete reversal of previous legislation. The proposed amendments could place great hardship on Civil Servants who may be demoted through realignment of Departments or Divisions. It is submitted therefore that the present Section should remain as it is.
4. Section 5 of the Bill clearly removes the Civil Servants traditional right to appeal selection decisions to the Commission and would substitute what amounts to no appeal at all. The Association maintains this right to appeal to the Commission should be preserved.
5. Section 11 of the Bill provides Civil Servants with the right to engage actively in politics prior to an election. The Association's position is that this right needs to be supported by clear safeguards in the Act protecting Civil Servants against discrimination, intimidation, undue influence or threat of dismissal by reason of their having exercised such right.
6. Section 12 of the Bill appears to be unnecessary.
7. Section 13 of the Bill proposes to exempt the regulations made pursuant to the Act from the requirements of the Regulations Act. The Association reiterates its strong feeling that this amendment not be made.
8. Section 14 of the Bill proposes to grant more power to the Executive and is contrary to the Report of the Task Force on Equal Opportunities in the Civil Service.

So I have indicated that with respect to the political activity and the changes relative to the Commission, the Association is not objecting too strenuously to those sections but feels that they could be buttressed and made better by the suggestions we've made. However, dealing with the other sections - the conclusion the Association strongly urges that the arbitrary and unilateral powers being sought by the employer, the Government is the employer in this case, in many of the proposed amendments could destroy the objective criteria upon which conditions of employment should be determined, not only for Civil Servants but for employees generally and accordingly those amendments should not and must not become law.

All of which is respectfully submitted.

That is the brief of the Association.

MR. CHAIRMAN: Thank you Mr. Ritchie. Are there any questions? I will recognize Mr. Paulley when he comes up to the table to a microphone. There is one at this end Mr. Paulley, if you wish.

MR. PAULLEY: Yes, Mr. Chairman, either the table be extended to take into account all of the Members of the Committee, so some of us do not have to sit at the back row, and it's a very comfortable position for a Minister to be seated in now and again, namely the back row. I do want to say, Mr. Chairman, I appreciate the remarks made by Mr. Ritchie on behalf of the Association. I wonder however, whether or not in the presentation made this evening that Mr. Ritchie or the Association has not drawn to our attention that insofar as the consideration of Bill No. 7 is concerned, in some aspects at least, the Brief refers not to amendments that are being proposed in Bill No. 7 but to sections presently in Chapter C 110, namely the Civil Service Act.

Mr. Ritchie made reference to Regulations and suggested that in the Regulation Section that we should adhere, and that Mr. Chairman, is dealt with on page 8 of the Brief submitted by the Association, paragraph 8 dealing with Section 13 of the Bill, proposed amendment to Section 57 (5) of the Act will exempt Regulations made pursuant to the Act and the requirements to the Regulation Act. I would refer Mr. Chairman to the present Act which says in section 57 (5) and I quote from the present Act not Bill No. 7:

"Notwithstanding anything in the Regulations Act, that Act does not apply to regulations made under this Act."

So that is a provision that is contained in the present Act where it wasn't necessary to adhere strictly to the Regulations Act as I understand previously and if I am correct, that was changed by the Statutes of Manitoba (1960) Chapter 6, subsection 46 where the amendment was made. I am not quarrelling with the presentation made but I really want to point this out that it appears to me that this is not something new that is being proposed.

Now I do not intend really Mr. Chairman at this particular time to deal section by section with the presentation of the Association. I do want to indicate to them however, that many of the points that they have raised in their

MR. CHAIRMAN: Order please. Could I just point out to the Minister that this is the part of our proceedings where questions for the.

MR. PAULLEY: That's what I'm doing by way of question and sometimes one has a little license in delivering a question but if you rule Mr. Chairman, that I should not proceed the way I am, I will cease.

MR. CHAIRMAN: I've been giving you some latitude, but I just wanted to remind you that this is the ...

MR. PAULLEY: Yes, I've been at Committee Meetings before Mr. Chairman.

MR. CHAIRMAN: Proceed please.

MR. PAULLEY: Don't let's pursue it Mr. Chairman, I don't want any ruddy arguments with the Leader of the Opposition or anybody else. I just cease right now.

MR. CHAIRMAN: Mr. Spivak, on a point of order.

MR. SPIVAK: Mr. Chairman, but if I'm correct I may have misunderstood the honourable member when he presented the information. I think it's germane to this particular item that I think we would want to have an interpretation for Mr. Ritchie on this particular clause, the reference having been made to it by the Minister. When he read Section 57 (5) out my impression of what he said, and I stand to be corrected, the Minister can correct me and others who heard him, he said notwithstanding anything in the Regulations Act, that Act does not apply to the regulations made under this Act; but the Act Mr. Chairman reads now "notwithstanding anything in the Regulations Act that Act does apply to regulations made under this Act."

MR. PAULLEY: Oh I'm sorry, I misinterpreted what Mr. Ritchie said. I apologize.

MR. SPIVAK: The proposed amendment would suggest "does not" and this then would be consistent with the argument presented by Mr. Ritchie that the regulation would not be provided ....

MR. CHAIRMAN: Thank you. Mr. Paulley.

. . . . . Continued on next page

MR. PAULLEY: It's okay then. I'm being corrected on that.

MR. BALKARAN: Mr. Chairman, the Act as it existed prior to the revision did have the word "not" in that subsection. But in the revision through some inadvertency "would not" was dropped. Hence the reason for reinserting the word "not" in that subsection.

MR. SPIVAK: Let me understand this so we understand it. Are you suggesting that the Act that was passed had "does not" and the printed Act that we have has "does" and "does not" is really the way in which the Act operates.

MR. BALKARAN: That's right. The basic reason for this, Mr. Chairman, is that at the end of every concluded agreement when a pay plan is established it's a voluminous document and it has never been published in the Gazette and that is the reason for reverting back to this "would not".

MR. PAULLEY: I recall it now.

MR. CHAIRMAN: Mr. Ritchie.

MR. RITCHIE: I can answer those questions. The copy of the Act that I have, not only does it not have the word "not" but it also has the heading "The Regulations Act to apply" and the explanation given by legislative counsel would tend to emphasize what I'm saying, that things should be published, these regulations should be published so we can see what's going on. If there's some suggestion that something wasn't published and therefore we didn't become aware of it it's an indication of why it should. But certainly we would have made a submission presumably at that time had we known that that was the intention.

MR. PAULLEY: Mr. Chairman, might I ask Mr. Ritchie in the reference of the brief to 61(1) and also there is reference in the brief, Mr. Ritchie, that you presented on Page 9 (a) dealing with the matter of a task force report that was submitted to me and is under consideration by the government. Would you not agree that the provisions under subsection 61(1) would have to apply at least until such time as changes were made in the delegation of the authority from a Committee of the Executive Council and would you not agree that that could conceivably be a reason it's not contained in Bill No. 7?

MR. RITCHIE: Well with respect, Mr. Minister, since the bill is up for amendment I suppose the Association's position would be that it would like to see 61(1) amended to take all that power away from the Executive Council and to repose it with the Commission.

MR. PAULLEY: But the point -- all right, I'll argue that in Committee but not with Mr. Ritchie -- the point that I'm trying to - the reason for my questioning is the absence of that being in Bill No. 7 is because of a decision not having been made and so subsequently possibly required an amendment to The Civil Service Act. That's the point that I'm trying to make, Mr. Cathcart.

Mr. Chairman, I again say that it's not my intention at this particular time to deal with the points raised by Mr. Ritchie on behalf of the Association. I have indicated that I intend to propose amendments to the Act that could conceivably meet many of the points raised by the delegation.

MR. CHAIRMAN: Have you finished your line of questioning, Mr. Paulley?

MR. PAULLEY: I was just asked a question by a committee member whether those amendments will be available to members of the Committee. They will be in due course so that they can have an opportunity of studying them. But they're not available this evening.

MR. CHAIRMAN: Thank you. Mr. Asper.

MR. ASPER: Mr. Chairman, I'll question the brief only on what it says and not what it doesn't say although I would ask if I can get an expression of opinion from the MGEA on some matters that are not in the submission but I'll wait your ruling on that when I ask the question.

Can we assume on Page 11 in your summary, Paragraph 6, you make the point that Section 11 grants the civil servant the right to participate in partisan politics prior to an election and you ask for some protection against discrimination for those who do. Are we to take from the silence relative to those who don't that you're not concerned with seeing protection built into the Act for those people in the Civil Service who do not take part in politics and may feel discriminated against subsequently.

MR. RITCHIE: Well I would hope, Mr. Asper, that that would follow.

MR. ASPER: It would be the MGEA position that the protection you seek is for those who do take part not to be discriminated against and also the same protection

(MR. ASPER Cont'd) . . . . . being afforded to those who don't take part.

MR. RITCHIE: That's right. It should be a right and it can be exercised at the will of the employee and he shouldn't suffer whether he exercises it or he doesn't.

MR. ASPER: Would the MGEA support the idea of size of the Commission being expanded and the people on the Commission being appointed in order to give you the safeguards that you're concerned about, being appointed by status rather than by government discretion. By that I mean somebody appointed by the Manitoba Federation of Labour, somebody appointed by Chambers of Commerce or the University of Winnipeg or what have you, Farmers' Union, one from the MGEA and so on. Would you support the idea that the Civil Service Commission should be insulated to that extent, that the members of the Commission be - or at least a majority or some substantial minority of the Commission be appointed by designation than office. Such as you know automatically the Chairman of the Manitoba Federation of Labour, the Chairman of the Manitoba Chamber of Commerce and so on. Rather than having the government have - any government - having the power to discretionarily appoint commissioners.

MR. RITCHIE: Well I think you'll see from the brief what the Association would like to see is as completely independent a Commission as you could make it. That's why we have suggested that if the appointments had to be approved by the Legislature then this would - this is the best solution we can come up with to it being independent.

Now as regards specific categories I don't know if the Association has dealt with that. I wouldn't want to make a statement.

I'm instructed that the Association has not dealt with it in the form that you've suggested but I can only reiterate the idea is to try to achieve a completely independent Commission that would have security of tenure which of course they have now but that they could exercise their duties and functions completely free of any bias and that they would be respected by all concerned as being a body that does exercise independent judgment.

MR. ASPER: Well, Mr. Chairman, I won't pursue that line. We will be proposing an amendment at a subsequent point in the discussion and perhaps we might have Mr. Ritchie comment on the amendment at that time on behalf of the Association.

Is the Association familiar with Section 52 of the Saskatchewan Act dealing with the right of members of the Civil Service to participate in public life?

MR. RITCHIE: Well not being able to ask the 12,000 members - but I would have to say Mr. Asper I'm not familiar with it and since I'm the one who is put up here to answer the questions I have to tell you I'm not.

MR. ASPER: I wonder if we might ask the witness, Mr. Chairman, to consider Section 52 of the Saskatchewan Act and be prepared if the Committee is still in session to comment on it because we will be moving an amendment to incorporate Section 52 of the Saskatchewan Act which is the kind of protection we believe the MGEA seeks

MR. PAULLEY: Mr. Chairman, just on that point, I believe it's a point of order.

MR. CHAIRMAN: Mr. Paulley on a point of order.

MR. PAULLEY: The witness I don't expect will be called back to consider any amendment that will be proposed to the bill. It would be a most unusual procedure if we did that. Now I have indicated certain amendments will be forthcoming as far as the government is concerned and of course every other member of the Committee has the same license but I don't think on the point of order, Mr.Chairman, that we'd get into a situation where we would have opinions expressed on suggested amendments by the representative that we have before us. In all due respect to Mr. Asper I would suggest that in the brief presented by Mr. Ritchie reference was made to that very point and it would be up to the Committee then to consider what type of an amendment, if proposed, would accommodate the views of the Association.

MR. GRAHAM: Mr. Chairman, on the same point of order. I believe tonight we had witnesses here commenting on proposed amendments and to be consistent I think we should carry on that procedure.

MR. PAULLEY: There will be no difference in the procedure I am suggesting.

MR. CHAIRMAN: Thank you. Mr. Asper did you have another question?

MR. ASPER: Yes, Mr. Chairman. Just one then I'll pass to someone else who wants to question. Do you read the Act or does the MGEA read the Act amending The Civil Service Act to permit members of the Civil Service to solicit political funds on behalf of political parties?

MR. RITCHIE: The section you are alluding to . . .?

MR. ASPER: 44(1).

MR. RITCHIE: It doesn't appear to be specifically mentioned, Mr. Chairman.

MR. ASPER: I'm sorry. 44(4). The concern expressed in the Legislature over 44(4) by the Liberal spokesman was that this section would give the authority or validity to a civil servant who has discretionary power over citizens in Manitoba who might be fund raisers for a political party and then might be challenged as to the method by which they have been influenced to exercise discretion to grant licences or permits or approvals and that sort of thing. Do you read 44(4) with any of that kind of concern?

MR. RITCHIE: Yes, I think there should be concern in that regard. Perhaps dealing with your earlier suggestion, if there was a strong safeguard built into the Act for people whether they engage in political activity or don't engage in political activity, that might be so worded that it was clear to any civil servant who has solicited for funds that if they didn't contribute this wouldn't in any way be held against them. I think there is a position also on this section with respect to the MGEA and I just want to verify it.

In that regard although it's not mentioned in our brief the Association takes the position that any such soliciting for funds should not be done during working hours of the civil servants solicited.

MR. ASPER: Well 44(4) doesn't deal with the civil servant who has solicited for funds, it deals with the civil servant actually going out to solicit funds. Now it's not on his own behalf, it's on behalf of a provincial or federal party or candidate.

MR. RITCHIE: I see your point.

MR. ASPER: Would the MGEA support the position that there should be an absolute prohibition on a civil servant soliciting funds for a political party at any time whether he's on leave of absence or otherwise.

If I could just explain. Our concern as I've been saying off the record to the Minister of Labour is that regardless of what party is in office we have a very abiding concern that a man who has power and has the right to return to that power as a civil servant might become the bagman for a political party under 44(4). If I were applying for a liquor licence and the civil servant happened to be in charge of the liquor licensing division and he sought a political contribution from me for the party in office I would be intimidated or I might be intimidated into making a donation because he has the power to license or not license and it's a fully discretionary power. We would ask the MGEA position on that. -- (Interjection) -- Or road contracts or whatever.

MR. RITCHIE: I certainly understand your point now. The concern that I have in answering your question is if you're going to permit civil servants to engage in political activity and then you start to impose restrictions on them I think then the civil servant feels that he might be being discriminated against that he can't fully participate. I can see the concern you have and perhaps something could be built in like that but I'm a little concerned about having two classes of people that can engage in political activity, some with more rights than others.

MR. ASPER: Well but don't we have that now with the judges?

MR. RITCHIE: They're not permitted as far as I know to engage in political activity.

MR. ASPER: That's my point. That's my point. They, by taking on a position of power in the community, give up that right to full citizenship so to speak.

MR. PAULLEY: They have to decide who is elected.

MR. ASPER: Mr. Chairman, I think that's the most astute observation of the evening. The concern being that we I don't think would like the MGEA or anyone else to be in a position where the man who makes the decisions that affect our lives should also be the bagman for the party. We would propose that he be free to raise funds for his own campaign but not for the party. And that's what the Section we think says.

MR. RITCHIE: Well wouldn't you have the same concern though if he was raising it for himself?

MR. ASPER: Yes. We would as a matter of fact hope to see support for an amendment saying that in so doing he would not raise funds from persons with whom his work for government takes him into a business contract.

MR. RITCHIE: The MGEA is on record as favouring civil servants being permitted to partake in political activity and while I appreciate your point I would be concerned as representing the MGEA that they not have full status as any other person who might be seeking office.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: Mr. Chairman, first of all I think Mr. Ritchie should be congratulated. I think he has given us a presentation that will give us the opportunity to deal with the particular sections, many of which have already been mentioned in the House. But I agree with the preamble here that to a certain extent it's been lost because of the argument of the politicizing of the Civil Service and the arguments relating to the political involvement. But I want to put this question to Mr. Ritchie because I think it's pretty basic and I put it to him on the basis of what appears to be the position of MGEA with respect to the political involvement of civil servants.

I take it that the position of the MGEA is that they will accept whatever the Legislature decides, that the Association has a difference of opinion as to whether they should or should not be involved in political life and the degree to which they should be permitted to be involved in political life and that the position is that they will accept the legislation that will be approved by the Legislature and will react accordingly, that they're not prepared as an Association really to take a position one way or the other as to the extent of involvement or as to any limitation as to the exercise of political activity.

MR. CHAIRMAN: Mr. Ritchie.

MR. RITCHIE: Well if I can answer for the Association in my own way - as some of you may know a resolution was passed by the Association supporting the right of a civil servant to participate in political activity. I'm informed that that resolution was not unanimous so there's obviously a difference of opinion among civil servants but the resolution was passed and presumably the thought was that if the right were in the Act then each individual civil servant could decide whether or not he wanted to participate.

A MEMBER: That's the best way.

MR. SPIVAK: Can I ask for one further clarification? When the resolution was passed to participate in political activity was "political activity" defined? Was it understood that that meant the full opportunity for involvement in political campaigning along with the ability to be able to run for office and not be prejudiced because one has run for office, the ability to be able to raise funds on behalf of a political party. Was that clearly understood at the time that that resolution was passed?

MR. RITCHIE: Maybe Mr. Metcalfe who is present should . . .

MR. METCALFE: Yes. Well gentlemen I would like to clear up one misapprehension that seems to be going around the table. This is not a resolution that was passed by 200 delegates of your convention, it was an every-member plebiscite through a mailed ballot. We got about 6,000 returns and the return was about two to one in favour of a very broad statement which said, "I agree that civil servants should have the right to actively engage in politics at the federal and provincial levels." That was the statement on the ballot and that's what they returned.

MR. CHAIRMAN: Order please. Before you continue I wonder if the gentleman would give us his name for the record.

MR. METCALFE: Garth Metcalfe, Executive Director of the Manitoba Government Employees' Association, I'm sorry.

MR. CHAIRMAN: Mr. Spivak.

MR. SPIVAK: What I don't understand, again in the sort of simple question that was asked on the ballot and was approved, was it really clear what political activity meant at that time, or are you in a position to say that it was clear that it meant the ability to be able to campaign for candidates, to raise money for candidates, to become involved in working for a political party during an election and prior to an election while at the same time carrying out the functions as a civil servant within the government?

MR. METCALFE: I can't really say, Mr. Spivak. It was clear to me because I helped phrase the ballot but what individual members reading that ballot took out of it I really can't say. It was that broad and general and I suppose people answered it in terms of their own particular thinking on the subject.

MR. SPIVAK: Has there been any response within the Association, the MGEA at least, to the present legislation? Has there been a response within the MGEA to yourself or to the members of the Executive with respect to this particular Act dealing with the political involvement as opposed to the other . . .?

MR. METCALFE: No. There is very little comment regarding Section 44. Lots of comment about some of the other matters we've presented tonight.

MR. CHAIRMAN: Mr. Spivak? Mr. Graham, did you indicate you wanted to ask something?

MR. GRAHAM: No, I didn't.
MR. CHAIRMAN: I'm sorry. Mr. Bilton.

MR. BILTON: Mr. Chairman, through you to Mr. Metcalfe. The brief itself covers a wide field of activity and it is very well set up. You did mention 44(1) and that is my concern and I would like your opinion, particularly to do with this ballot. I'm sure you've read it, particularly subsections (a) and (c). Let's take (c), the speaking or writing on behalf of a candidate or a political party in any election or any by-election and in doing so he does not reveal any information or matter concerning the Department, Branch or Agency by which he is employed or any information that he has procured or which comes to his knowledge solely by virtue of his employment or position. Would the Association agree that puts tremendous pressure on an individual that might run for office?

MR. METCALFE: I would agree, sir. But again we're in the position of having to say that the civil servant or the employee of the government's position on this whole matter of political activity is that they should not be treated any differently than any other citizen of the province. I can say that anybody in that kind of a vulnerable position that chooses to run does so at his own risk.

MR. BILTON: One further question. What does this do to his Oath of Office when he takes the position by Oath?

MR. METCALFE: Well I think that that and the Oath of Office, that this relates somewhat to Mr. Asper's question about the soliciting of funds and I for one sort of took the implication that in soliciting funds a civil servant who might try to use his position as a club over some organization or business in Winnipeg would fall under 44(1)(c). Now I was probably in error in making that broad inference but that's the one I personally took.

MR. BILTON: Well as far as I'm concerned do you not agree that the civil servant now has the right to run for public office?

MR. METCALFE: I don't think the Act says he can run for public office without resigning in other than municipal elections. I think the present Act says he must resign if he chooses to run at the provincial or federal level.

MR. BILTON: The Association doesn't agree with that, that he should resign if he's running for public office.

MR. METCALFE: No, we agree with the leave of absence latitude that's built into the bill.

MR. CHAIRMAN: Mr. Marion.
MR. MARION: Thank you, Mr. Chairman.
MR. CHAIRMAN: Will you speak into the microphone please.

MR. MARION: Thank you, Mr. Chairman. My question to the witness would be: what position does the MGEA take with respect to the sensitivity of certain positions within the Service in becoming involved in political activities? Does it qualify that there are some positions much more sensitive than others or not. Because the bill itself points out that at the level of Deputy Minister we're withdrawing the right of running for office so there is a sensitivity aspect covered in Bill 7 itself. How does the MGEA react to that . . .

MR. CHAIRMAN: Mr. Ritchie.

MR. RITCHIE: Well we've attempted to deal with that in our brief. We feel that if people are to be excepted from this provision it should be clearly spelled out so we know who it applies to and then be able to deal with those respective positions. The Association doesn't represent Deputy Ministers so we say that they have a right to come and speak for themselves.

MR. MARION: But there are still positions of much higher sensitivity than others with respect to the public and you have no comments to make in that regard.

MR. RITCHIE: Well we say to the drafters of the bill, you tell us who you want to exclude. Don't just put "by regulation" and then we will express or like the opportunity to express our views as to whether or not there is good reason for such people to be excluded from the broad application of 44(1).

MR. MARION: You alluded to the report on the task force for equal opportunities in the Civil Service and I read that report very intently. Would you say that if the bill did to the Civil Service Commission what the task force requests it do would you feel that that would give you the kind of assurances that the Civil Service would not be politicized. Would you be satisfied with that kind of legislation - that recommended in the task force.

MR. RITCHIE: Well that's a pretty all-embracing question. What we would like to do and what we intend to do is to prepare an MGEA brief on the situation and

(MR. RITCHIE Cont'd) . . . . . to present it and at that time we would deal with all aspects of it. But I can't just take a report about that section and say generally that's acceptable or it's not acceptable.

MR. MARION: Mr. Chairman, one last question. I will quote from the area that I am referring to. At present and even in Bill 7 there is a duplication of authority. Certain aspects are covered by the Civil Service Commission, other aspects are covered by the Lieutenant-Governor-in-Council or Cabinet.

I quote now: "The present divided central authority for personnel administration should be integrated by restoring to the Civil Service Commission the powers and functions for a total personnel program in the Manitoba Government." That's specifically now what I . . .

MR. RITCHIE: That's specifically and it's specifically referred to on Page 9(a) of our brief. We support that position. Yes. It's quoted. Their recommendation on Page 44 of that report is as follows: "That the present divided central authority. . ." etc. down to "should likewise be transferred to the Commission." So with respect to that specific proposal we adopt that.

MR. MARION: Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you, Mr. Ritchie. Any more questions? Mr. Asper, did you have a question?

MR. ASPER: Yes, I just have one. In your comments on Section 13 to do with the right of appeal I take it the position of the MGEA, from your brief, is that if the MGEA is satisfied that the structure of the Commission is independent that it would be seeking appeals exclusively to the Commission. Is that correct?

MR. RITCHIE: Yes, I believe that . . .

MR. ASPER: Does the MGEA consider the structure of the Commission as it now stands by Bill 7 as amended, would that constitute in your mind an independent Commission or would that Commission be simply an extension of the governing party?

MR. RITCHIE: What we've tried to say in the brief, that the Commission should be made to appear as independent as possible. We're not saying that it's not independent but it should be clear to all that it is independent. That's why we've suggested that it have the - the appointments have the approval of the Legislature and were that to be so the Association would accept that the Commission would be a fair body to deal with appeals. I think we've tried to make it clear that we feel that the Executive Council has too much authority, unilateral and potentially arbitrary, and that this should be reduced in the area of terms and conditions of employment. They basically are the employer and that these matters should be the subject of the collective bargaining process.

MR. ASPER: And if you aren't satisfied that the Commission as structured then is independent in the manner you describe or in some other manner which may be brought into the bill would you agree then that appeals be to the courts? You know or some other . . .

MR. RITCHIE: I presume that the question -- and the only way I can answer it is the MGEA rather than the . . .

MR. CHAIRMAN: Mr. Ritchie.

MR. RITCHIE: We certainly have no fear of the courts. We do feel that this is the area that it could be extended, if it was covered by the collective bargaining process then it would be covered by the collective agreement. The appeal procedure could then be incorporated in the agreement and the grievance procedure could be followed through and agreed upon procedure agreed to - agreed upon procedure agreed to within the agreement. It's not uncommon to see the -- at least the courts appoint who might be the final arbitrator. This would certainly be acceptable.

MR. ASPER: Okay.

MR. CHAIRMAN: Thank you. Does that conclude your questions?

MR. PAULLEY: I have one, Mr. Chairman, if I may to Mr. Ritchie.

MR. CHAIRMAN: Mr. Paulley.

MR. PAULLEY: As I understand the suggestion made by Mr. Ritchie that the Legislature would make the appointment of the members of the Civil Service Commission. Given a majority government then that of course naturally would follow that it is a government appointment notwithstanding there may be a few names bandied around but in the final analysis the responsibility would rest with the government of the day insofar as the appointment is concerned. My question is: would that not be a reasonable follow-up, unless of course we did have a minority government at the time of a vacancy on the Commission.

MR. RITCHIE: Well, Mr. Minister, I've heard arguments by politicians who

(MR. RITCHIE Cont'd) . . . . . say that it wasn't the responsibility of the government, it was the responsibility of the Legislature, the Legislature did this or that. I've seen comments made by government members to that effect and given the fact that there is a majority government certainly if the government was determined to put something through it could do it but it could then be the subject of legitimate debate in the Legislature and it would be a function of the Legislature rather than a particular opposition member having to suggest that the government made a bad appointment or something. I think that it would at least be a legitimate discussion for debate and what I'd contemplate is something like hopefully that it would end up, even though we have the parliamentary system and government rules, but that there would be a meeting or a committee and the appointments could be examined, the people that are put forward by the government and recommended they could be examined by committee members and an effort made to ascertain that they were independent and unbiased. I would think that in that way the government of the day - I'm not speaking of any particular government - would exercise, exert its best efforts to get independent people so that the government then would not be embarrassed concerning the persons that they propose appointing.

MR. PAULLEY: Further, Mr. Ritchie, though would you not agree that in the final analysis it would be a decision of the government in a majority Assembly.

MR. RITCHIE: Yes.

MR. PAULLEY: Are you aware of the provisions contained within The Civil Service Act at the present time dealing with the other end of the spectrum, that is the dismissal or suspension of a member of the Civil Service Commission notwithstanding what particular government may have appointed that individual, that it can only be dismissed or the suspension sustained by a two-thirds majority of all members of the Assembly.

MR. RITCHIE: Yes. And I think I recognized that in the brief, in putting it forward, that they are responsible to the Legislature and I'd like to go the step further and have the appointments approved.

MR. PAULLEY: That's all I have, Mr. Chairman.

MR. CHAIRMAN: Thank you. Mr. Spivak.

MR. SPIVAK: One point, Mr. Ritchie. Are you familiar with the way in which the Legislature appoints the Ombudsman?

MR. RITCHIE: I have to say I'm not.

MR. SPIVAK: Well in that case what happens is a select committee of the Legislature agrees on the name of the nominee and then he's approved I believe by Order-in-Council. In effect it is negotiated among the parties within the Legislature. Would you be prepared to accept that procedure in which all parties of the Legislature will have negotiated and agreed on the appointment to be a means to have the independent and the involvement of the Legislature as the procedure to be followed in interpreting what your original intention and direction appeared to be.

MR. RITCHIE: Certainly I would feel that that would go - would be a large improvement over what exists now and it appears to be, although I'm not intimately familiar with it, the type of suggestion I'm making.

MR. CHAIRMAN: Thank you. Mr. Sherman.

MR. SHERMAN: Thank you, Mr. Chairman. I'd like to ask Mr. Ritchie whether the MGEA is entirely satisfied with the leave provisions as set out in Section 44, particularly subsection (3). As I read 44 it has struck me that it's only necessary for a civil servant to go on leave provided that he or she wants to become a candidate in a provincial or federal election. But as far as speaking or writing on behalf of a candidate or a political party there is no requirement that leave be applied for. I would like to ask the witness, Mr. Chairman, whether the MGEA reads that section the same way or whether it's the Association's understanding that the desirability of leave taking would apply to - across the spectrum of political activity. 44(3) makes specific reference to leave of absence as it relates to a person who proposes to become a candidate in a provincial or federal election. But it doesn't say anything about a person who is elected although I suppose by implication it would apply while that person were proposing to become a candidate, it doesn't clearly say that it applies after he or she is elected and it certainly doesn't say that he or she should ask for leave if they want to go out and actively speak, write and campaign on behalf of a federal or provincial candidate.

MR. RITCHIE: I would take on the first point that we're talking about in the future with this legislation so that presumably it would apply to everybody because it wouldn't be a matter of an existing candidate, a person who proposes to be

(MR. RITCHIE Cont'd) . . . . . a candidate in a federal or a provincial election. I think this is probably well enough drafted there.

I'd have to defer to Mr. Metcalfe on the second thing as to whether in the referendum they were dealing with more than political activity in the sense of being a candidate in the election.

MR. CHAIRMAN: Mr. Metcalfe.

MR. METCALFE: I think we would agree with the implication you read into the present legislation, Mr. Sherman, and that the leave of absence would apply to only those who were successful and nominees in an election. I see no reason why a civil servant can't put a political sign on his front lawn during the election campaign without having to go on leave from the government service by so doing. That may be a ridiculous example but . . .

MR. SHERMAN: Well, Mr. Chairman, I certainly don't suggest to Mr. Metcalfe that it's a ridiculous suggestion but I would suggest with respect that it begs a greater question. There is a substantial difference between putting a sign on your lawn as I think Mr. Metcalfe would agree and actively writing, speaking and campaigning for a party which implies an activity that takes place during the working day as well as during the hours of the non-working day and implies an activity that would have some - no doubt - some effect on one's colleagues, one's working associates. I just wonder whether - let's accept for the sake of argument the premise that the Association believes that its members should have the right to run for political office and be politically active. Does the Association go beyond that point and say that it's also in the Association's best interests and the province's best interests that its members should be able to actively campaign without taking leave of absence in an election?

MR. METCALFE: Yes, you get me in kind of a position because I'm speaking for some 12,000 people right now but I think I'm going to answer the question in this way, that we're quite happy with the bill as it stands where the leave of absence requirement applies only to those who seek to run politically at the provincial and federal levels.

MR. SHERMAN: Well that answers that question, Mr. Chairman. I have one other question I'd like to put to the Association and that is - perhaps to Mr. Metcalfe while you're at the podium. Mr. Metcalfe, through you, Mr. Chairman, to Mr. Metcalfe, does the Association feel that there is anything discriminatory in the proposed legislation in Section 44 in that it, while purportedly opening up areas of political opportunity to some civil servants, by implication will close those areas of opportunity to others. In Section 44(1) - Section 44 subsection (1) and subsection (2) . . . open up a wide discretionary area for the Executive Council in terms of determining who in the Civil Service can. But I just wonder whether the Association doesn't feel that it's somewhat discriminatory and that it might deny opportunities that now are available to certain employees of agencies and certain civil servants. I believe I'm correct in suggesting there's nothing in the legislation right now that prevents a civil servant or an employee of a government agency from campaigning for political office if he or she wishes to do so. But does the Association not infer from 44(2) that there is a danger of a discrimination here?

MR. METCALFE: Our objection to that particular section is the tail end of it that does give, we feel, wide powers to the government to pretty well say to any individual employee that they can't participate. But I think the Association agrees that in regard to the specific positions mentioned which are of a very senior nature in the government service that we would probably agree the government has some degree of responsibility in designating Deputy Ministers. So you know it's discriminatory but . . .

MR. SHERMAN: But in other words what you're saying on the one hand, that you believe that civil servants should have the right that every other citizen of Manitoba has but you're saying but only some of those civil servants should have that right. You're not giving that to every civil servant.

MR. METCALFE: There's no excuse for any kind of discrimination but we're referring to a very small group of people.

MR. SHERMAN: But who is going to determine who those senior civil servants are?

MR. METCALFE: Well I think the bill in terms of the very senior ones has said Deputy Ministers. Is that not right, Mr. Minister?

MR. SHERMAN: Yes but you don't just say Deputy Ministers.

MR. METCALFE: Oh I know but we're objecting to the tail end of that though where it says that by regulation any other person can be denied the right.

MR. SHERMAN: Yes but I would like to see you object to more than just the term "regulation".

MR. GREEN: Is that a question?

MR. SHERMAN: Well perhaps I could ask Mr. Ritchie how much further do we go beyond Deputy Ministers in your view.

MR. GREEN: You would like to see them listed.

MR. RITCHIE: We submit that if the government wants to make a position that they are concerned about a particular area, that they should spell out in the bill just who they feel should be excluded and then they would have to argue why they should be excluded. You know when you talk about discrimination in that regard those of us involved in labour relations know that for instance there are certain employees who are excluded from bargaining units because they have access to confidential information and things of that nature. So you can't have a perfect system where everybody can have - I hate to say that - equal rights but there are situations that do crop up that require an exception. But I hope we've made this point clear. We say this bill should not pass in its present form. We don't object to Deputy Ministers but we say that the bill should spell out clearly who else should be excluded and the proponents of the bill should be required to justify why those people should be excluded.

MR. SHERMAN: One final question, Mr. Chairman. Do you, Mr. Ritchie, then agree with Mr. Cathcart that the requirement for leave taking should only apply to the civil servant who wants to become a candidate?

MR. RITCHIE: I think Mr. Metcalfe has really answered that question and that's the answer of the Association.

MR. CHAIRMAN: Thank you. If there are no further questions thank you Mr. Ritchie; thank you Mr. Metcalfe. There was one other person indicated a wish to speak. Has Mr. Veitch left? In that case he left me a note which I will read into the record on his behalf. He represents the Manitoba Trucking Association and he says, The Manitoba Trucking Association is interested in Bill 20, Section 258 (1) to (6). We support the adoption of these sections as very necessary to the viability of the trucking industry in Manitoba and request that these sections be approved. In the interest of time I will not submit any further argument. It's signed John Veitch, the Secretary-Manager of the Manitoba Trucking Association.

Before we rise there's one other point. May I have your attention for a moment please. It was indicated to me that there were persons interested in making representation on Bills 13, 14 and 27 but due to the absence of the Minister I assume that these people will be given an opportunity to address the committee at a later sitting.

Committee rise.