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Legislative Assembly of Manitoba

STANDING COMMITTEE

ON

LAW AMENDMENTS

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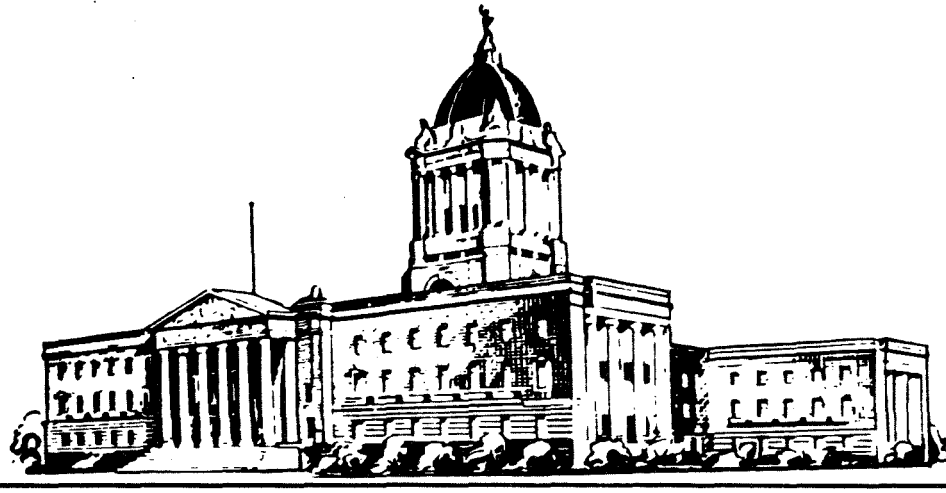

MONDAY, 7 JULY, 1980, 8:00 p.m.

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Thirty - First Legislature

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THE LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Monday, 7 July, 1980

Time 8:00 p.m.

CHAIRMAN Mr. J. Wally McKenzie (Roblin).

MR. CHAIRMAN: The committee will come to order. We have a quorum. I have before me Bills 12, 37, 38, 39, 51, 59, 85, and 94. I have Mr. Walsh wishing to speak to Bill No. 59, and Mr. Arnold and his group have asked if they could have their presentation deferred to a later date on Bill No. 85; they're not prepared to speak tonight. Have I an agreement from the committee that they be prepared to come at the next meeting of Law Amendments and make their presentation. Agreed? Mr. Arnold, that's okay.

Mr. Uskiw.

MR. SAMUEL USKIW (Lac du Bonnet): Mr. Chairman, you may want to see whether there is anyone else who wishes to make presentations . . .

MR. CHAIRMAN: I have Mr. Walsh who indicated . . .

MR. USKIW: Or anybody else.

MR. CHAIRMAN: Are there any other citizens here that wish to make presentations on any of these bills tonight? Then I'll call Mr. Walsh to deal with Bill No. 59.

BILL NO. 59 AN ACT TO AMEND THE FATALITY INQUIRIES ACT

MR. WALSH: Mr. Chairman, I'm here today on behalf of the Manitoba Association of Rights and Liberties, an organization that I understand should be setting up its own office in your building in order to keep pace with the representations it's making on various pieces of legislation. Be that as it may, the Civil Liberties group in Manitoba has grave concern about the changes that are being proposed to The Fatalities Enquiries Act. This Act has been debated pretty thoroughly in the Legislature and many of the points that I am going to make today have been made before. But what I would like to do, and I don't propose to be lengthy in my remarks, is to address certain comments as to the rationale, the reasons for the Act being in existence in the first place and the values that have to be considered when looking at amendments and then try and relate the amendments to those basic statements of principle.

Now it's my submission that the reason for the Act is because, in Canada, and in Manitoba, we have a view of life and a belief in the sanctity of life, and consequently, the state is justifiably concerned when any of its citizens meets death in a sudden or in a way that isn't natural, as it were.

Secondly, to the sanctity of life, we want to have confidence in the state institutions that exist that have to do with people when they meet an untimely or inappropriate death. And finally, we want law enforcement accountability when a person dies in the hands of a law enforcement agency. And possibly, and though I don't state this is a principle absolutely, we are concerned with product safety. And consequently, we are very much concerned when for any reason due to a malfunctioning product, someone meets an untimely death.

So those are all the rationales for a Fatalities Enquiries Act. The other basic values that are to be considered when drafting an Act, if we were to start from the beginning, is to make sure that interested parties are heard, so that when there is a hearing into a fatality, we are concerned that anybody who might be involved or affected by the outcome of the inquiry, has an opportunity to play a role, call witnesses, cross-examine witnesses, in the course of the hearing. Also we're concerned that any party who has rights outside of the Act, such as the right to be silent if they're possibly an accused person, that those rights have to be protected as well.

So to sum up the platform that I'm putting before is that we have this notion of the sanctity of human life and the need to assure citizens when people meet an untimely death, particularly if the state is in any way involved, and we also want to be concerned that anybody who is involved as a result of the death has an opportunity to present his or her position and to cross-examine and call witnesses.

Now, if you start from that point and you follow the logic, you say when should there be an inquest? And the answer to that question, I suggest to you, is that there should be an inquest whenever the public may have cause to question the circumstances of a death; whenever you know, just in your day to day dealings, when your eyebrows would be raised, when your concern would be provoked, about a death, and that's when there should be an inquest. And you can't exhaustively catalogue those kinds of instances. Suffice it to say that where there's a death within an institution, where there's a product liability problem, where there's a trade custom that's suspect or where the police power of the state is involved, there should, as a matter of course, be an inquest. However, where there's a traffic fatality or a crime, where the perpetrator of the death is known and particularly where the perpetrator of the death is charged with a criminal offence, then one can say, relatively confidently, that generally speaking there doesn't have to be an inquiry in those kind of cases.

Then we get down to the nub of the amendments, which I respectfully submit, with all deference to the presenter of the amendments and to the consideration that's thus far gone on, are regressive and retrograde in their presentation. Because I ask you this question, and ask you to answer it. Is that, who should decide whether or not there should be an inquest? Whose decision should it be? From what forum should the decision be forthcoming? There are three possible forums: a) a prosecutorial authority; or b) a bureaucrat authority; or c) a judicial authority. Now, it seems to me, as a lawyer, that the prosecutor's job is to investigate and lay charges. That the judge's job is to hear evidence and resolve

issues of fact and determine blame and liability. And that the bureaucracy's job is to initiate the process. So, as between the three possible, and that's an exhaustive catalogue of persons who should be responsible for initiating an inquest, it seems to me that the government bureaucracy is obliged to do that, and that's the way the present system is set up.

But that is not the way the present system works. I had occasion to be involved, as a retained counsel, for a family in Sidney, Manitoba, that had a son die at the hands of a police officer. An inquest was held and it was ruled that the officers acted properly and responsibly. I'm not here to retry that case, in any way, shape or form. What I am here to remind you of, is that day after day in the newspaper, headlines said 'Attorney-General decides not to hold inquest.'' 'Attorney-General will make up his mind later whether or not an inquest is to be held.'' And, day after day, the headlines read what Mr. Mercier had to say about whether or not an inquest should be held. Yet, anyone who would take the time to read The Fatalities Inquiries Act as it's presently constituted would find out that he had no business making those decisions at all. Because the present Act, which you don't propose to change at all, sets out the process for a decision and the process is to be made by an administrator. The Attorney-General can order an inquest where none has been ordered but nowhere do I read there being provision in the Act for him to stop an inquest. So what we have now in the province of Manitoba, if the last instance is to be regarded as authoritative, is an Attorney-General who can arrogantly, who can arrogate onto himself the decisions as to whether an inquest is held or not. It seems to me that that is not right. That the prosecutorial authority is not the source of this kind of decision making.

Then we look at the present amendments and MARL has presented a brief so that it's set down in writing for you, but I have a great concern that the changes, that the two major changes, one doesn't go far enough and the other is regressive. The one that doesn't go far enough has received much publicity and much discussion, and all I can say is that the Manitoba Association for Rights and Liberties falls on the side of those who would have an inquest occur automatically where a death results at the hand of a police officer. The public should know that where a police officer takes a life, that there has been a proper investigation and that the investigation is resolved judicially by a judge who assesses the facts and thereafter says something about the circumstances which led up to the taking of that life. I don't think that there would be any police officer in the province of Manitoba who wouldn't be prepared to stand before a proper tribunal and justify his actions. And the fact that the government of the day seems reluctant to expand those instances where an inquest takes place baffles me. I don't understand it. Surely there's no opposition to it, and I don't know, if there is opposition to it, from which quarter that opposition is coming. But that's the point where we think the Act isn't going far enough.

Now let me get to what our major complaint is not that that should be a secondary or peripheral complaint, because it's not. The major complaint is, in this society one of the fundamental virtues which we hold dear is that judges make decisions which affect our rights and liberties, not prosecutors. How can members of the Legislature take the position that whether an inquest perceives or not or whether it's adjourned once criminal charges are laid, is a matter of prosecutorial discretion. One of the fundamental rights and liberties in Canada is the right to remain silent when you're charged with an offence. So picture the proposition of the Attorney-General's department, feeling that they have a reasonably good case against 'Jones'' for murder. Well, in that case, they would adjourn the inquest and allow the charge to go through the courts and probably there would be no inquest. Jones would either be convicted and we would know how the death took place or he would be acquitted, in which case there would have been a full hearing and his culpability would have been decided by a jury. But what in the case where the prosecutor says, I know that Jones did it, either on the basis of evidence that's not admissible or on the basis of tips that are hearsay, that can't get into court, do you know what we'll do? A judge can't halt the inquest now, we'll carry on with an inquest, we'll have an inquest and we'll Jones to testify. Jones who's been interrogated by the police and either rested on his right to remain silent or retained counsel and not obliged the police by being accommodating, or whatever. In other words, rested on his rights. And right now you give the authority to the prosecutor, the same person who decides whether to lay a criminal charge, to decide whether the inquest goes ahead or whether it doesn't go ahead, and I ask you, how can you in conscience do that? How can you say that the Crown prosecutor who has to decide whether a murder charge will be laid and prosecuted can first, before he makes that decision, call his prime suspect to give evidence and if the fellow rests on his right to remain silent can be found in contempt and put into jail, time after time after time, until he either testifies and then goes on record, which no one can today oblige him to do or not.

So what I am saying to you, is look very carefully at the discretion and where it rests. We look to the courts, to the judiciary to protect our basic liberties. I, personally, would go so far as to say that where we have a person charged with a criminal offence resulting from a death, that automatically, by operation of law not by operation of discretion, the inquest should be immediately stopped until that person's criminal liability is determined. But if you won't go that far at least leave the Act as it is. Leave it up to a provincial judge who is holding the inquiry, to say, Jones is charged with the offence. We can't prejudice Jones' rights. We have to allow the charge to go through the courts and be dealt with and then if Jones is acquitted or Jones is convicted and there is some compelling reason to carry on with an inquest at that point in time, then when Jones has nothing to win or lose as a result of his trial already having taken place and he can't in our system undergo double jeopardy or be tried again on the same charge then maybe we can go ahead with the inquest. And that would be a judicial determination made by a judge who has tenure and is not susceptible to influence and who has no vested interest in the outcome of the proceedings.

I've given you my view. I would like to see the proceedings stopped in their tracks as soon as

Jones is charged or is suspected; but if you don't do that, if you won't go that far, I beseech you to leave it as it is, leave not so well enough alone because what you are replacing it with and I'm sure all you good men would not do anything but in a decade or in two decades hence when this legislation remains on the books and it's decided by some Crown Attorney that it would be a damn good idea, rather than go to trial not knowing what the accused version is and not letting him remain silent, as is his major right, one of his major rights in our society, to remain silent and tell the prosecutor, if you think I'm guilty of an offence you prove it, I don't have to co-operate with you and I don't have to testify. I don't have to give my version of events under Oath except in my own defence, if I choose to do that after the prosecution has presented its evidence. That's one of our fundamental rights in society. We hear about it all the time. It's just a matter of common parlance, everybody knows that. You ask anybody on the street from a grade 6 education right through triple degrees at the university, they will tell you that one of the common law rights is the right to remain silent. Right now a judge can take that right away by continuing with an inquest, but that's a judge, we can repose some confidence in a judge to act on the principles of the common law and say that if you're charged with an offence I would, as a judge, respond to those principles. But why? why? answer the question, why would you take that discretion away from a judge and put it in the hands of a Crown Attorney? And if you do that, for what reason? And the only answer to me seems to be is that in some case, somewhere, for some reason, a Crown Attorney is going to want to take an accused person, without putting him through a trial and have him testify first at an inquest, and if he relies on his right to remain silent, throw him in jail.

I ask you not to do that. Thank you.

MR. CHAIRMAN: Thank you, Mr. Walsh, for your presentation. Are you prepared to answer any questions from the committee, Mr. Walsh?

MR. WALSH: Well, if there are. I'll certainly be happy to answer.

MR. CHAIRMAN: Mr. Corrin.

MR. WALSH: I think this is going to be a sweetheart question.

MR. BRIAN CORRIN: Mr. Walsh, well knows that I have, not so eloquently though, Mr. Walsh, but I have made essentially the same points in the Legislature now on several occasions this session.

I believe, Mr. Walsh, that your group has had an opportunity also to see Bill No. 69, which is a bill that the Opposition introduced before the Legislature this session.

MR. WALSH: I have that.

MR. CHAIRMAN: We're just dealing with Bill 59 tonight, sir.

MR. CORRIN: I know that, Mr. Chairman, I want to know simply whether or not since he's had an opportunity to peruse it, whether or not he feels that revisions similar to those proposed in Bill 69 would be adequate and sufficient . . .

MR. CHAIRMAN: Mr. Corrin, I'll have to rule you out of order, sir. We're talking about . . .

MR. CORRIN: Well, Mr. Chairman, on the point of order, you can attempt to rule me out of order, but certainly it's always been the case that we're allowed to fall back on precedent and rely on other informational material, which is within the knowledge of the delegate, and he has indicated, Mr. Chairman, he is fully familiar and aware of that supportive material. And, Mr. Chairman, you'd have a very low opinion of the delegate's intelligence and the groups' importance and significance within our society if you were to suggest that we couldn't ask these sorts of questions to the delegation. I challenge your ruling, Mr. Chairman, if you don't allow us to continue.

MR. CHAIRMAN: Ruling is charged. Those in favour of the ruling of the Chair, please signify in the usual manner. Raise your hands. (Interjection) He challenged my ruling. I've already made the ruling.

MR.CORRIN: Mr. Chairman, you haven't made an adequate . . .

MR. CHAIRMAN: On a point of order, Mr. Corrin, I've already made the ruling.

MR. CORRIN: What is the basis of the ruling, Mr. Chairman . . .

MR. CHAIRMAN: The ruling is that we're dealing with Bill 59 tonight, sir.

MR. CORRIN: Well, what is the basis of that. I know what bill we're dealing with but what is the basis of your ruling as you have on the point of order?

MR. CHAIRMAN: The contents of Bill 59, sir. Mr. Evans.

MR. LEONARD S. EVANS: Mr. Chairman, I'm sure my colleague the Member for Wellington, is leading up to a particular relevant question and I see nothing wrong with making some reference to some other material that is pertinent and relevant to this very important topic and I would just appeal to you, sir, just to allow the member to continue and make his case and then if it is truly irrelevent, then I would say that you should rule him out of order. But at this point, I think in due respect to everyone, that you allow the member to carry on for a moment.

MR. CHAIRMAN: I thank you kindly for your comments, Mr. Evans, they're very worthy. We're still dealing with Bill No. 59, that's the bill that's before the House. Bill 59.

MR. CORRIN: On the point of order, Mr. Chairman, I would indicate by way of precedent that in discussing bills such as the Social Allowances Act, just last week, that you allowed considerable latitude and during the course of those discussions, we discussed a Court of Appeal ruling, we discussed the contents of other similar legislation, we ranged far

and wide in the course of our analysis and assessment of that particular bill and its featured provisions, and I would wonder why in the case of this particular bill, we're being so restrictive and why we're not allowing any discussion relative to the principle of the bill?

MR. CHAIRMAN: I would suspect, Mr. Corrin, its quite possible the mood of the chairman.

MR. CORRIN: The mood of the chairman, Mr. Chairman, with respect, is a rather arbitrary thing, we don't know whether the chairman's had an argument with his wife, we don't know whether the chairman's had a bad dinner, but certainly, Mr. Chairman, with respect to you, it seems that simply the subtle variations of your mood should not suffice to change the normal rules of order.

MR. CHAIRMAN: Mr. Corrin, you know the rules of the committee. Are you opposing my ruling?

MR. CORRIN: Well, Mr. Chairman, I would concur that I know the rules of the committee and I do oppose them because it appears that you've forgotten them.

MR. CHAIRMAN: You're challenging my position and you are . . .

MR. CORRIN: Quite so, quite so.

MR. CHAIRMAN: Those in favour of the position of the Chair in this matter please raise your hands.

MR. CLERK (Jack Reeves): Nine.

MR. CHAIRMAN: Those opposed to the ruling of the Chair.

MR. CLERK: Six.

MR. CHAIRMAN: Proceed, Mr. Corrin. Bill 59, please.

MR. CORRIN: Thank you, Mr. Chairman. Dealing with Bill 59, Mr. Walsh, we note that you indicated that your group would approve of legislation that made mandatory, inquests into all police related fatalities. I am wondering whether your group perceives any limitation on that sort of omnibus power. Would you prefer to have a limitation, or would you prefer to have that all inclusive and comprehensive?

MR. WALSH: I have a hard time knowing the moment of the question, given the generality in which it's asked, but I can respond in this way to say, that where a person dies, and he's died at the hand of a police officer, then the Manitoba Association for Rights and Liberties feels that that should be sufficient information upon which medical examiners, through the administrator, should mandatorily call for an inquest. Our feeling is that the public, no matter how cut and dry, and no matter how apparent and obvious the circumstances are, that would only mean that the inquiry could be short, it could be brief, it could be in half a day, but if the fatality occurs as a result of a lethal blow struck by a police officer against the citizen, that ought to be the cause for a fatality inquiry to be held. And I say that no matter whether it were done at the corner of Portage and Main, with 99 witnesses and everybody aware of the circumstances, some members of the public won't have been there, some will have heard of it through the various media, some will have heard distorted versions of it and best to have a judicial mind say, I've weighed the evidence, I've heard the witnesses, they've been cross-examined and I find that this is what happened. Even if it's obvious. The public would then be able to rest content in the knowledge that if it's a police officer, and there's a death, then there's an inquiry.

MR. CORRIN: Yes, I thank you, Mr. Walsh. With respect to the reporting mechanism, I was quite interested in reading your brief. You indicated at the end of the second page, in the second last paragraph that your group would recommend that there be some sort of reporting mechanism, that be made available by way of public information.

MR. WALSH: The reason for that, Mr. Corrin, I'm glad of the invitation to comment on that because it certainly was in the brief and didn't receive deep explanation from me. But sometimes a picture emerges from a number of a series of incidents, each of which by itself may not cause the public to be concerned, and each separate event may of itself have explanation and the public may be satisfied with the explanations that are given. But sometimes pictures emerge as to certain areas having more deaths requiring fatalities enquiries or certain police forces, or certain institutions, and the only way that a person can know, or be tipped off, as it were, if some investigation in a broader sense is necessary, is by studying the statistics; if we start with the notion that the human life is sacrosanct, that we can't touch it, that it's sacred, and when it's taken, it's a matter of great public concern, not just a matter to be sloughed off or of no moment, then when we can see pictures emerge, patterns emerge, we should be very quick to want to investigate and determine the cause of the those patterns. Are they a result of insufficient policing? Are they a result of institutions not doing their work? Are they a result of products not being sufficiently safe and servicing a certain area, so that only when you get a reporting picture and a total picture, can you make those kind of generalizations. We are concerned that not only do we have the proper mechanisms, but that people be able to draw conclusions about the pictures that emerge over time. The only way you can do that is to have some kind of annual or bi-annual report, depending on the number of deaths that there are. So that's the reason for that recommendation, Mr. Chairman. Thank you.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Those are my questions. I thank the delegation.

MR. CHAIRMAN: Mr. Evans.

MR. EVANS: I wonder if Mr. Walsh could with regard to the third last paragraph where you urge

public information be made available on those persons who die in a correctional institution, jail or prison, whether this particular recommendation is prompted by any examples or any incidences that the association had particular reason to be concerned about. Is there some evidence or some events that have occurred that have caused the association to press for this?

MR. CHAIRMAN: Mr. Walsh.

MR. WALSH: I think that if we were to use a particular incident as a springboard for that recommendation, it would be unfair to the citizens who are involved in that particular inquiry who might feel that we were second-guessing the outcome of the inquiry. I can think in my own mind as a lawyer knowing very particularly about deaths at the Public Safety Building or at certain institutions, it would be inappropriate to second-guess the judicial officer who made a finding, to say that this is the cause of our concern. But I think that we can generalize and make our point with equal strength to say that the public, if you start with the notion that you want an Act and that the Act has a purpose and the purpose is to tell the public that your institutions, that your agencies, that your government is running its institutions in a proper way and that the death in no way reflects the kind of treatment that's being delivered, or the kind of service that is emanating from the institution, then there should be no reason why anybody would respond negatively to the notion that is contained in that paragraph.

MR. EVANS: Just one further question, Mr. Chairman. Has the association any knowledge of what goes on in other jurisdictions in Canada, other provinces? Is it customary that this type of information be made available that you're suggesting be made available by an amendment here?

MR. WALSH: That is an excellent question. The information provisions vary from province to province. Our association yet hasn't catalogued that information, but if there were time, like a week before this item were to proceed, we'd surely be happy to be the vehicle to do that, although I might say parenthetically, it shouldn't be our job but we're happy to do it if know one else is. But the notion that it's the Attorney-General who can stop and go the inquest, who can press the 'stop'' button and press the 'go'' button on the inquest even while the criminal charge is pending, that isn't extant in the other major common-law jurisdictions. We think that would be a very regressive step if that were to be the case in Manitoba.

MR. EVANS: Thank you.

MR. CHAIRMAN: Any further question? Mr. Walsh.

MR. WALSH: Thank you, Mr. Chairman. I'm much obliged.

MR. CHAIRMAN: Thank you for your presentation, Mr. Walsh. Are there any further witnesses here who would like to make presentations on the bills that are before the committee tonight? If not, then we'll proceed with Bill No. 37. Shall we take them in order, or have you any preference, members?

A MEMBER: . . . 12?

MR. CHAIRMAN: No. 12.

A MEMBER: Oh, the A.G. is not here.

BILL NO. 12 THE LAW FEES ACT. LOI SUR LES FRAIS JUDICIAIRES

MR. CHAIRMAN: The only thing is the Attorney-General is away. Okay, Bill No. 12. Page by page, Page 1 Mr. Evans.

MR. EVANS: Just on a point of order, could we have 10 seconds? We're just checking the bill.

MR. CHAIRMAN: Okay, proceed? Page 1 pass; Page 2 pass Mr. Corrin. Oh, I'm sorry.

MR. CORRIN: I believe this gentleman was first, Mr. Chairman.

MR. CHAIRMAN: Yes.

MR. HENRY J. EINARSON (Rock Lake): Mr. Chairman, the proposed amendments to Bill 37.

MR. CHAIRMAN: 12.

MR. EINARSON: On 12, I'm sorry. Yes.

MR. CHAIRMAN: Bill No. 12.

MR. EINARSON: The first motion, Mr. Chairman, . . .

MR. CHAIRMAN: 12. I apologize if I left then we reverted back to 12. I'm sorry. Mr. Corrin.

MR. CORRIN: . . . mislead your colleague. Yes, on Page No. 2, Mr. Chairman, subsection 2 of Section 2, headed, Fees not payable by Crown, I just wanted to indicate that we had a question for the Attorney-General which we told the Attorney-General about in the House during the course of second reading debate. There are several questions, as a matter of fact, for the Attorney-General relative to some of the provisions. We wanted to know why, in this case the Crown was exempting itself in the payment of fees. You know, we obviously understood that there might well be several reasons, and we wanted to know which one it was, and then we wanted to know why other approaches weren't considered, whether they were and why they were discarded. Well, is there anyone here who is prepared to deal with the bill?

MR. CHAIRMAN: Mr. Minaker.

HON. GEORGE MINAKER (St. James): Mr. Chairman, if I might, for Mr. Mercier who is away in Ottawa dealing with the Constitution, I do have the answer relating to this question, that it is not a change from the present Act. Subsection 8(2) of the present Act permits the Crown to recover fees from an unsuccessful party notwithstanding that the

Crown is paid no fees. The Crown does not pay fees, because it doesn't make much sense for the Crown to pay itself for these services, never mind the bookkeeping required. However, why should an unsuccessful party in a lawsuit involving the Crown not be required to pay the usual fees? Where the Crown is the unsuccessful party, the Crown would be taxed the fees paid by the other party.

MR. CORRIN: From that response, Mr. Chairman, for which I thank the Honourable Minister, I would indicate that our concern is that the departments might be more accountable for the litigation which they precipitate and present to the courts, if in fact they were responsible for the money transfers entailed in paying fees. It's not totally ridiculous to consider that from a bookkeeping and management point of view, Mr. Chairman, as I'm sure the Minister will appreciate. Obviously, it's just a question of transferring money from one pocket to the other, but at the same time, it means that any department prior to initiating proceedings will presumably think twice knowing that they have to incur some costs. Our concern is that by relieving the departments from the responsibility of bearing and paying fees, one encourages what might possibly be in some circumstances frivolous litigation.

Also, Mr. Chairman, if I might move forward, because I think the response also dealt with the question of when the Crown might recover fees, it seemed from our point of view that if the Crown is going to be in a position to recover costs, then the same should hold true with respect to their onus to pay them. As I understand it under the other section, Mr. Chairman, which I think is sort of a companion section, they would get to keep disbursements that were paid to them as costs by unsuccessful parties. So they can effectively keep money that they never actually disbursed when they are successful and, on the other hand, they don't have to pay the fees in the first place because of Subsection (2). So you seem to have a bit of an illogical situation with them being able to recover moneys they have never put out.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Might I answer the member, Mr. Chairman. I realize that the question was asked of a Minister but perhaps some clarification would be . . . The fees are intended to cover part of the cost of operating the courts. The parties in normal circumstances pay those fees and, therefore, contribute to the overall operation of the costs of the courts. The losing party usually pays the fees if costs are awarded against him.

As Mr. Minaker said, it is senseless to go into bookkeeping transactions if the Crown is required to pay the fee in the first instance, merely requiring bookkeeping costs where the money is going from one pocket into another. Nevertheless, when the Crown is a party to an action, the courts time and personnel are used to the same extent as they are for other parties. Therefore, it was assumed, and has been assumed for some 40-odd years that the Crown's cases should be dealt with, insofar as the collection of costs, in the same way to recoup the costs of operating the courts, as other parties. In order to do that, you have to presume that the Crown is entitled to recover fees which it has not, in fact, paid.

Insofar as one other point that you raised and that was the question of whether or not it might deter some departments from bringing actions, I don't think it would be much of a deterrent. The highest fee in the schedule is 50 and that is for an appeal, except for jury cases which the Crown is not normally interested in. So a 50 fee maximum for an appeal is not going to deter very many departments from taking an action or taking an appeal.

MR. CORRIN: Yes, I can accept what Mr. Tallin says, Mr. Chairman, and I appreciate the significance of it, except that I think that there would still be a inconsistency insofar as the Crown has not made it a practice, for instance, to pay the law fees incurred by successfull appellants, for instance, in criminal cases. Example, Mr. Chairman: If a person is accused of a crime and is found guilty at their trial; appeals to an Appeal Court, and of course in doing so has to pay for the transcript fees; which said transcripts are, in turn, registered before the Appeal Court as the record before the court, then if the accused appellant succeeds, Mr. Chairman, of course, the Crown would not, as I understand it under the provisions of this Act or any other legislation, ever be accountable to reimburse the appellant for his costs.

So what I am saying, Mr. Chairman, is why then, if we clearly have a disposition on the part of the Crown not to pay the costs of successful appellants, why then does the Crown want the same citizen to pay it, when it hasn't put out any money at all? So, you see, Mr. Chairman, a person would pay 400, 500, 600 for transcripts and not get a penny back, even though they were successful on the appeal and it was found that the prosecution was without foundation. But yet, it doesn't go the other way; when the Crown wins they come up to the citizen and they say: Well, come on, we didn't pay the money but you are going to pay us the fees now. And that doesn't seem fair; it is just innately unfair to the citizen.

MR. TALLIN: This doesn't apply in a general way to payment of fees on criminal matters because fees are not paid on the same basis in criminal matters anyway. But when the Crown is unsuccessful in an ordinary civil case, they pay costs the same as any other unsuccessful litigant in a civil case.

MR. CORRIN: Also, Mr. Tallin pointed out, Mr. Chairman, that the Crown is simply indemnifying itself for its actual expenses. Well, Mr. Chairman, in the course of debate on second reading we had extensive discussion on the subject of whether that was factually correct. We discussed, for instance, the fees in the Surrogate Court; and we discussed particularly the fees that were charged Administrators of Estates on applying for Grants of Probate. And there was evidence, Mr. Chairman, that, for instance, the same document, when filed with respect to a 200,000 estate, could be as much as 800 more than that same document when the estate was only worth 10,000.00. And we wondered how that related, Mr. Chairman, through you to Mr. Tallin, we wondered how that related to user fee; we

wondered how that related to the cost of processing the documentation. What relationship does that have?

MR. TALLIN: On the same basis as the Land Titles fees. Everybody who contributes to the cost of operating the courts doesn't pay their precise costs of operating that section of the court system, just as the transferee of a transfer of land pays a higher fee towards the administrative operation of the Land Titles Office than a transferee who pays on a low transfer amount. It is not all picked up because of the assurance fund. It is just that that's one of the ways that, generally, people are expected to contribute to the costs of government. Those who are dealing with big amounts pay higher amounts, even although the work involved may not be any more; in fact, it may in many cases be less.

MR. CORRIN: First of all, the land titles analogy, Mr. Chairman, with respect, I don't think is precisely accurate simply because we are talking about, in the land titles case, an actual benefit conferred on somebody who is registering a document. If I want to buy a very expense house, I suppose, perhaps I should be called upon to pay a little bit more, although again, I think it is quite questionable, but perhaps, because I am going to get the benefit of the property, I should be called upon to pay a little bit more. If, on the other hand, a person dies and their estate, of course, has to be probated in order that it can be distributed to the beneficiaries, what possible benefit can be conferred on that person? With respect, Mr. Chairman, I think, that the case of the Surrogate Court fee is much more in the line of indirect taxation, as opposed to a law fee for usage of the staff and operations of the office of the courts.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, just further to indicate that I believe that the public has accepted fees of this type in Surrogate Court and Land Title fees in order to pay for the services that they receive, and when one considers the costs of the various courts, even when all the revenues are added in, it still falls very short of those services that are provided and we think that this method is a correct method and is not really being changed.

MR. CORRIN: I just want to point out though that generally, Mr. Chairman, it is fairly evident that it isn't always equitable and, I guess, I can give you the classic example that was always given with respect to estate tax, the farmstead. A lot of farmers in this province are land rich and money poor, and those fees keep appreciating and it puts an unfair burden on that sort of individual. There isn't that sort of material affluence that translates into a lot of cash for paying these sorts of fees.

As I said, that's the difference between the fellow who goes out and decides to make an investment in some land and the estate. A lot of what goes on by way of disbursements in the Land Titles fee schedule is, of course, also passed on by way of tax benefits and write-offs to the person who is getting the benefit. A lot of those are commercial transactions involving mortgages and commercial properties.

But the estate situation, I don't know of anybody that's going to be able to write that off the estate. There's no tax benefit to that sort of fee. It seems to me, as I say, that the government is sort of wearing two hats. On the one hand they want to say that they are just recouping the expenses relative to operative costs, and on the other hand they seem to be moving into the field of indirect taxation. I just don't see it.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, just to indicate that other provinces have similar Surrogate Court fees and when we compare to Saskatchewan, on a 10,000 estate, Manitoba's fee is 30, whereas Saskatchewan is 66; and on a 200,000 estate Manitoba's court fee is 790, whereas Saskatchewan is 1,206.00 It's a policy of the different provinces and we are obviously low in our fees as compared to Saskatchewan.

MR. CORRIN: I'm just wondering if the Minister could indicate whether there's any disposition on the part of the government to, in the future, provide for repayment of successful appellants' costs in criminal matters.

MR. MINAKER: I would think, Mr. Chairman, that question would be best put to Mr. Mercier when he returns.

MR. CORRIN: Mr. Chairman, I'm wondering then whether there's a disposition to adjourn discussion on Bill 12 until Mr. Mercier returns.

MR. MINAKER: How pertinent is that question?

MR. CHAIRMAN: It's up to the committee. I'm at the mercy of the committee. I don't think that has anything to do with this bill that's before us, that's my observation.

Mr. Corrin.

MR. CORRIN: I have another question, Mr. Chairman. I wanted to know, and this is of purely academic interest, but I wanted to know if somebody could tell us why this particular bill had been translated instantaneously as it were into French, when so many of the bills that have been presented this session have not. This one is in both official languages.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: We had available to us a limited number of translators for a limited time and as a result we knew we would not be able to translate all bills that were complete entities on themselves. I think, Mr. Corrin, you will agree that it would be senseless to translate An Act to amend the Highway Traffic Act into French when the fact is that The Highway Traffic Act itself is not in French. So we decided, rather arbitrarily I think, not with any consultation with members of the House, that what we would try to do is get as many bills translated as possible, but only bills which were entities onto themselves, that is, not amending other Acts.

Within that group there were some which we thought should have priority over others. One of the

ones which we thought should have priority, of course, was the bill that dealt with Section 26 of The Manitoba Act, and another group where the bills dealing with the Department of Education and The Public Schools Act.

Apart from that, because we didn't know how much time it would take them to do bills, we selected smaller bills which we thought they might be able to finish. We didn't want to start them on The Securities Act because it's a technical Act. They themselves said they didn't know whether they would be able to translate The Securities Act without going back to Quebec and talking with the Securities Commission people there. So that kind of bill was out of the question. Also, the length of The Securities Act and bills of that kind would make it almost impossible for them to do The Public Schools Act and The Securities Act in the one session.

So we selected a number of the smaller bills. One of the groups that we selected was some of the Supply Acts, because the Supply Acts are done every year almost identically and we thought that the translation that we did this year for the Supply Acts might help translators in the future do Supply Acts in subsequent years. This Act was selected not because it was of great importance to bilingual people in Manitoba, but because it was short, it was available early on when the translators were here, and we thought it was the best use of their time at the time. It was not particularly a government decision, it was sort of an internal operation with the Translation Bureau and ourselves.

MR. CORRIN: Of course now, Mr. Chairman, I am probably about to embarrass myself, but in reading the and I don't read French well, Mr. Chairman but in reading (Interjection) Well, if you could translate, you're going to notice that the two bills are not the same, Mr. Chairman. Why then don't we make exact translations?

Just to use an example, when I read the French, I noticed that in Section 1, the definition section, essentially it says that well, forget about what it says. If you look at 1(a), and then you look at 1(a) in the English let's just go clause by clause you note that they're not saying the same thing; 1(a) in the French is 1(e) in the English, and I don't understand that if somebody was doing cross-referencing and some intensive research, Mr. Chairman, it occurs to me, maybe I'm wrong, but it seems to me that there have been some transfers of sections and subsections, and it could get a bit confusing when people are trying to compare the various sections.

In court, if somebody stands up and argues that he's referring to Section 1(a), the other fellow, if it's a bilingual court, looks at 1(a) and says, what's this idiot talking about, it doesn't say court means the Court of Appeal, it says proper officer means and that goes on down the list. So you're going to have two different things being discussed in the court. I'm just wondering why they're not doing it exactly? Why is there not more precision in that regard?

MR. TALLIN: I am afraid that this is the first time that I noticed that they had put the clauses in Section 1 out of line with the French and English versions not in the same order. The practice I think they adopted was the practice that they use in Quebec, which was that they put both definition lists in alphabetical order. They avoid problems in Quebec by not assigning definitions clause letters.

My preference would be that they would all be in alphabetical order in one language and that the other language follow the direct clause thing, but I must admit that this is the first time that this was brought to my attention.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, the only thing that would happen if we followed that ruling is that one of the people, who spoke the other tongue of the two official languages, would object because they weren't shown precedence. So I guess this way, if both are shown alphabetical, there's no dispute, so that's how far it gets to.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Chairman, do we understand ourselves, since Legislative Counsel has been so kind to take the stand as it were, do we understand ourselves then that he agrees though that it would be better if the sections were comparable and related one to another? I'm just wondering, Mr. Chairman, in practical terms, if somebody is doing research on the bill or arguing a case and I can see cases, Mr. Chairman, and I anticipate there will be cases, for instance, just to use an example, where one counsel will speak English in making his submission and another counsel may in her submission be speaking French. That will be possible now in our courts, Mr. Chairman. For instance, in the County Court of St. Boniface it may be happening all the time, so you'll have the judge and of course the judge there is fully bilingual; he could appreciate the arguments in either language. You could have the judge being totally confused. You'd have one lawyer talking about one section, the other lawyer talking about the same section but referring to it by another number and subsection and it would be like chaos. They'd never have a meeting of their respective minds and I'm wondering, in order to make the courts more efficient and facilitate communication, if we can't have exact translation. I appreciate that the custom in Quebec, Mr. Chairman, may well be to do it alphabetically, but we're not in Quebec, Mr. Chairman, we're in what is essentially a unilingual province. With respect, Mr. Chairman, I think that it will create a lot of confusion in terms of scholarship and practice, and frankly, I don't think it's workable. I think that this matter should be addressed immediately before all the statutes fall into the same state of disrepair.

MR. CHAIRMAN: Page 2 pass; Page 3 pass; Page 4 . . .

MR. EVANS: Mr. Chairman, on page 2, I was going to ask a question, on section 6, subsection 2, in the English. There's only one page yes, page 2, English. The lower left hand is item 6(2), and I'm asking this strictly as a layman. It says, 'except as provided in this Act or the regulations, no officer or a clerk of a court shall take for his own use or benefit,

directly or indirectly, any fee paid under this Act", and I'm asking very plainly why, particularly if that officer or clerk is a civil servant, why would they be entitled to a fee anyway. You almost wonder why you have to have this section. I imagine there are some people being paid fees but it seems to me it's rather odd.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: One of the groups of people who are officers of the courts are the court reporters and with respect to certain transcript fees they are entitled to keep the fees. In addition, I don't believe there are any court clerks at the moment who are fee paid but there is still possibility that they might want to appoint fee-paid clerks who are essentially part time clerks for some courts because of the nature of the practice in the court or something like that, and presumably under those circumstances the fee-paid clerk is entitled to keep the fees and that would presumably be dealt with in the regulations.

At the moment, as I say, I don't think there are any officers who are entitled to keep fees except the court reporters with respect to providing transcript of evidence.

MR. EVANS: I see. As I said, I appreciate that this is put in to cover every possibility but it just seemed to me that again, looking at it as a layman that it's rather a peculiar thing to tell your employees you shouldn't take the fees that are payable, but if there are so-called, I suppose, if you have people working in the court who are not civil servants, then in fact I can see where you would want to have this type of clause.

MR. CORRIN: I'm wondering whether the government has had any complaints from the private court reporting sector with respect to the competition provided by the public sector people in the industry. The Attorney-General presumably would be the only person who could tell us whether he'd received a complaint from anybody in that regard. I'm wondering, Mr. Chairman, and I'll do so out loud, whether or not the latitude allowed the public sector reporters is enhancing the efficiency of our courts. I would wonder whether or not it's possible for a person to serve so many masters. It seems to me, Mr. Chairman, and nothing I say is definitive, but it seems to me that a person in the public sector should, by and large, be devoting his or her full time to duties. I presume the salaries of these people are commensurate with full time duties. I don't know what they are. Perhaps some one can tell us. But I'm wondering why it would be necessary to allow the court reporting sector to work outside and retain private fees.

MR. TALLIN: I don't know whether the court reporters do work outside or not but this Act wouldn't relate to the fees that they charge for outside work. This Act relates to the fees that they are entitled to charge for transcripts of evidence taken in court, and outside secretaries do not take, as far as I am aware, do not take down evidence given in court.

MR. CORRIN: But then why does 7(2) in my ignorance, Mr. Chairman, I'll ask, perhaps I'm leading with my chin but why does 7(2) say a court reporter may retain, for his own use, the prescribed fees for copies of a transcript of proceedings or evidence?

MR. TALLIN: That deals with proceedings. Proceedings are defined as 'proceedings in the court".

MR. CORRIN: Would that not include, Mr. Chairman, private proceedings?

MR. TALLIN: Yes, and are you talking about the discovery?

MR. CORRIN: A discovery, for instance, between two private litigants, where the Crown is not a party, where it has nothing to do with the Crown.

MR. TALLIN: Well, I presume that evidence in transcript of proceedings or evidence means transcript of proceedings in court, not the discovery, and evidence means evidence given in court, not evidence given by way of discovery, which is not yet in court.

MR. CORRIN: Now I even have more concerns because I'm wondering, Mr. Chairman, in that case, whether the current practice is the Legislative Counsel advising us that the current practice that enables public court reporters to retain private fees because that is the current practice, Mr. Chairman, and that was acknowledged by the Attorney-General in the House, is that practice then to be discontinued on the occasion of the assent of this bill?

MR. TALLIN: No, all I said was, this bill does not relate to the fees that they charge for their outside work. This relates to the fees that they are entitled to charge as court officers for doing court officer work.

MR. CORRIN: So what we're saying for clarification then is that a court reporter can retain a fee that has to do with two private litigants if it happens in a court room, but it wouldn't give approbation to the retention of such a fee if it happened in a discovery at a solicitors office, for instance.

MR. TALLIN: That's right. It doesn't deal with that at all. It doesn't say they can't do and it doesn't say they can do it. It doesn't deal with that fee if there is a fee charged by them.

MR. CORRIN: . . . extensive, these charges, it's a very lucrative aspect of the court reporting work.

MR. TALLIN: I'm sure they don't do it for the love of doing it. I'm saying that this Act relates to court charged fees, not to fees charged by any entrepreneur who wants to go out and do work, whether he does it in his overtime or whether that's his full job. We're not dealing with that.

MR. CORRIN: So we're in a situation then, where a public reporter attending a public proceeding in the court, can charge fees for transcripts of those proceedings, so if a person wants to appeal and they ask for the transcripts to be printed, then the

reporter can retain the fees for preparing the transcripts and that's incidentally related to what we talked about earlier about accused appeals in criminal matters. But I take it then that there is a bit of a monopoly, is there not? I take it that only the public reporters, public court reporters, have access to proceedings in the courts, so that their private counterparts can't come in and do the same thing.

MR. TALLIN: I think it's open to either the Attorney-General or whoever is involved in making the appointment. I don't know The Queen's Bench Act and The Country Court Act well enough to know who appoints the court reporters, but I'm sure that they can appoint a court reporter either on a fee basis for special work, or they can appoint a person as a civil servant to do court reporting work, the same as they can appoint people to do any work in the Civil Service either on a contract basis or on a salary basis.

MR. CORRIN: Obviously then, when a private individual, Mr. Chairman, files an appeal and orders a transcript, he will pay the court reporter who will take the fee privately. I'm wondering, coincident with that, whether or not, when the Crown appeals, when the Crown loses a trial and it appeals, do they pay a fee to the public reporter? Can he retain the fee that's paid him by the public reporter in those circumstances?

MR. TALLIN: Mr. Goodman tells me they are. I don't know, I've never had experience in obtaining a transcript from a court reporter for the Crown.

MR. CORRIN: This is quite incredible, Mr. Chairman. So we have a situation where essentially we're dealing almost, as it were, at arm's length with our own civil servants. I presume these people are civil servants as well and these are people who are actually working as entrepreneurs within the public sector within the Civil Service system. I don't know if perhaps the Minister or the Legislative Counsel know of other such cases, but I'm wondering whether there are any precedents for this sort of activity. Do any other public servants operate on a private basis within the system?

MR. TALLIN: I'm afraid I couldn't tell you.

MR. CHAIRMAN: The Minister is not here unfortunately. You'll have to raise that question in the House.

Page 3 pass Mr. Corrin.

MR. CORRIN: I'm wondering, a lot of these questions can't be answered by the people that are here and obviously it's unfair perhaps to ask them to do that, Mr. Chairman. Again, I'm wondering whether we shouldn't wait for the Minister to return in order to hear his explanations.

MR. CHAIRMAN: I suspect the Minister will give you the answer in third reading.

MR. CORRIN: The point is, Mr. Chairman, obviously an amendment can't be made in the same fashion at third reading as it can before the committee.

MR. CHAIRMAN: Certainly it can be made in third reading.

MR. CORRIN: It's somewhat more difficult in the House than it is here and I think the purpose of the committee is to facilitate expeditious reporting, not send it in for protracted debate, because question and answer is not the way it goes in the House on third reading, and nor would we want it to be that way, we don't want that sort of give and take on third reading, I am sure.

MR. CHAIRMAN: I'm at the mercy of the committee, if you want to hold the bill up, I'm at the wishes of the committee.

Mr. Evans.

MR. EVANS: Again, for clarification because I didn't follow all of the conversation that has just taken place. But under 7(2), it states, 'a court reporter may retain for his own use the prescribed fees for copies of a transcript of proceedings or evidence''. My question is, Mr. Chairman, is a court reporter a private entrepreneur, so to speak, or is he a public civil servant? Is he a public servant or may a court reporter be both, and I thought I heard someone say earlier a court reporter may be both, or was it the transcriber? A court reporter can be either a private person working in the court or a public servant. Is that correct?

MR. TALLIN: It's possible for a private person to be appointed on a contract basis to be a court reporter, the same as it's possible for a person to be employed on a contract basis for any position in the Civil Service. But at the moment, I believe, all the court reports who do the official court reporting are civil servants.

MR. EVANS: So Mr. Chairman, under 7(2) then, civil servants who act as court reporters can retain prescribed fees for work done, which is a rather unusual situation.

MR. TALLIN: Prescribed fees for the transcript, not for being the court reporter. They may take many court proceedings without having to provide a transcript.

MR. EVANS: Once the court reporter has taken down the material, or the words that have been spoken in the court, he's compiled a report and copies, they're sort of a mechanical procedure, I mean, you type it out and you make copies.

MR. TALLIN: I'm sorry, Mr. Evans, he doesn't type it out unless he gets a request from somebody who is willing to pay for a transcript.

MR. EVANS: Mr. Chairman, I would have thought, and again I'm speaking strictly as a layman, wouldn't the court itself provide, or the government, provide that sort of service. I don't understand why a civil servant court reporter engages in making copies of transcripts on his own and then charges fees for them. It seems to me rather incredible.

MR. MINAKER: Mr. Chairman, there's no change in practice in the operation of the court and a use of

the court reporter. What is being indicated in 7.1(2) is that in 6(2) it indicates taking fees for own use.

A MEMBER: 6.2?

MR. MINAKER: Yes, in 6(2) it indicates that 'Except as provided in this Act or the regulations, no officer or clerk of a court shall take for his own use or benefit, directly or indirectly, any fee paid under this Act'', that's been inserted in the Act. Now, to stay with the present policies of the court reporters, which I might add was the policy under the former administration and other administrations, it was then necessary to insert 7(1) and 7(2) to indicate those where it does not apply, following with the present policies of the use of court reporters. So that is basically why 7(1) and 7(2) are in there because it's to follow the present policies and the former policies, to combat 6(2).

MR. EVANS: Mr. Chairman, could someone explain, even though this practice has been in existence for some time, can someone explain the rationale why a civil servant would be busy making some money on the side, so to speak, for services rendered? I don't understand the rationale for that.

MR. MINAKER: Mr. Chairman, my understanding is, how it has evolved is the fact that most of these reporters have to take the transcript in the court most of the day, then they have to give it to their typist and then after the typist has typed it, they have to proofread it and recognize the correctness of it which takes up time outside of the courts, and then they have to pay the typist to do this; and then in turn when the transcripts are provided to other people, they get a fee for them. This is how it evolved.

MR. EVANS: Well, could the Minister advise what sort of moneys are we talking about? In a typical case, how many dollars, what would be the amount of fees obtained by a civil servant court reporter for this type of work done? Is there any idea? Do we have any estimate of moneys received?

MR. MINAKER: Mr. Chairman, it is my understanding they get somewhere in the order of approximately 2.00 a page and then they pay their typist out of that fee, and again it depends on how many copies of the transcript, and so forth.

MR. EVANS: Does the Acting Minister have any idea in terms of and this I can appreciate would be an estimate of what sort of . . .

MR. CHAIRMAN: Mr. Evans, maybe the record shouldn't know he's the Acting Minister, I don't think. He's not the Acting Minister. The Minister is in Ottawa. He's just filling in trying to answer some questions with the help of the legal counsels around the table.

MR. MINAKER: Well, I'm the Acting Minister while he's not here.

MR. EVANS: That's fine. But, Mr. Chairman, I always thought there was an Acting Minister.

MR. CHAIRMAN: Well, it's not him.

MR. EVANS: There's a first acting, a second acting. At any rate the Minister is now taking responsibility. How shall I refer to him, Mr. Chairman?

MR. CHAIRMAN: The Minister of Community Services would be acceptable.

MR. EVANS: Yes, okay. If the Minister of Community Services could advise us in some general way, what would be the amount received by a civil servant court reporter for services rendered, that is, providing transcripts? What would be an estimated typical annual amount of fees received?

MR. CHAIRMAN: Put in an Order for Return, sir, we don't have that.

MR. MINAKER: Mr. Chairman, I don't think it would be possible to work out anything like that because even as Minister of Community Services, we don't necessarily have access to the Income Tax Department's files and if the reporter is dealing with private lawyers and that, we would have no idea of the total numbers of dollars that an individual might take in under that part of his revenue. And then again, out of that revenue would be the cost for the typist.

MR. CHAIRMAN: Page 3. pass. Mr. Evans.

MR. EVANS: Mr. Chairman, I wonder if the Minister could advise, what is the typical salary paid to a court reporter, a civil service salary paid to a public court reporter?

MR. MINAKER: It's my understanding, Mr. Chairman, that it's in the order of 20,000 per year.

MR. EVANS: Well, would he double his 20,000 a year in a typical case? Or does he only add 5 percent to it or 10 percent to it?

MR. CHAIRMAN: I don't think we have that information, Mr. Evans. You'd have to find some other vehicle than this committee.

MR. MINAKER: Mr. Chairman, I would think that would be impossible to get unless the individual involved volunteered the information.

MR. EVANS: Yes, okay. I'd only make this point, that it seems to me a very peculiar way to operate within the court. It may have been done for centuries under all administrations and again as a layman, it seems to me a rather peculiar way of operating and rather peculiar for a public civil servant to add substantially to his or her annual salary by means of additional work which is related to what that person's being paid for.

I'm not in a position to make an amendment although I think one is perhaps required and I would like to urge the Minister to look into this.

MR. CHAIRMAN: Somebody told me the other day, Mr. Tommy Douglas is on the board of the Husky Oil, so there we are, it's people like that who go out and make whatever money they can.

MR. EVANS: I don't know what the relevance of that comment is, Mr. Chairman.

MR. CHAIRMAN: Well, it shows any entrepreneur is entitled to go out and engage himself . . .

MR. EVANS: I'm trying to get to a point here. We're dealing with the bill clause by clause, I'm not trying to hold it up. I think all members of this committee, on both sides of the table, should be concerned about this. I think it's a rather peculiar situation for civil servants to be engaged in earning funds, earning moneys, for doing work which is related to their initial salary, to their primary type of work. It seems to be a very peculiar situation. And I don't know whether it's typical of other jurisdictions or not, whether it's typical of other courts or not.

Also, as my colleague from Wellington reminds me, that they are competing with the private sector, in effect, because there are private court reporters as well who don't have any civil service salary but have to rely entirely on fees.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Just to bring this into dramatic prospectus so that all members can understand this, perhaps we could use the example, Mr. Chairman, of a piece of legislation that would enable, in fact encourage, teachers at Red River Community College to retain fees for a portion of the work they do in the course of their public duties in training and educating students within the system; so that while using the facilities of the college, which are paid for by the taxpayers, they could also carry on private schooling of certain people in competition with places like Success Business College.

You see, with putting it in that perspective, Mr. Chairman, as I said I thought it best to . . .

MR. CHAIRMAN: Page 3 pass; Page 4 pass. Preamble pass. Title pass.

MR. EVANS: Mr. Chairman, on a point of order.

MR. CHAIRMAN: Point of order? Mr. Evans.

MR. EVANS: Would the Minister of Community Services, whom I believe is representing the Attorney-General, although he's not the Acting Minister, would he undertake to look into this and communicate this with the Attorney-General?

MR. MINAKER: Mr. Chairman, I will convey Mr. Evans' concerns to the Attorney-General through his staff.

MR. EVANS: Okay, thank you.

MR. CHAIRMAN: Bill be reported. Mr. Corrin. Mr. Tallin. Proceed then Mr. Corrin.

MR. CORRIN: Mr. Tallin is ceding the floor to me I take it? Am I recognized, Mr. Chairman?

MR. CHAIRMAN: Yes, proceed, you're recognized, Mr. Corrin.

MR. CORRIN: I was going to say that before we proceed with this, Mr. Chairman, I would indicate that it's my intention to attempt to amend the French portion of the bill. I want to amend Section 1 of the Bill in order that it reflects the provisions of Section 1 of the English speaking Bill.

MR. CHAIRMAN: You have your amendment ready, Mr. Corrin?

MR. CORRIN: But it still has to be . . . I don't think members understand. The people who are suggesting, Mr. Chairman, that it's alphabetical obviously aren't aware that the definitions opposite the letters aren't the same on both sides of the page.

Mr. Chairman, just so that my own colleagues are satisfied because they seem to be the ones who are most agreed. The alphabet that we're referring to, Mr. Chairman, is the first letter of each word in the respective languages and I'll note, Mr. Chairman that the first letter of the words as translated render the two sections completely different. You can't possibly, Mr. Chairman, regard them as being consistent, one with the other. The only way is to make sure that 1(a) is the same in the French and the English language.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, I would suggest that Mr. Corrin, if the amendments do come in, do it in report stage in the Third Reading after he's had a chance to discuss the matter with our Legal Counsel. It's an editorial really.

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Mr. Chairman, what Mr. Corrin I think is attempting to do is to change the order of the definitions in the French version or vice versa, change the order of the definitions in the English version.

MR. CORRIN: No, the French because . . .

MR. TALLIN: One of the ways to get around this is to strike out the clause letters at the beginning, which is what the practice in the federal government is. They don't use clause letterings for definitions because of this very problem. That's one suggestion.

The other suggestion that I have to make is that we rearrange the order, but both could be done as an editorial matter because neither would change the meaning of the sentence. If the committee instructs me to do that, that's just a matter of an editorial correction. If you'd like to perhaps see whether the committee wants to give one or other of those instructions.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, there's an overriding thing. The initial bill that came before the House this year said that the language in which the bill was first presented took precedence if there was any conflict between the French and English version. So it really isn't a concern, I submit. It should be in the same way as the English because . . .

MR. HANUSCHAK: Because the language takes precedence, it's only a reference interpretation of a section. But I would suggest that leave the definitions in the alphabetical order because if we change this one, it'll create a problem for other pieces of legislation that we may want to translate, I'm thinking particularly of The Interpretations Act, where there are umpteen thousand sections in alphabetical order. So, therefore, in English it's more convenient to read definitions in the alphabetical order in which they would appear in the English vocabulary and in the French, arrange them in the French alphabetical order as they would appear in that language.

MR. TALLIN: Do you wish to remove the clause letters . . .

MR. HANUSCHAK: Yes, the clauses, just one. Use the new Section 1 definitions and that's it.

MR. TALLIN: Do you wish to remove the clause letters, Mr. . . . ? Then you don't have to worry about them being in opposite . . .

MR. HANUSCHAK: Well, okay, that's a procedural matter.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I just wanted to indicate that I concur with Mr. Filmon on this point. I think that we had passed legislation which says that the language in which a bill is first introduced is the primary language so far as interpretation of it goes henceforth, and it seems to me that without removing the clause letters, we fail to live within the spirit of that. It obviously was the intention of the Legislature I think it is our intention to have this particular bill read in this particular order as cited in the English . . .

MR. TALLIN: I don't think that the bill that you are talking about, has any application here because there is no difference in the meaning. We have been assured by the translators that the two sections mean identically the same thing. It's just a question of what order clauses go in in a sentence and that doesn't vary the meaning. So there's no conflict. In any case this bill was introduced in both languages simultaneously, so that application doesn't . . .

MR. FILMON: What Mr. Corrin is referring to is, that if somebody in court cites Clause 1(b) or 1(a), there's a question as to whether it's Clause 1(a) in English or Clause 1(a) in French. I understand what he's saying, there is a possible misinterpretation.

MR. CHAIRMAN: Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, the translation is quite obvious. The French is in French alphabetical order; the English is in English alphabetical order and there is absolutely no reason for all this stupid discussion on it.

MR. FILMON: Mr. Chairman, if you refer in court to Clause 1(a) of Bill 12 it defines 'court'' in English, but it doesn't in French. In French it defines 'proper officer'', so it is different.

MR. CHAIRMAN: Mr. Orchard.

HON. DONALD ORCHARD: Mr. Chairman, to solve this great controversy, I move that we remove the lettering from the definitions in both the English and French version of the Bill.

MR. CHAIRMAN: Committee agreed? Mr. Kovnats.

MR. KOVNATS: No, I disagree. I think with proper French or proper English it is printed properly.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: We are not changing the printing, we are removing (a), (b) and (c). I just wanted to make the point, Mr. Chairman, so Mr. Kovnats can appreciate it, that there is no argument that each of the Acts appropriately and properly define the various words included in the Section. What we are saying is that we want to revise the lettering in order that people not be misled into believing that each of those subsections deals with the same subject matter; so that if somebody reading in a journal discovers that there has been a dispute with respect to the interpretation of subsection 1(b) in The Law Fees Act, that person, if they were reading in a French Journal, would not look at the wrong subsection and be misled into believing that it was dealing with something that it is not. Can you understand? We would have a situation where somebody, because somebody is citing in English, section and subsection, which is usually the way these sorts of things go, will be misled. It isn't a question of showing priority to a language, it is simply making sure that errors and mistakes won't happen as a result of the misleading lettering. I think that the Minister of Highways has . . .

MR. CHAIRMAN: This matter, I'm sure, has been handled in the province of Quebec for a hundred years or more and we can argue here all night. I don't think you actually know what we are talking about in a lot of cases and we are not going to solve the problem. So I am going to ask Mr. Orchard to withdraw his motion and leave it to Mr. Tallin to resolve. (Interjection) No, I can't do that, okay.

Well, I have a motion before me from Mr. Orchard. Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, is the motion just to remove all of the lettering?

MR. CORRIN: In the definition section.

MR. CHAIRMAN: Well, (a), (b), (c), (d) and (e)?

MR. KOVNATS: Well, being completely bilingual and being well versed in legal matters I will accept it.

MR. CHAIRMAN: All agreed? (Agreed)

Bill be reported pass.

BILL NO. 37 AN ACT TO AMEND THE HIGHWAYS DEPARTMENT ACT

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Mr. Chairman, I note that Bill 37 was being tended to as a matter of special interest and concern by the Member for Logan, Mr. Jenkins. Mr. Jenkins is I am told quite ill today and unable to be with us, and I know that a week or so ago we adjourned this in order that Mr. Jenkin's amendments could be considered by the Minister of Highways.

MR. CHAIRMAN: Not this, the other one, his is the other one. You've got the wrong bill.

MR. CHAIRMAN: This is Mr. Hanuschak's. We have an amendment, would somebody care to read the Amendment into the record.

MR. EINARSON: Mr. Chairman. Bill No. 37, An Act to Amend The Highways Department Act, motion:

THAT proposed subsection 15(2) of The Highways Department Act, as set out in Section 3 of Bill 37, be amended by striking out the words 'or village'' in the last line thereof and substituting therefor the words 'village or unincorporated village district''.

MR. CHAIRMAN: Any discussion? Pass.

Mr. Orchard.

MR. ORCHARD: Mr. Chairman, the Member for Burrows, in Law Amendments, pointed out that there are a number of unincorporated districts which do not qualify as villages, hence were left out by not having 'unincorporated village districts'' in the specific reference as to cities, towns and villages, so we have added that in for their coverage by the law.

MR. CHAIRMAN: Mr. Evans.

MR. EVANS: Therefore, the only governmental jurisdication that is left out now is the rural municipality or Crown lands? Is that right?

MR. ORCHARD: Yes.

MR. CHAIRMAN: All in favour? Pass. 15(2.1) Mr. Einarson.

MR. EINARSON: Mr. Chairman, the motion:

THAT the proposed subsection 15(2.1) of The Highways Department Act, as set out in Section 3 of Bill 37 be amended:

(a) by striking out the words 'hedge or other objects'' in the third line thereof and substituting therefor the words 'or hedge''; and

(b) by striking out the words 'or village'' in the last line thereof and substituting therefor the words 'village or unincorporated village district''.

MR. CHAIRMAN: Any discussion? Mr. Evans.

MR. EVANS: Mr. Chairman, was this amendment related to the concerns raised by the Member for Burrows? So, therefore, it is restricted to, as the wording indicates, trees, shrubs and hedges.

MR. ORCHARD: Right.

MR. CHAIRMAN: 15(2.1) pass; 15(2.2) Mr. Einarson.

MR. EINARSON: Motion:

THAT proposed subsection 15(2.2) as set out in section 3 of Bill 83 be struck out and the following subsection be substituted therefor:

Removal of unauthorized trees, etc.

15(2.2) Except as provided in (2.1), any tree, shrub or hedge planted or placed upon or within 50 feet of a departmental road outside a city, town, village or unincorporated village district, which creates a hazard to traffic or causes obstruction of view of the roadway, may be removed and the person who planted or placed, or caused to be planted or placed any tree, shrub or hedge is not entitled to any compensation for any loss he may have suffered by the removal.

MR. CHAIRMAN: Mr. Hanuschak.

MR. HANUSCHAK: Yes, Mr. Chairman. I am very glad that the Minister had taken to heart the comment that was offered in the course of the debate of this bill during the last meeting of Law Amendments Committee. I think that the amendment to the bill that the Minister has now proposed is a tremendous improvement over the original version of it. Because I wish to point out to you, Mr. Chairman, that now the Minister, or whoever on his behalf, will only have the right to remove the tree or obstruction if it creates a hazard to traffic or causes obstruction of view of the roadway. In other words, at the time of removal it must be a hazard or create an obstruction to view.

So, for example, if, for whatever reason I may decide to dress up the front of my yard because, well, my daughter is getting married and we want to have a garden party and I want to put in a few plants and so forth, make my yard attractive, and as long as it is not creating an obstruction, the Minister is not going to come along and root up all the plants because this section gives him the authority to do so. But if they should grow to 30 or 40 feet in height and they become an obstruction to view, then he has a right to remove them, but until such time he doesn't.

I do not wish to instigate any debate, I wish to express my appreciation to the Minister for having taken to heed the concerns expressed by the opposition and brought in this amendment. I personally would support the amendment as presented by the Minister.

MR. CHAIRMAN: 15(2.2) pass; 15 as amended pass; 15(8)4 pass; 5 pass; Preamble pass; Title pass; Bill be reported as amended.

Bill No. 38, for Mr. Jenkins, we'll hold it then. He's not here tonight, he is ill and they have asked to have the bill held. Mr. Corrin did. You asked to have 38 held.

MR. CORRIN: Yes, for Mr. Jenkins.

MR. CHAIRMAN: Committee agreed? (Agreed)

Bill 39, An Act to amend the Social Allowances Act.

BILL NO. 39 AN ACT TO AMEND THE SOCIAL ALLOWANCES ACT

MR. CHAIRMAN: In this bill we proceeded with Clauses 2(h) and (h.1) and 1(h.1)(i), (ii) and (iii) is where we were, and I had an amendment from Mr. Corrin on 1(h.1)(iii); that regular gifts shall be treated as income and casual. One time gifts shall be treated as capital additions to a recipients liquid assets, is the only one that I have before me.

Have you got an amendment George, or are we just dealing with the one?

Mr. Minaker.

MR. MINAKER: Mr. Chairman, we haven't any amendment, we're proposing the clause as before the Committee, as worded in the Bill before the Committee. I think we had quite extensive debate on this particular clause, and indicated that it's pretty difficult to try and legislate either numbers in a bill to what one would consider the limits of a gift, or whether it's a one-time gift. The difficulty for the administration of the Act is in how to determine a one-time casual gift. It could in many cases take two or three years to in fact establish that.

What I have indicated to the committee is that the administration will continue to use common sense and fairness on this, and not to the extremes that were indicated by some of the members of the committee, that if a child received a trip to a camp that we would count that as income. We would not, and have not in the past.

I think what is being debated is that both the opposition and the government are not opposed to charity. The question is, when a recipient receives a charitable gift or donation from an individual, to what size do we look at the charitable donation and then question whether or not, in addition to that charity, should the individual also receive social assistance if they are requiring it? I think that is what we are trying to achieve with the bill that's before the House, or before the committee, and is the way that we administrate the department at the present time.

To try and say that it's part of the liquidable assets wouldn't necessarily overcome the problems that can happen. As I indicated earlier, we have set limits on exemptions of allowable liquidable assets, of up to 2,000 per family. I would just like to make it clear to some of the members of the committe who maybe don't realize that liquidable assets are not the family home, it is not the family car, it is not the furniture or the personal objects that a person has within the home, it is liquidable assets in definition that is used by the department, bonds, cash on hand, in the bank, and maybe a second additional car. I want to make it very clear that what we are talking about does not pertain to the property that the home is located on, the home, or the personal belongings and so forth.

We indicated that we probably will be reviewing those limits, but I don't believe by making this amendment as put forward by Mr. Corrin we'll overcome a problem that he thinks exists.

MR. CORRIN: I do not intend to belabour this, Mr. Chairman. The Minister is quite correct in saying we've had extensive debate on this particular amendment. I think we debated an hour-and-a-half at our last sitting and this must be, I think, our third sitting day in Law Amendments alone on this particular bill. But I do want to say, because repeatedly he has suggested that one can rely on the discretion of public servants to operate not only within the letter but the spirit of the law, I do want to put on the record the comments of the Manitoba Court of Appeal in that regard, and they are very brief. The court, in its reasons for judgment, said as follows, and the speaker is the member of the court who wrote the judgment: 'I may also say that some of this dispute is due to a failure to recognize that public servants must operate within the legislation and regulations validly enacted for them."

I just want to make that point, that the Court of Appeal and this is not the only time that this has happened in the judgment, this is not the only reference made in the judgment the Court of Appeal did determine that the conduct of the department was somewhat arbitrary and questionable, not from an ethical standpoint, Mr. Chairman, but just from a common-sense point of view. So if we're going to be asked to rely on the good graces and discretion of the bureaucracy, let the record show that the court found that was not possible in the Wuziak case.

I really think, and it's the final word I'll have on this, Mr. Chairman, I really think that the Minister makes a mistake when he delegates so much authority to members of the department. I think there should be tighter governmental control with respect to this area. I think it's necessary for him to take the proverbial bull by the horns and spell out what the government's intention is in the legislation. He may have all the best intentions, Mr. Chairman, and this is what I think we fail to impress on the Minister. We all appreciate that he can have the best of intentions, but that department is enormous and it's simply impossible for him to know that everybody is doing what they should and is following his instruction. Mr. Chairman, in the absence of that sort of clarity in the legislation, then it will not be possible for people to go to the court, as Mrs. Wuziak did, in order to redress abusive treatment or unfair treatment by the department.

That is what we're being asked to vote on with respect to this particular subclause, Mr. Chairman.

MR. CHAIRMAN: If the members of the committee would just keep your visiting down a little lower, I think maybe I could hear what the honourable member is saying. At times I'm having a terrible time to hear what is taking place.

Mrs. Westbury.

MRS. JUNE WESTBURY (Fort Rouge): Yes, Mr. Chairperson, I'm going to support the amendment. I think that some of the judgment has been questionable and that it boggles the mind to think of how much it cost us to investigate this 400 expenditure and how much we spent in trying to get the 400 back. I would suspect that, in terms of salaries and costs, it would come to thousands of dollars. I would suggest that there is some question there as to the good judgment of the department, although I don't like to be in a position where I seem to be criticizing people who can't respond, so I will just support this amendment.

MR. CHAIRMAN: Any further discussion? Mr. Boyce.

MR. J.R. (Bud) BOYCE (Winnipeg Centre): The Member for Fort Rouge, Mr. Chairman, says it appears as if we are criticizing people who can't respond. It is regrettable that we hear much about thejudgment, but not about the mitigating circumstances that prompted the bureaucracy to proceed in this particular manner.

I would just like, through you, Mr. Chairman, to ask the Minister, the way the Act reads without the amendment, this is still going to allow some discretion without spelling out just exactly how much that discretion . . .

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Yes, Mr. Chairman, it will leave discretion. As I indicated, the present guidelines to the committee before were based on looking at if, say, there's a gift given to someone that's in the order of 5,000, then obviously we will have to look at whether or not the individual required additional social allowance benefits to handle her budget for the family. The present guidelines at the present time are such that it is 2,000 in liquidable assets per family. As I indicated, we will be reviewing that to see whether in fact those might be too low, but it does leave discretion, there is no question about that.

MR. BOYCE: The Minister uses the term 'liquidable assets." Are these assets which can be turned into a liquid, or are you talking about liquid assets?

MR. MINAKER: Liquid assets.

MR. BOYCE: Having heard the Minister, perhaps we could ask the Member for Wellington to explain his amendment and how it would change that discretion.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Yes, I would be pleased to provide that information if I'm able to, Mr. Chairman. In our submission, Mr. Chairman, the problem in the Wuziak case related to the fact that there was nothing in the legislation which adequately defined when a gift should be treated as a capital addition to a recipient's assets. There was nothing that provided a clarifying guideline for the administration, so the administration, confronted with what certainly was a one-time gift, decided to treat it as income. They decided that it wasn't, in the discretion of one or two individuals, the department decided that would be treated as income and they pursued it. They pursued the matter so far as they eventually debited or they deducted moneys from the recipient's, Mrs. Wuziak's, social allowance payments.

Now, what our amendment does, Mr. Chairman, is simply to add onto the end of the government's clause a proviso that says that only regular gifts would be treated as income, and that and these are the words 'casual one-time gifts shall be treated as capital additions to a recipient's liquid assets." So in the case of the Wuziak gift, it would be clear to the bureaucracy that that sort of asset, or that sort of income, should be attached to the liquid assets owned by the recipient. Then we wouldn't have that sort of wrangling hassle, and the Minister and I don't seem to disagree on this. This is one of the things that amazes me.

The difference seems to be, Mr. Chairman, through you, that the Minister is adamant in his faith in the bureaucracy. I've told him this privately as well as publicly. I'm not suggesting that anybody in the bureaucracy is malicious in the pursuance or conduct of their duties. But, Mr. Chairman, I'm saying that by not defining the regulations by way of law, by not telling both prospective recipients as well as the staff how to go about their business, it is simply impossible to administer the department. It doesn't make a lot of sense that this sort of thing should be simply a matter of departmental discretion. And the Minister says, well, we'll define it. But I'm wondering how he would better define it than that way?

What sort of instruction could he give to the bureaucracy that would better instruct them, that would better define how they should treat gifts? He tells me that if it's a one-time gift they'll definitely look at it as capital and if it's regular they'll look at it as income. If that's so, then why not enshrine it in the legislation so that if that is not so, a recipient whose rights are trammmelled can appeal? I don't see why we can't put it in the law. I think we're being simply too protective of the bureaucracy and too unprotective of the citizen. And we should remember, Mr. Chairman, that the bureaucracy in the case of this sort of programming is at a distinct advantage. Generally speaking, I think it's fair to say, and it's almost a matter of record that most of the people who receive welfare are probably relatively ignorant of their rights, and I don't think they would disagree either. They don't tend to be people who have access to those sorts of social skills, and they certainly don't usually have access to extensive legal counselling. And if they do, they often don't know they have the right to it.

So it seems to me that we can spell it out and then everybody knows how the game is played and we can trust the bureaucracy to follow the law. That doesn't seem so hard, and the Minister knows that if a hard-hearted NDP Minister such as myself should one day come into power and try and change the law, he'll have a right to debate it, just as we're debating it this evening, so he can protect the welfare recipients.

MR. CHAIRMAN: Mr. Corrin, would you read your amendment into the record so then we can proceed with it.

MR. CORRIN: Yes, Mr. Chairman, although I'm not sure if you want to proceed, whether Mr. Boyce is . . .

MR. CHAIRMAN: Well, there may be more debate, but I'd like to have it on the record in case we didn't get it properly.

MR. CORRIN: Yes, Clause 1(h.1)(iii), add as follows: 'Regular gifts shall be treated as income and casual one-time gifts shall be treated as capital additions to a recipient's liquid assets.

MR. CHAIRMAN: Any further discussion? Mr. Boyce.

MR.BOYCE: I'm sorry we, for the sake of argument, I suppose, in making our argument, we have a tendency to re-try a particular case. I honestly can't say how I would decide, relative to a particular case, what my judgment would have been, because I'm not apprised of the circumstances leading up to that particular judgment.

Nevertheless, Mr. Chairman, I think the Member for Wellington's argument on the principle is well taken, and I think that I can't see it restricting that which is being done. It's just putting into the statute that which is purported to be done. When we leave it up to administrative discretion, I don't think it's a bureaucratic discretion per se, I think it involves the whole administration, because I'm not going to ask the Minister whether it was proceeded on his instruction or not. Nevetheless, I would assume that the Minister responsible was apprised of the circumstances leading up to that particular case. But when we leave it to the judgement of courts, we're always going to be in a position where courts will rule and we have no way of knowing how they will rule, even if we put it in the statute. You may recall that we, as an Executive Council, passed an Order-in-Council which many of us thought that we had the authority to pass. Five learned judges said we didn't have the authority to pass such Order-in-Council and four learned judges said we did, so you always have that judgment. But the principle which is involved in the amendment suggested by the Member for Wellington, I would ask the administration to consider it because I don't think it restricts. That's my understanding of what the Minister said as far as the discretionary ramifications of this particular section are concerned, Mr. Chairman.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, as I indicated at the last Law Amendments Committee meeting, the amendment, as put forward, does not in any way give any assistance in determining what is a one-time gift or is a regular gift. With the amendment before us, an individual that has been indicated in discussions in the debate could receive three trips, one every year to the Bahamas, worth maybe 2,000, and it would not be till the third year that in fact it could be determined that it is a regular gift, not a one-time gift.

A MEMBER: The second year.

MR. MINAKER: Well, it would be hard to prove that the second gift was even a regular one, but I'm saying that there has to be some discretion and I don't think you can legislate it in black and white, this particular item, and that is why I'm saying that the way it is being put forward in the bill will leave some discretion and I'll see to it, as long as I am the Minister, that our administration will look at it practically.

MR. CHAIRMAN: Any further debate? Those in favour of the amendment as proposed to Mr. Corrin, please signify by raising your hands, please.

MR. CLERK (Mr. J.R. Reeves): Five.

MR. CHAIRMAN: Those opposed to the amendment as proposed to Mr. Corrin, please raise your hands.

MR. CLERK: 14.

MR. CHAIRMAN: I declare the amendment lost.

(iii) pass; (iv) pass; 1 pass.

In the second Clause 2, that's supposed to and 'I'' instead of an 'i'', if any of the members haven't corrected it in their bills.

Mr. Corrin.

MR. CORRIN: Are we going on now, Mr. Chairman?

MR. CHAIRMAN: Yes, on 2.

MR. CORRIN: Fine.

MR. CHAIRMAN: 2 pass; Clause 5(1)(c) 3(c); (c) pass Mr. Corrin.

MR. CORRIN: Yes, I have already presented a written amendment which was distributed at our last meeting, Mr. Chairman. I have to presume that people who are interested brought it along. It is very lengthy to read, that's why I was hoping people brought it. It's a revision of the entire clause.

MR. CHAIRMAN: 5(1)(c).

MR. CORRIN: Perhaps I can just touch on it. At this point, I'll touch on the material differences between the clause as presented and the clause as amended and then we can, if necessary, read the whole thing for somebody, if they want to have the entire context of it. Essentially, first of all, what we do . . .

MR. CHAIRMAN: Can you read it it into the record first, Mr. Corrin, and then we can debate it?

MR. CORRIN: I'm at the mercy of the Chairman in this case, but it's quite lengthy.

Clause 5(1)(c) is repealed and substitute as follows:

(c) who is a parent with a dependant child or dependant children, and

i) has been separated from his/her spouse for a period of more than 30 days, or

ii) is the spouse of a person who has been sentenced to imprisonment for 30 days or more, or

iii) has never been married and has legal custody of the dependant child or dependant children,

iv) has been divorced and has not remarried.

The reason for this, Mr. Chairman, is to first of all create equality between the sexes. For some peculiar reason, we seem to have forgotten about the widower or the husband who has been deserted by his wife and who has been left to care for the children. We have forgotten that these people, too, I think, should have a right to apply for assistance, just as their female counterparts. I see no reason, and note that this was the opinion of the Manitoba Association for Rights and Liberties, as well, Mr. Chairman, why we should discriminate in favour of women and against men in this legislation. It makes no sense to me.

It seems to me that we had a case in this regard last year or perhaps it was two years ago, Mr. Chairman. It was the notorious Fitzpatrick case where, because of the anachronistic deficiencies of

the current legislation, the court held that a father was not entitled to welfare. This was a father who had been deserted by his wife and left to care for three children. So, it seems to me, Mr. Chairman, that in those sort of circumstances we should have some parity and equality as between the sexes, and certainly shouldn't, out of hand, dismiss the application of a father. I think all the circumstances should be reviewed, as they are in the case of women. So that's the first thing.

Second of all, I'm very concerned about this 90-day rule. The clause as written would prevent a person from obtaining welfare assistance for 90 days after a spouse had been sent to prison or after they had been deserted. Mr. Chairman, we heard substantial evidence from the delegations to the effect that municipal governments, as a matter of rule, place liens against the names of all applicants, all recipients, at the appropriate Land Titles Offices. Mr. Chairman, I think we all had grave concern as to whether that sort of burden should be placed on people.

I know right now I have a case involving a lady who lives in Fort Garry but who came to the city from a small town in rural Manitoba. She and her husband had acquired a small home there, which they were forced to leave because of her husband's illness. Her husband, by the way, Mr. Chairman, is a cancer victim and it's an inoperable, incurable sort of cancer and he's had it for a number of years. The family has been on welfare for, I think, three to four years now and she told me last time we met that the liens in the R.M. in which the property is situated now come to almost 5,000.00. Now the property apparently, on a resale basis, is only thought to be worth between 10,000 and 15,000.00. I presume it's a modest dwelling and probably resale values are low in that particular town or village and she is very concerned about this. The only thing we can do, Mr. Chairman, and what we're doing is we're applying to the Municipal Council asking for special dispensation and relief. You know, they can vacate the lien if they wish, but in order to do that you have to convince a majority of the reeves that is sensible. That's a lot of aggravation, Mr. Chairman. She has made the point and I think she makes the point well, and our argument is going to be that she needs the money to buy some special transportation equipment and a car. She can drive a car and she thinks that the money on the sale should be put towards an automobile so that she can drive her husband and I think they have one child to various points in the city.

I personally think the argument has merit and I know when I sat on City of Winnipeg Council a number of such applications were successful. But, Mr. Chairman, it is a lot of aggravation. It often leads to horrible inequities because, unfortunately, a lot of people, first of all, don't know of the rule and, secondly, a lot of lawyers don't know that they can get this sort of dispensation on special application. So a lot of people resultantly don't do it. They just simply don't make the application and don't get the benefit.

But in any event, Mr. Chairman, we think one of the things we can do from this end is abridge the waiting period to 30 days, and by doing so, it seems to me that we can provide some immediate assistance to people in this sort of situation. I don't understand and one of the things I wanted in enquire about is how my client could build up almost a 5,000 lien debt over a 90-day period. It happens all the time in the city of Winnipeg where recipients are allowed to rotate cyclically and what happens is they virtually never go off municipal welfare assistance. They never go on the provincial rolls. I don't know how that happens but it does. Some sort of bureaucratic Catch 22.

By and large most people, as I understand, prefer it simply because provincial welfare doesn't provide as much money as municipal welfare usually. It certainly doesn't in the city of Winnipeg. Our rates always were more attractive than the provincial rates. Perhaps they reflected city cost-of-living as opposed to rural cost-of-living but in any event, Mr. Chairman, I would note that I would like to see that abridged and there was concurrence and support for that from MARL.

I think that's the substance of the amendments that I have made. I don't think that there is anything else, other than those two major points in the amendment. But I would certainly like to hear from the Minister in this regard why men are being discriminated against.

MR. MINAKER: Mr. Chairman, the honourable member has introduced a few new ideas into this particular section of the bill, because as I indicated in second reading, all that this section has added to the law itself is that now we are writing into law that any woman that has been separated from her husband for a period of more than 90 days will now qualify for social assistance, which in practice we are presently doing, but because of certain technicalities it was deemed that it should be written into the Act. Now what we have is a suggestion that we now provide social assistance to single parent families where the man is responsible for the dependant children. What I might suggest is that it's not necessarily that the father should benefit or have social assistance, but rather we should look at should we really deem single parent mothers, who are looking after children, unemployable. Because in actual fact that is what the law states at the present time. Yet on the other hand, we are pumping considerable amount of moneys into the Day Care Program and the Noon and After School Program to encourage women getting off the welfare roll, so that we are looking at that at the present time, of possibly changing that actual fact of law. It was decided that we would not do that at this time this year. So single fathers who are employable are not eligible for assistance under our present welfare Act unless they are unemployable through disability of whatever, but they are, however, eligible under municipal assistance.

I would think that we should probably look more at the question of employability of mothers. I know that Ontario has done this and that we are looking at it, but I was not prepared in my short term in office to make this recommendation at this time, until I had a full chance to look into the complete scene. So that I, at the present time, could not support the proposed amendment that is being put forward by Mr. Corrin.

With regard to the waiting period of 90 days, I think this has always been for many years what has been recognized as a reasonable period to allow a possible reconciliation of the two separated spouses and also to establish that, in fact, a mother and dependant children are deserted. I would think it would be wrong to make a change to 30 days, to assume that automatically when someone is separated for 30 days that they would qualify for welfare. They do now qualify for welfare under the municipal assistance and it's a question, I guess, of the fact that municipalities lien properties if in fact they own properties, of people that are involved in the separation.

The other thing, Mr. Chairman, which I don't want to get into a long debate and dispute on, is, I don't believe that a motion can be put forward by someone other than a government member that would create additional spendings of taxpayers' money and this would make considerable additional spending of taxpayers' money, by reducing the time period from 90 days to 30 days and furthermore to place now the single male parent as qualifying for social assistance, if in fact he is still employable. So I would think that for those reasons that we would not support the resolution put forward.

MRS. WESTBURY: Yes, Mr. Chairperson. You know, I think that one of the reasons that there has been a tendency to consider that women and not men should be supported in the welfare system when they are raising their dependent children, is a fear that a man will give up employment to stay home and look after the children. And I personally think that only exceptional circumstances would make a man or woman give up employment to go on welfare. Because we all know that there is a certain stigma, rightly or wrongly there is a stigma, it is not a desirable state to be in, to be on welfare. I think all of us can envision certain circumstances in which it's almost required that a parent be raising children, if there's for instance, it comes to mind, a hyperactive child, or some child with special problems or even if it's just the conviction of the parents that a child is entitled to be raised by a parent. I think that we have to remove the discrimination that is in the bill.

And so, I will support the removal of that discrimination. I do feel that having supported having spoken strongly on behalf of removing discrimination against women, I must, to be fair, support the opposite discrimination and I don't really believe that a person who's in a good job, is going to leave the job to go on the not-so-good income of welfare, unless circumstances in some way demand that.

Now, the Minister has said, in regard to 5(1)(c)(i) 90 days is left in there to provide for reconciliation. Well, I can envisage the reconciliation falling flat rather rapidly when he finds that he hasn't had any income for 60 days or something. The reconciliation would become unstuck quite quickly when he finds he's got debts from the 60 or 70 days. So I don't think that that's a reason to keep the 90 days in. And it certainly doesn't apply to (ii).

I also want to go back to this employability factor for a minute and say that we can't really have it both ways. Until we're providing sufficient, adequate day care, of adequate standards, so that parents have faith that the care in which they're placing their children is as good as the parental care would be, we can't expect and demand that people become employed because they, you know, a responsible parent is particularly concerned about the quality of the care that the child receives. So that, you know, we can't have it both ways, if we're going to expect them to be employed then we have to provide suitable, adequate, competent day care.

I'm less concerned than Mr. Corrin is about the lien situation on municipal welfare and we've had this discussion on the floor of council, I think. The scenario that Mr. Corrin gave us, you know is a special case and certainly I can see that a person such as his client, would have to have consideration and having lived in these circumstances for some years where her husband is ill however, the city, as Mr. Corrin said, the city of Winnipeg council would have disposed of that, on application, I'm sure and there were a number of cases while we were sitting, where the liens were withdrawn what do you call it? What I think about, when I think about not placing liens, is somebody who is temporarily in a poor situation, a poverty situation but within a few years becomes prosperous again, I consider that it is not unreasonable to think of the welfare payments in that case as loans. They can't get loans on the commercial market very often or most of the time in those circumstances and I don't think it's unreasonable that when they become prosperous they should repay the taxpayer who, one would hope willingly looked after them in their times of trouble and I'm not talking about impoverishing somebody.

I also envisage a case and we've heard of this I had complaints when I was a councillor, from people who said, I don't want a lien on my property because I want to leave this property to my children.

MR. CHAIRMAN: May I ask where I don't see any lien in this legislation that's before us.

MRS. WESTBURY: Yes, it is actually a part of the amendment which is trying to reduce the time from 90 days to 30 days in order that a lien should not be placed on the home. The amendment is concerned with the placing of a lien.

It was stated and I'm replying to that.

MR. CORRIN: On a point of order. Unless, Mr. Chairman, the provincial government had exactly the same policy as the municipal governments and also placed liens, if the Minister could tell us that the provincial government currently had identical policy guidelines and was imposing liens, then of course it would be superfluous to discuss that particular provision, so perhaps we should ask the Minister what the policy guideline, for the provincial administration, is in that regard.

MR. CHAIRMAN: Mrs. Westbury, do you want to finish your argument first?

MRS. WESTBURY: Well, if the province does, in fact, place liens, then what I'm saying is irrelevant. If the province does not place liens then what I'm saying, I suggest, is relevant. Because it was one of the reasons for the amendment. So could we have

an answer from the Minister and then could I come back please?

MR. MINAKER: Mr. Chairman, the present policy of the provincial government is that liens are not placed against residences, unless we make payment on a mortgage, then the principal is liened, but the interest or the taxes are not liened. If a major repair is made to the residence, say over 500, like a repair to the roof or something like that, or a new furnace, then that is liened. However, otherwise the property is not liened. Additional pieces of property will be liened, if they have, say, an additional piece of land somewhere, then it would be liened. I believe, if I remember, if I'm correct, if it relates to a farm, then anything over the quarter section that the home is located on could be liened. But that is the present policy of the provincial government. I might point out

well I can't debate on what the municipalities do, so I won't comment.

MRS. WESTBURY: Perhaps when the Minister next speaks, he can tell us if that is a change because I don't remember that liens were placed in the past. (Interjection) No change, right, thank you.

What I was talking about was somebody who phoned me up, I had a person phone me one day to complain about the city placing liens and she said, I want to leave my house to my children. Her children were fairly prosperous. It seems to me that we must provide assistance to such a woman, during her lifetime and during her need but we don't have to make that a bequest to the children, who really do not need it, and I do believe that the first responsibility there, when the need no longer exists is, to repay the taxpayer, from the sale of the property, for instance. So, as I said I don't have the same concern on liens as Mr. Corrin has. I don't how this can be separated out for voting. It's one of those awkward things that would have been easy at the city because you can vote section by section, at the request of one member and perhaps you can here, and perhaps you can advise me on that, Mr. Chairperson.

Those are my comments on this particular amendment.

MR. CORRIN: Yes, I'm wondering, Mr. Chairman, it may well be the case that the policy respecting liens has been unchanged since 1977.

MR. CHAIRMAN: We still have the problem, Mr. Corrin, about the resolution being out of order, it was questioned by the Minister, the expenditure of dollars and I wonder how we're going to deal with that?

MR. CORRIN: Well, of course, Mr. Chairman, an equal rights amendment would by no means entail an expenditure of dollars, it's a question of whether or not the first of all, whether the legislation is even valid, constitutionally. I would argue, Mr. Chairman, that first of all, the Human Rights Act probably would take precedence to this legislation. I'm wondering first of all whether we can even enact legislation in these times, that doesn't credence to the provisions of the Human Rights legislation. I wish the Attorney-General was here because I'd like to have some guidance on that point.

MR. CHAIRMAN: Well, the problem as I see it, Mr. Corrin, is the changing from 30 days to 90 days. That does cause an expenditure from the Treasury. From 90 to 30. I don't know how to deal with it.

I can read you the amendment if you so wish. It's Rule 54 'No member, who is not a Minister of the Crown, shall move any amendment to a bill, or to estimates, that increases any expenditure or varies a tax or a rate of tax or provides an exemption or increase in exemption from a tax, or a proposed tax, but a member who is not a Minister of the Crown, may move an amendment to a bill, that decreases an expenditure, or that removes or reduces an exemption from a tax or a proposed tax."

I suggest your amendment is out of order, sir.

MR. CORRIN: Well, we can change it back to 90 days, Mr. Chairman, it doesn't matter to me. I'll continue to debate the principle. The point is, Mr. Chairman, that first of all, we should not be I'm very concerned to hear about this lien rule, simply because I'm concerned that it may precipitate situations where people are encouraged to stay on municipal welfare, instead of going onto provincial welfare. And I'm concerned about that because very often, depending where you are, municipal rates are lower than provincial rates and sometimes the reverse is true. But I'm concerned that in certain rural municipalities, people would be . . .

MR. CHAIRMAN: Mr. Minaker wants to explain his says, if that's okay with you, Mr. Corrin?

MR. MINAKER: If, Mr. Corrin, might permit, what I said was, we only lien if they have additional properties, besides the home and the land that the home is on. And we only lien on the mortgage payments, like the principal on the mortgage payments. We don't lien on the interests say the payment toward a house, to maintain it for the woman, was 100 a month, of which 20 was interest and taxes, then we would only lien the 80 a month. However, in the case of municipalities, if Mr. Corrin is suggesting they stay on municipality welfare, they lien everything on their property, so I can't see them taking that approach, because of the fact that we lien a small portion, if they in fact, qualify in our regulations to be liened.

MR. CORRIN: I think, Mr. Chairman, the Minister in that respect is quite correct. Logically, if that's the case, that would flow.

MR. CHAIRMAN: 3(c)(i) pass; Mr. Corrin.

MR. CORRIN: I would just, with respect to (ii), the Minister has indicated that 90 days is arbitrarily chosen in order to encourage reconciliation. I wonder since that particular provision involves people whose spouse has been in prison. I wonder if he thinks it will encourage early parole. I can't understand that at all.

MR. MINAKER: I don't want to even answer that, Mr. Chairman. I was referring to the specifics of

someone who is separated when I used the 90-day. I think that Mr. Corrin is fully aware that 90 days has been in existence for many years; when he was on council and I was on council, it was understood the municipalities looked after those people in the initial stages. The question of municipal assistance is a larger one, whether in fact it should be looked after by the provincial government rather than municipal governments, I will be reviewing that, but I wasn't prepared at this point in time to inserrt amendments of what he is suggesting in the bill.

MR. CORRIN: I just want to, in closing, make the point, Mr. Chairman, that as a result of these amendments, not addressing those problems, there will still be differential treatment as between residents in various rural municipalities across this province, some who will receive better allowances than others, because the provincial government won't intercede and make uniform standards and guidelines for all the various regions of the province. So that is one problem that the Minister has not in his wisdom seen fit to address; and secondly, it will continue to treat men and women differently with respect to their access rights to welfare allowances. I just want to make the point, Mr. Chairman, that does not seem to make a lot of sense.

Clearly, if a male can make a case for having to stay home and look after children I can think of some circumstances, using my imagination as I said, three very young children, a wife who has run off, and this must happen occasionally, Mr. Chairman, somewhere. If a person decides that they can't carry on their employment and look after those three children let's say they're not in area where it's so simple to take the children to a local day care centre and surely, in the rural areas and in the northern areas, Mr. Chairman, there cannot possibly be easy access to day care. I mean, if you're on a farmstead I can imagine all sorts of circumstances where a person could be hard put to survive unless they had access to this sort of assistance. I don't understand why we should proclaim legislation that treats men differently from women, particularly as I said, in view of the fact that there is a Human Rights Act in this province that says that there should not be discrimination on the basis of sex. So why can't both their applications be received and reviewed on an equal basis? The point I'm making is, under this legislation, a widower or a dependent husband is simply precluded, is simply stopped from applying for assistance, cannot do it. No case can be made. It doesn't matter what their circumstances are, they can't gain access to the assistance; that's the substance of my complaint and I think that's a fairly substantial matter.

MR. MINAKER: Mr. Chairman, just to clarify, I'm sure that the honourable member has read the existing Act and compared the amendment that's put before us in this section. The only thing that's been changed is the addition of Roman numeral V. That is all that we're adding and amending. Nothing else has been changed. It reads verbatim in the existing bill that was enacted in 1959, I believe it was, so that we're not changing and bringing in any new law. It was in 1968 it was brought in, and I might say that it was followed through in the eight years of the former administration. We have chosen to add an additional qualification for a woman who has been separated by her husband now, but to try and imply that there are any major changes and that we are going to create a problem of differences between municipal assistance and provincial assistance is incorrect, because this law has existed in this matter as late as 1968. Amendments were put in in 1970, 1971, 1973, 1974 and 1975, by the former administration but they did not choose to change to what he proposes. My main concern was that there was a sort of implication that we were adding something new that was going to create a major difference, which is not the case.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, I tend to agree with Mr. Corrin's suggestion. I think that social norms are changing and if the cases are very few and far between and very exceptional today, as each year passes, I think there will be more and more instances in which men may choose to stay home looking after children and be given custody of children under separations and divorces. I think we can anticipate that happening, so we should provide for it. If we are bringing in these changes to the Act today, why not provide for that situation which we know will be happening more frequently in the future?

MR. CHAIRMAN: Any further discussion? (ii) pass; (iii) pass; (iv) pass; (v) pass.

MR. CORRIN: Mr. Chairman, we had an amendment in front of the committee; are we not going to deal with the amendment?

MR. CHAIRMAN: The amendment was out of order, sir.

MR. CORRIN: No, it wasn't. I said that we will simply amend 30 to be 90 and then it's in order again.

MR. CHAIRMAN: I didn't have that before me, sir, I think the amendment was . . .

MR. CORRIN: It's on the record.

MR. MINAKER: Mr. Chairman, still, to accommodate employable male parents would probably create additional cost, because at the present time they don't qualify unless they're unemployable. I don't know how many are out there, but I guess technically, they would increase the costs of expenditures. If you wish to vote on the amendment, that's fine, but in terms of Rule 54, in my opinion, it's out of order.

MR. CORRIN: Mr. Chairman, I'm very disappointed to hear the Minister taking the position that he has. The Minister set out to revise the Act with a view, I presume, to reform it. I would presume that would be the intention of the Minister when he brought forward the package of amendments that he did. The Minister seems wholly reluctant to consider any amendments that were simply not produced by his department. It seems to me, Mr. Chairman, that unless the Minister can tell us why men should not

be given equal treatment you know, as a matter of fact, I'm becoming particularly incensed. If I am the father of infant children and my wife falls prey to a fatal illness, and I'm put in the situation where I have to choose as a result of my circumstances and I indicated that can happen in many situations, a situation where a person lives outside the city at a great distance from his or her work, where the hours of work are irregular and perhaps shift work, and a person makes a decision, in good faith, to commit himself to looking after his children, he decides that is within the spirt of the commitment he made when he and his wife decided to have a family, and he makes that sacrifice because, Mr. Chairman, that is what it is. He gives up a good job, he gives up his own personal aspirations to tend to the needs of people who are unable to look after themselves.

So when he makes that sacrifice the Minister is telling me, that because he did not think of the particular amendment, it didn't come from the pen of one of his staff workers, that he will summarily and arbitrarily dismiss out of hand, the possibility of such a reform being made. And what would it entail? It would entail, Mr. Chairman, the word 'wife'' of a man being struck and being replaced with the word 'parent''; that's all. It would take a matter of probably less than 60 seconds, Mr. Chairman, for the Minister to give access to any person who falls into those circumstances to welfare assistance. Would that be so awful, Mr. Chairman, would it be so terrible, that the Minister should swallow a slight bit of pride, and I don't even know why it's a matter of personal pique or pride, to allow that the opposition occasionally can bring forward a constructive suggestion, because that's all it was up to this point. I don't think that it had become a controversial debating point. It wasn't a political football. It was well beyond the realm of that. The Minister would simply have to accept that the times have changed. We are willing to accept that we had the opportunity in eight years to make such an amendment. We were willing to accept the fact that we did not and put it on the record if that shows a failure in our commitment to social progress, so be it, it's on the record.

But, Mr. Chairman, the Act is before us today. It is the Minister who has brought forward the package of reforms. The opposition has reviewed the package of reforms and has suggested one small revision that might improve the tenor of the Act. It can't be that unreasonable, Mr. Chairman, because the Member for River Heights, who is, I think, a very loyal member of the government caucus, and I think an articulate spokesman of government philosophy in this House, has suggested that it's not irrational. He seems willing to accept the fact that we live in different times. We brought in The Human Rights Act in the 1970s in response to this sort of predicament and problem. I'm sure, Mr. Chairman, and I think I'm speaking fairly now, if the shoe was on the other foot, and the Conservative Party was in office in the early 1970s, it is quite likely that as a result of the consultations that took place between Ottawa and Manitoba and the pressures that were brought to bear by members of the Manitoba public on the government, that the Conservative government then, would have done exactly the same thing. And to your credit, Mr. Chairman, you haven't dismantled the Human Rights legislation either, so I have to presume that you're supportive of the philosophy implicit in that sort of statute.

So why, Mr. Chairman, is it so difficult for the member to consider the appropriateness of an equal rights' amendment? Why shouldn't we give equal treatment to everybody, men and women? You know, a person, I suppose, could become histrionic and quite argumentative in this regard. Mr. Chairman, and I say this with all respect, to women everywhere, if in fact this sort of legislation were before the House and referred only to men, the roof would be coming down around us. There would be delegates lined up all the way to Broadway. But, Mr. Chairman, it doesn't; in this case, the benefit flows in favour of women and it's wholly against, in its entirety, against men. And I'm saying that it's time that we give consideration to treating men equally. It's not so far-fetched, Mr. Chairman. There are deficiencies on both sides of that fence, and this is one of them.

So the male widower should get the same consideration as the female widow. There is no reason why that shouldn't be the case. I haven't heard one argument why that should not be the case. And the point, Mr. Chairman, is that tonight we are dealing with clause 5(1)(c). We're actually at a point in the parliamentary process where we can effect change simply and expeditiously, because it's before a legislative committee, and with the stroke of a pen and a voice vote, it can be done. It doesn't have to be a subject of a private members' bill and all that that entails, all that sort of wrangling. We can find common cause tonight and we can do something. You know, we did it with respect to the first clause, the Member for St. Boniface provided a compromise that provided protection for the concerns that were raised by both myself and the Minister, and the Minister accepted that. We all agreed that it made sense. The Minister accepted it and it passed through committee.

We've come to the same sort of impasse again and I can't see why we can't substitute for the word 'wife of a man'', the word 'parent''. You know, the equal rights amendment. So, Mr. Chairman, on that basis I turn it over to Mrs. Westbury.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: I think the reason that you haven't got hundreds of people lined up to speak on this is because it doesn't occur to anyone to expect that women are going to be better off than men financially, so when they find out, they'll be lining up.

Mr. Chairperson, I think (Interjection) It's the first time he's ever wanted to hear me, so let him listen. He's mad. That's all right.

I think that a mark of good legislation is legislation that perhaps anticipates the consequences of future court action and I think that any male parent in a situation such as has been described by Mr. Corrin, who is refused assistance that would be given to him if he were a woman, would take legal action on the basis of the Human Rights legislation. I just think it's shortsighted and foolish not to anticipate that at this stage. When the bill is being amended I think we should be considering what the Member for River Heights called the changing norms, that also the

changing attitudes of courts and the legislation that has been in place for what, five or six years in this province, and seems to be holding up very well.

I would advise the Minister to save himself future embarrassment I really would have said, okay, I don't care about the 90 days as much but I really do advise him to accept the suggestion that a 'wife'' of a man should be changed to a 'parent'' and the other similarly sexist portions of this be changed, Mr. Chairperson.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, firstly to Mr. Corrin, I have never advertised that this is a major reform bill. In fact, when I introduced it I said that it was basically technical changes in the Act, so to try and harangue and put on a display that this is a major reform bill is incorrect and I think the committee recognizes that. So to try and imply that this is a big reform-type of bill, it is not. It is basically a technical clarification on the majority of the items.

Now with regard to his suggestion and Mrs. Westbury's suggestion that we include males in the Act, I suggest that that's the negative approach and I'm not prepared to take it. A negative approach that we will now deem that any male parent who has dependent children is unemployable, that's what they're suggesting.

I indicated earlier that at the present time a woman that has a dependent child is deemed unemployable and that is exactly what the honourable members are requesting.

I am of the opinion that we should take the positive approach and I've indicated that I'm looking at that, where we will deem women who have children, single-parent women, should be deemed employable. That, in fact, says that they then have to prove they're unemployable. But I'm not prepared to do that until I know, in fact, that we have all the services in place that will give them a fair chance to prove that they are employable and should, in actual fact, prove to us that they're unemployable.

But what the two members are suggesting tonight is that we now deem a male parent unemployable so that he qualifies for the welfare. I can't take that approach and I'm looking at the other side of the picture, that possibly we will deem female or female single parents as employable and they will have to prove that they're not in order to qualify for welfare. But I am not prepared to do that at this stage and I have indicated that other provinces have, in fact, done that.

MR. CHAIRMAN: Mr. Steen.

MR. STEEN: Mr. Chairman, earlier you said that you had some concern as to whether a non-Minister of the Crown could move such a motion that might cost money to the Treasury Bench and changing from 'wife'' to 'parent'' obviously means that it could have both male or female, and the Minister has also expressed that potential view. But there's always the chance that if the Minister can be convinced between Second Reading at committee now and Third Reading of making such a change, that maybe the Honourable Member for Wellington, Mr. Corrin, would use some of his persuasiveness in a nice manner, and so on, and try and work on the Minister in between times and perhaps he could bring in such a change, because I think as you, Mr. Chairman, that it could cause an extra expense to government and that a non-member of Treasury Bench can't make such a motion.

If it is out of order, sir, let's get on to the next piece of business.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, I wonder if anybody, from the administration who is here, can tell us how much it costs us to conduct a court case because I'm quite sure this will lead to a court case. We are talking about the expenditure of money and really I think the Minister has made some statements which he will probably hear more about by saying I wish I had the Hansard before me now he is saying that we are trying to say that men with dependent children are unemployable and by saying that he has said that women with dependent children are unemployable and obviously that's not true when you look at the number of mothers of children, dependent children, who are in fact employed. You can't say one without saying the other, as he tried to point out in the opposite.

The reason we're asking for better Day Care facilities is because so many women consider themselves and want to be employable and they're not because there isn't adequate care for their children. Is the suggestion being made that adequate care for the children of men is less important than the adequate care for the children of women? I'm afraid that we're into a situation here where we have a very stubborn Minister, who has made up his mind he is not going to be moved by this, Mr. Chairperson, and I don't think he's really opening his mind to the discussion around the table, because I do feel that this is a violation of the Human Rights legislation and that this is a dangerous situation for the government to place itself in financially.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, I don't think we're naming anybody as being unemployable. I think it's a question of saying that some may make the choice not to be employed in favour of spending the time at home raising the children. Now that traditionally is the decision that women have made. They have chosen to sacrifice their own personal ambitions for careers or for greater income in favour of spending the time at home raising the children. What I have said is that although it's non-traditional for men to make that choice, I'm suggesting to you in the future, we're already seeing signs of it happening in other jurisdictions, in other parts of the world, in other similar societies, and I believe that our society is moving in that direction.

In the case of cost, it seems to me that if there are children who have parents who may be in that situaton, there are the same number of children who have parents who may be in that whether the parent is a male or a female there's still probably the same number of children whose parents may be affected by it and it would be impossible to quantify the costs involved and, in fact, I don't know if you

could state with any degree of certainty that there would be additional costs. It may, in fact, cause courts to make decisions that would say that the male now is capable of looking after the children because he has the right to choose to stay home and look after them, which he hasn't had heretofore under this type of legislation.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: I just wanted to make the point that I concur with everything that the Member for River Heights has just said. I think that was imminently wise and we should, Mr. Chairman, whenever we review legislation, encourage reform of all sorts and that's obviously a spinoff effect. I think we should be moving in that direction because if we can create more equality with respect to he rights of parents to custody through this sort of support of legislation, then we've gone a long way. We're moving in the right direction.

Mr. Chairman, I wanted to address the concern raised by the Minister. He suggests that we would be simply deeming all males to be unemployable and, Mr. Chairman, I presume his tongue must have been in his cheek because he knows that it's a question of choice and that the individual in question would have to give up the job. It's also a question of review. It's not quite that simple, Mr. Chairman.

If a person had a job or had access to a job and it became clear to the welfare authorities upon investigating the application that the person could well be gainfully employed, the person would have to indicate why he felt it was necessary to give up that job. I don't think it's a question of the person simply saying, I won't work, Mr. Chairman. If a woman who has access to a job, who as the welfare department knows can work, is living and I'll give you the classic example if a woman right now is living alone and has no dependent children or has a child who may not be deemed to be dependent in the sense that it doesn't need constant attention, I know that the department can require that lady to take the job, and they do it all the time. For the Minister to suggest that people aren't asked to take jobs, that they're discouraged from becoming employed in those circumstances, when there's no good reason for them to refrain from employment, would be absurd and I think it would be an incorrect statement.

I would hope that if that is the regulation, if that is the regulatory policy, I would hope that would be attended to immediately and changed because certainly under the legislation, I know of no reason if a person doesn't have a truly dependent child, why they would be deemed to be unemployable and not be made to work.

MR. CHAIRMAN: (v) pass. Mr. Minaker.

MR. MINAKER: Mr. Chairman, I have to clarify that. It very clearly says in the Act at the present time, Mr. Chairman, 'that a social allowance shall be paid only to'' and under that section it says very clearly: 'who is a mother with a dependent child or dependent children''. Now with the amendment that was proposed it would now read: 'who is a parent'', which would mean that a male parent with dependent children could sit at home and we have to pay them welfare, with the proposed motion.

In the same way now, that if a mother choose to stay home with her child, we have to pay them welfare and that means that they are basically deemed unemployable by law, if they choose to, and that is exactly what the proposed amendment would do for the man and what the honourable members are suggesting, that a man could stay at home with a child up until the age of 18, if he so desired, in the same way that a mother can now stay at home with a child up to 17 or 18 years of age and collect welfare. What we are finding happens is that when the child becomes the age of majority, that that individual is now off the welfare rolls, but then we find that they are now deemed unemployable because they're not suited for any job, and that's exactly what could happen with the man as well if he chose to do that.

So that is why I said that at the present time we're deeming that a mother is unemployable if she chooses to take that approach and we cannot make her go to work even if it might be in her best interest.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: Surely, Mr. Chairman, and I say this with respect, because any other conclusion is absurd. The courts must be and the department presumably would determine what constitutes a dependent child, and obviously if a child was 16 years old and fully self-sufficient and of able body and sound mind, or of sound body and able mind, presumably the mother of such a person couldn't simply, if there were lots of jobs going and available to her and she could be tied into them through the Manpower offices, the Minister surely is not telling us that under his legislation such a person could simply, in perpetuity, sit on the welfare roll; because if he's doing that, then this Act needs wholesale reform; because I have never interpreted it that way and I've never known this is the first Minister, Mr. Chairman, I've ever heard, suggest that people . . .

MR. MINAKER: That's the reform I'm talking about for next year.

MR. CORRIN: Well, Mr. Chairman, this bill should simply be taken back then and it should be wholesale. Mr. Chairman, we've heard people, because the question is raised from time to time in the House. The questions have been asked whether there are any people receiving welfare who are not in need of such support, whether there are any people who are capable of obtaining employment. We always received the answer that, no, all of the people on the rolls are simply incapable of performing work and there is no work available that they can do.

Now the Minister is telling us that if a person simply chooses under this Act to go on welfare, even though they say that a 16-year-old perfectly non-dependent child is the excuse, if a person chooses to do that, that that's fine, that the Minister will not intervene or intercede, that he will go along with that. Mr. Chairman, I'm inclined to be compassionate, but I say that is folly. That is completely foolish. That is what's going to be wasteful of the government's

revenues. That's absurd. This bill should be immediately pulled back. I don't want to give somebody like that welfare. I'm willing to be big-hearted and I'm willing to be generous, but that is ridiculous. Why would you want to give a person who can get a job, and where a job is available, welfare, simple because they have a 14 or 15 or 16 or 17-year-old child who is still going to school. They don't have to be home all day to look after that child. That's sheer madness.

The Minister can't possibly stand behind this bill. It's simply inconsistent with common sense now. And if he says that's been the law all along, I must say that he's the first Minister ever to be so candid as to suggest it. No other Minister has ever stood before this House, I'm sure, and suggested that that was the case.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, every other Ministers administered the bill in that way and if the honourable member, who is a lawyer, does his homework like I think he does, if he reads the definitions that are in the Act as they are today, it very clearly tells you what a dependent is. 'With respect to any person'' means any child who is dependent upon him support who is under the age of 16 years, or 16 years of age of age and older and mentally or physically incapacitated. That's a definition of dependent. The definition of child means 'A boy or girl actually or apparently under 18 years of age.''

So it's very clearly in the Act as it sits today, before we even make these amendments, so that even if we withdrew this bill, the only thing we would be doing by withdrawing this bill would be removing the rights of those women separated from their husbands to qualify for welfare. So, Mr. Chairman, I'm not going to debate this section any further. If the Honourable Member for Wellington wishes to, that's fine for him to keep on. I've pointed out our view on this situation.

MR. CHAIRMAN: Mrs. Westbury.

MRS. WESTBURY: Mr. Chairperson, I don't want the bill withdrawn, I just would like it amended. If the Minister is adamant, then it should at least go forward and we'll have to bear the consequences, and he will know that he has been warned.

I was moved to speak again by the casual way in which he assumed that anyone staying home with small children sits around. He said he can sit at home. When my children were small, I didn't sit from morning until dinnertime, practically the whole day. It sort of perpetuates the myth that mothers with young children are sitting watching the soap operas all day.

MR. MINAKER: I didn't refer to young children. I was referring to 14-year-olds.

MRS. WESTBURY: I just wanted to object to that statement.

MR. CORRIN: I don't really know why the bill is before us. Mr. Green, when he was here the other day, suggested, and I thought quite rightfully, that there was nothing in the bill that he found of merit. He didn't know why, and he referred to it several times, and I wish he was here tonight. He said that he didn't see why the government was bringing in most of these revisions. He couldn't understand the compelling necessity to do that.

And as we go on, Mr. Chairman, it appears that this bill needs a lot of work. The Act needs a lot of work. There obviously are loopholes in the Act, and it cuts both ways, Mr. Chairman. It seems to me that, on the one hand, the Minister is acknowledging that the Act has been interpreted in such a way as to allow people who really shouldn't be on welfare to go on welfare and, on the other hand, it would preclude somebody like the male widower, who really has need, from doing it.

It just seems, Mr. Chairman, that this legislation is in a deplorable state and perhaps it would be best served by sending it back and working up some real reformative legislation. Do a wholesale revision of The Social Allowances Act and bring it into tune with the 1980s. The Minister has suggested that the bill has been the same essentially for years and years and perhaps it's time, and this is perhaps one of the useful things that often does come out of committee debate. It's time that we recognized that the bill has fallen out of step with the temper of our times.

MR. CHAIRMAN: (v) pass; 5.1(c)(iii) pass; Clause 5.1(a)(iv) pass; 5(5) as amended, 5 pass I have an amendment here.

MR. CORRIN: Yes, Mr. Chairman, we introduced an amendment the other day we again distributed it; all the amendments have been distributed, Mr. Chairman which goes as follows, and I'll just read it because it's very short.

It would introduce after the word 'words'' in 5.5 as follows: 'under circumstances that indicate to the director that they are living together.'' Excuse me, that would be struck out. The clause would read and I'll read the amended clause because then the intent of the amendment becomes more obvious Section 5(5) of the Act is amended by striking out the words 'as man and wife'' immediately after the word 'together'' in the second line thereof and substituting therefor the words 'as if they were married to each other.''

So what essentially we're moving, Mr. Chairman, is an amendment that will remove some of the discretion that would be provided to the department in deciding what constitutes a common-law relationship when determining whether a person should be eligible for an allowance or not.

MR. CHAIRMAN: Mr. Corrin, I have a different amendment altogether before me. I have 'Amend Clause 5.5 by striking out the words after the word 'words'' as follows: 'under circumstances that indicate to the director that they are living together.'' Is there another amendment that you are speaking to?

MR. CORRIN: That's the one I just read.

MR. CHAIRMAN: No, it's different from the way you read it.

MR. CORRIN: I read the amendment first, and then I read the clause as amended.

MR. CHAIRMAN: This is correct, then?

MR. CORRIN: Yes. The first time I read the amendment, and the second time I read the clause as it would be amended by deleting the words that were extracted.

MR. CHAIRMAN: Okay. Proceed, sir.

MR. CORRIN: Mr. Chairman, we felt, and again all three delegates to the committee agreed, that it was simply unfair to allow the director to have the authority to make a decision to terminate assistance because of a civil servant's impression of what might constitute a common-law relationship. I think everybody pointed out that that was a very difficult thing to do and it was best left, if necessary, to judicial discretion, to judicial determination and interpretation. So we are trying to provide an amendment that will clearly facilitate that sort of circumstance.

I think the amendment essentially replaces discretion with objectivity. What we are doing is we're creating a situation that will allow for a more objective ruling on what might constitute that sort of living arrangement. I think it is probably one of the most difficult aspects of determining who may be eligible for an allowance. I think it's very difficult for a person to decide what constitutes a common-law relationship. We don't want a situation where, because a director simply snoops you know, because a welfare worker is told by a neighbour that somebody is living with someone else, that they make such a decision on the basis of that sort of information, and on the basis of their sole discretion. We think that's going to lead to very harsh circumstance; it is simply going to be manifestly unfair.

It seems to us that there should be some clearer prescription. I'm not suggesting it's an easy thing to do, I'm just suggesting that by taking the discretion away from the department and putting it back into the hands of the court again, you get into a fairer situation from the point of view of the welfare applicant. I don't like a situation where somebody can simply be cut off the roll because some civil servant thinks what they do is a common-law marriage. I don't think that's fair and I think that that should always be the subject of an appeal.

I think again you've got to sort of put yourself, I suppose, into the shoes of the applicant. If you did that, I think that you'd realize that if you were the person affected, you wouldn't want to be at the whim, at the arbitrary whim, and under the sole power of a welfare worker. You would want some right of appeal. You wouldn't want, just because your welfare worker doesn't like you, to be ruled ineligible because the welfare worker says that your boyfriend is a common-law. I don't know, it's a very arbitrary sort of thing. When does a boyfriend become a common-law? What constitutes that sort of relationship? I'm not that wise and I'm not going to pretend to be. I would prefer to let that go to the court and I'd prefer to know what the court said about that.

Under this sort of wording we're going to have situations where welfare workers do it, and I think that they're no wiser certainly than their legislative counterparts. So I don't know why we should enable them to have that discretion if we don't want to make adequate definition. We're reluctant to do that, ovbiously.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, first I want to make it very clear, and underline it, that what is being put forward in this bill is not to give the power to the director to decide whether it's right or wrong for two people to live together common-law or married. Whether it's ethically or morally right, that has no consideration whatsoever in what is being proposed at this point in the bill. What is going to be determined is if there are any economic ties because of their common-law relationship. Are there any benefits in terms of dollars and cents that are being shared in the common-law relationship.

In other words, is the boyfriend or the commonlaw relationship paying for the rent, or is he paying for the groceries. This is what would determine a so-called common-law relationship. We're strictly interested in the economic relationship between the two. And I would suggest to the honourable member that the court will not be administrating this Act, it's the director, and it's throughout the whole section of the Act. If he looks at 7(1) and 7(2), it's the director that 'shall in accordance with the regulations" that is why it says 'the director shall determine" and it's strictly from an economic relationship and nothing other than that, and I can assure the honourable member of that.

If it was found that there was a financial relationship and there were some benefits that the individual woman might well be cut off of welfare because she has now a supporter and if it's not satisfactory to the person who's receiving the welfare, then they can appeal it to the Appeal Advisory Committee.

MR. CORRIN: Mr. Chairman, you know the Minister seems adamant in his defence of the department. I'm sure that he is willing to repose every confidence in the department, but, Mr. Chairman, what we're suggesting is that we should put the court in a position to review the decisions of the department and the welfare appeal board. We want the court, the Court of Appeal of this province to define what circumstances indicate that there is a common-law marriage, so that the economic relationship can be assessed. You know, that's what we're suggesting. He's suggesting and I think he wont deny this, that he would prefer that the department and only the welfare appeal board have that power.

MR. MINAKER: No, it goes to the court after that. He knows very well.

MR. CORRIN: Well, he knows very well it can't go to the court, if he takes out those words because he's taking away the power of the court to review the circumstances and that's why MARL and the other groups that came down here, all complained about that provision and they all said exactly the same

thing and I don't understand why the Minister refuses to accept the opinion of all these groups. Why is everybody else always wrong and out of step and the department, I presume because they're the ones who prepared these amendments, always in step. You know, if he can tell me how the court will be able to if you substitute the words 'under circumstances that indicate to the director that they are living together'' how is the court supposed to under those with those operative words, how is the court supposed to review that? The court is going to hear . . .

MR. MINAKER: The same way they do section 5(1).

MR. CORRIN: The director's legal counsel is going to say, I am sorry but this court is precluded from reviewing that because the director has discretion in that regard, not the court. That is something for the department and the director to make regulations about. And you know, the court will have to agree that the Legislature has taken that away from them. There are certain things which the court can't review because the Legislature won't let them. That is within our power. And this is one of them. So we're suggesting that that shouldn't happen and that's what everybody else said. We're saying, leave things the way they are and let the court decide what the operative definition will be and you work within that.

You know, it's going to be very arbitrary and it's even going to be more arbitrary, I suppose, because the bureaucracy is going to have considerably more latitude when they know that the courts can't review it. So presumably we're going to have an ill-enforced regulation anyway, no matter what regulation is struck by the director. It's unlikely that it will be very strictly enforced. So why not again come down on the side of people and let the court make the decision as opposed to the departmental staff.

This bill, you know, the more we review it and the longer we go on, one can only conclude that everything in this bill is meant to facilitate the administrative processes of the department. And I don't think the Minister appreciates that, I really don't. He shared well I don't think he shared but I saw the administrative explanation of all the changes, and I know that he is reciting them, rhyme and verse before the committee and I presume that they're on the table in front of him.

Mr. Chairman, I want to assure you that those explanations are not fully satisfactory. Those explanations are cursory, they're brief, they often don't go to the substance of the amendment. They're sort of framed in jargon and bureaucratise. You know, did this come from caucus or the bureaucracy, that's really what I'd like to know. Because I don't believe that they reflect the opinion of even the government caucus. I think this emanates strictly from the bureaucracy and I think it was simply brought down and people heard that it was necessary to enforce the welfare program and people said, well, you know, we have to trust, and perhaps they saw the explanation and it looked all right, it looked very straightforward and I'm sure they were as shocked as others when all these people started coming down and complaining.

MR. CHAIRMAN: 5(5) as amended by Mr. Corrin pass; Mr. Minaker.

MR. MINAKER: No, we're not passing the just a minute Mr. Chairman, first off, if we were to accept Mr. Corrin's arguments, he's obviously shooting from the hip because if what he is saying is correct that that will not be able to be appealed and will not be able to go to the courts, then I would suggest that in section 8(1) of the bill, the existing Act, which very clearly says 'order for discontinuance or reduction or increase of allowance'' where it says 'where in the opinion of the director, that it should be reduced or cut off'' that is being appealed at the present time in the courts. So the same thing would apply to the section we're dealing with in the Act, that the director can make that opinion, but it still is appealable to the advisory committee and also to the Court of Appeal. So to try and imply that otherwise, is incorrect because it is no different than section 8(1) of the existing Act 'where on the basis of information received by him the director is of the opinion the social allowance payable to any recipient should be discontinued,'' that is being appealed today and there is no difference in the wording that we're dealing with in this section that we're dealing with.

So that we could not support the amendment of the common-law relationship as put forward by Mr. Corrin.

MR. CHAIRMAN: 5(5) as amended by Mr. Corrin pass; . . .

MR. MINAKER: Pardon me?

MR. CHAIRMAN: Well, I want to signify it from the committee, are you in favour of it or are you not? Those in favour of it, please raise their hands to signify in the usual manner.

A COUNTED VOTE was taken, the result being as follows: Yeas 5, Nays 8.

MR. CHAIRMAN: I declare the amendment lost. 5(5) as amended pass; (Interjection) as amended in the bill here. 5(5) pass; I'm sorry, okay. Sub-section 7(5) pass; then (6) pass; Section 7, in 8(1) we have a correction that was given to me by Mr. Balkaran the other day, after the word 'information'' on the first line, the word 'received'' should be added in there and I have another amendment from Mr. Corrin.

MR. CORRIN: Yes, that was obviously there's concurrence because that was one of our amendments as well, we mentioned that on second reading the other day. The other amendment though, well I'll read it 'Clause 8(1) amended by inserting the word 'received'' after the word 'information'' that's the one we just discussed in the first line and 'deleting words after the word director' in line one as follows: or any other person authorized by the director to receive information'' and after the word 'director'' three last words in line two the words 'or the person'' and after the word 'director'' in the third last line, delete words 'or the authorized person.''

The clause would therefore read as follows, just to give you a synopsis of the intent of the amendment:

Where on the basis of information received by the director, the director is of the opinion that the social allowance being paid to a recipient should be discontinued or should be reduced or should be suspended or should be increased, the director may, by written order, direct that the social assistance be discontinued, reduced, suspended or increased as the case may require.

That essentially is an amendment to assure that there not be too much delegation, irresponsible delegation if you will, of the director's authority. We feel that in order to assure that authority not be exercised arbitrarily, the Act should spell out clearly who should have that and I want to refer back to the amendment I referred to earlier, made by Mr. Desjardins and accepted by all members. Clause 1 of the bill 2(h) of the Act. We accepted there a similar restriction. We deleted provisions that would have authority delegated to any person authorized by the director to act for him and approved by the Minister. You remember that we said that we would restrict it to directors of area offices. So again, I suggest that on the same sort of spirit and without having Mr. Desjardins mediation available this evening, that a similar sort of amendment should be made to 8(1).

It seems to me again that this was a subject brought up by all three delegations. Everybody seemed to be concerned about too much delegation and that, Mr. Chairman and I say this with respect again, is the entire theme of this particular bill. The bill moves away from legislative authority as interpreted by the courts, to discretion imbued and endowed to the civil servants and that is, if anything, the general import and the general significance of this particular piece of legislation.

So again we say, don't arbitrarily allow too much discretion to the Civil Service. Retain some authority, at least at the higher levels of management. It seems to me that we're going to get too far flung, we're going to have a situation where we have very poor management structures. (Interjection) Oh, it's acceptable, I won't talk anymore.

MR. CHAIRMAN: Mr. Balkaran.

MR. A. BALKARAN: I wonder if I might ask the member a question just for my own clarification? If I read 8(1), would you follow me and tell me if I've got his amendment clearly. 'Where on the basis of information received by the director, the director is of the opinion that the social allowance being paid (a), (b), (c), (d), the director may, by written order, direct etc. ' Is that it?

MR. CORRIN: Yes.

MR. CHAIRMAN: Okay. 8(1)(a) as amended pass; (b) pass; (c) pass; (d) pass; 8(2) pass; 7 pass.

MR. CORRIN: Excuse me, on 8(2) there was an amendment put in last time. I'll read the amendment again, the members all have it.

MR. MINAKER: Mr. Chairman, we have an amendment here that possibly if it could be read, that might be satisfactory to Mr. Corrin, relating to 8(2).

MR. CHAIRMAN: Proceed, Mr. McGregor.

MR. MORRIS McGREGOR (Virden): THAT proposed new subsection 8(2) to The Social Allowances Act as set out in Section 7 of Bill 39 be amended by adding thereto, immediately after the word 'shall'' in the 2nd line thereof the word 'forthwith''.

MR. CORRIN: That's a step in the right direction, Mr. Chairman, and I don't want to be overly critical of that because as I said, it goes in the right direction. We would, just in case everybody doesn't have the bill before them, we have asked that there be provisions put in the notice clause whereby the applicant appellant, be made aware of all his or her rights respecting appeals. That would include knowledge that legal aid is available to all such prospective appellants, and information as to the means by which the Legal Aid Society can be contacted by them. So I say I can commend the government for the amendment they've made because that was mentioned by delegates as well and I think it's important that they be given notice of their appeal rights as soon as possible, so we can accept the amendment that they proposed. But we're asking whether or not they can accept the amendment that we have proposed.

MR. CHAIRMAN: Proceed, sir.

MR. CORRIN: Well, I'm just wondering whether they can answer that?

MR. MINAKER: Mr. Chairman, this isn't a new section and the substance is basically the same as the present section, there is an addition of the person acting under the authority of the director, which I guess should be amended now and pulled out, in that first line, but it's with regard to the notification to the appellant that legal counsel is available. I've got the social allowance regulation form that goes out to all of those who are appealing or have been cut off. It's Form 5, and it very clearly indicates on a notice of hearing, and also it says the appellant must appear or must be represented at the hearing by any person of his or her own choosing or by counsel. It very clearly says that right on the form that is mailed out to the appellant. It's regulation that there is in writing a notification to the client, and it may on occasion have been failure to do so, but it would be an odd case. It is definitely in the regulations at the present time to notify by written notice. The Appeal Board sends a notice of the time and place of the appeal hearing to the appellant and to the district office respondent. The form, as I indicated, notifies and indicates that counsel is available.

MR. CORRIN: I don't know why there is a reluctance to assure that every person who is an eligible candidate to make an appeal should be made aware of that. I don't know why that sort of reluctance is indicated by the Minister, in view of the fact that the regulation struck by his department,

now he says, make provision for that. Again, I don't know why we can't simply make that a legislative requirement. It seems to me there is only one good reason, I suppose, and that's if, right now, somebody fails to get an appropriate notice, they wouldn't have the grounds of appeal. If our legislation were accepted and the person weren't made aware of the fact they had access to Legal Aid, that in itself would become a ground of appeal, so that they could go back and start all over again; they could make another application and go back to the Welfare Appeal Board.

Right now, sure the Minister says it's a regulation and the department is supposed to do it, but it's not mandatory. It's purely a departmental regulation and it can be changed. It's very simple to change that sort of regulation without anybody but the Treasury Bench members of the Legislature being aware of it. I'm not even sure that's the regulation that is struck by the Lieutenant-Governor-in-Council. Perhaps the Minister can indicate whether those sorts of regulations are within the purport of the Cabinet. But even if they are, that doesn't mean that everybody in the House and all members of the public are made aware of it. So, again, it's a practical problem, and I don't see why we don't move towards enshrining these sorts of rights and legislation. The Premier of the province tells us that legislators are capable of doing that.

We had an indication, that with respect to equal rights for males, in this province anyway, certain legislators, not all on the government side, are incapable presently of doing that. The Premier may well be one who would be willing to, I don't know, he's not here to present his position. But it seems to me that if you're going to make any sort of cogent argument for the present system and against the Bill of Rights proposed by the present federal government, you have got to accord people their rights and legislation. If you are going to take the position that you won't do that, then I'm all for an enshrined Bill of Rights. Because I think in an enshrined Bill of Rights (Interjection) well, in the Constitution, because then these amendments won't be necessary. We won't have to say by legislation that people have to get knowledge, have to receive notice of their rights of appeal, have to know that they are eligible for Legal Aid and the means by which they can make application to Legal Aid, and so on and so forth. You don't have to do that. You don't have to make equal rights' amendments that allow men the same access to welfare as women.

So if you are going to wear that hat, I think then the government has to show some constance. It's going have to come to grips with that as a problem, because it's going to become, I suppose, when the Legislative Committee hearings start in the summer, that's going to be a real thorn in the government's side, because you can be assured that there won't just be the opposition that reminds the government that this hasn't been the case in their legislative package this session.

MR. MINAKER: Mr. Chairman, I wonder if the committee might consider in the bill before us, in Section 8(2) where it's been indicated that after, in the second line the word 'shall'', that 'forthwith'' be added; that further, after the final sentence in that section, or order to the Appeal Board, add the words 'and the right to be represented by legal counsel.''

MR. CORRIN: That's an improvement. We couldn't vote against . . .

MR. MINAKER: I don't think we have the right under this particular bill to indicate Legal Aid, I've been advised by the counsel here, but that would in fact provide what you, I think, are requesting. It is presently done by regulation but this would ensure that it would be done by legislation.

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: Mr. Chairman, through you to Legislative Counsel, as I understand what the Minister proposing this section to read, is that implicit in that recommendation is the right to refuse counsel. At least my understanding of things is that I have heard nothing to suggest to me that the position of the New Democratic Party is that somebody must have counsel, so that I, as one member of the committee, would caution that I, for one, will not support anything which says that people must have counsel.

MR. BALKARAN: The right to counsel, Mr. Chairman, is the right that is subject only if the person exercises that right.

MR. CORRIN: Well, that's what we said. I just want to clarify that point, Mr. Chairman, that was what our amendment said, too. We didn't say that appeals before the Welfare Appeal Board, for instance, couldn't proceed without a counsel. We just said that people had to be given notice of the fact that Legal Aid services existed and they had a right to apply, that's all. But, as I said, we would be hard pressed, of course, to vote against the proposed amendment, so if the government wants to make it, obviously where practical, the majority is clear and we're willing to abide by parliamentary processes.

MR. CHAIRMAN: 8(2), as amended by the Minister pass.

MR. CORRIN: Should we not read the . . .?

MR. CHAIRMAN: Another amendment?

MR. CORRIN: Let's have the amendment read, Mr. Chairman.

MR. CHAIRMAN: Mr. Balkaran will read it.

MR. BALKARAN: I wonder if I might read it for committee?

MR. CHAIRMAN: Proceed, sir.

MR. CORRIN: I think it should be read by the Mover, shouldn't it? I'm wondering, to save two readings, shouldn't it be read by the Mover.

MR. McGREGOR: Continuing on from the amendment that was already read, further, after the word 'board'' in the last line, add 'and the right to be

represented on appeal by legal counsel of his or her choice".

MR. CHAIRMAN: Agreed? (Agreed) Pass. Let me see, 8(2), as amended pass; then subsections 9(2), (3) and (4). Section 8, 9(2) pass.

MR. CORRIN: Mr. Chairman, before we go, we have proposed an amendment to 9(2) as well. I'll read it. Again, it was distributed. Amended clause, 9(2), by deleting words 'after" . . .

MR. CHAIRMAN: Could we have those amendments, because I don't have all . . .

MR. CORRIN: Well, we presented all of them. The Clerk distributed them to every member who presented at the last meeting of this committee. Every single one was presented on the instruction of yourself, Mr. Chairman.

MR. CHAIRMAN: Are you amending 9(4)?

MR. CORRIN: 9(2) is the clause we're on right now.

MR. CHAIRMAN: Okay, proceed.

MR. CORRIN: Amend clause 9(2) by deleting words 'after person" in first line as follows, and then it would be 'who receives a notice after subsection 8(2) and", that's the end of the quotation, and replacing word 'the" in line 3 after word 'receiving" with 'a" and inserting after word 'notice" in line 3, words 'under subsection 8(2), if such notice is received" 9(2) therefore would read, 'a person who desires to appeal a decision or order for any of the reasons set out in subsection (1) may within 15 days after receiving a notice under subsection 8(2), if such notice is received, file a written notice of appeal with the Appeal Board setting out the grounds of the appeal."

Okay, 9(2) was the subject of agreement by all the delegations before the committee. It was felt that we should let me just get this. If I could just have a minute, Mr. Chairman, I'll try and gather things together to make sure that we have it correct.

MR.CHAIRMAN: It seems to me as I read that, it's almost identical as what's in the section.

MR. CORRIN: It's not a major it's been a long day and I'm having trouble getting myself oriented at this point. Hold on, I have a reference to another one of my filing things. Occasionally I think I should come better prepared, and this is one of the occasions, Mr. Chairman. Okay, the reason I now understand it. It was pinned on an amendment to 8(2), and I think in view of the fact that the amendments that have been made in 8(2) aren't quite consistent, I have to withdraw my amendment to 9(2) because . . .

MR. CHAIRMAN: 9(2) pass.

MR. CORRIN: . . . we changed it a different way than I thought we would go.

MR. CHAIRMAN: 9(3) pass; 9(4) the Member for Virden.

MR. McGREGOR: That new subsection 9(4) to The Social Allowances Act as set out in Bill 39 be amended by adding 'thereto" immediately after the word 'appellant" in the first line thereof the words 'the board shall forward a copy thereof to the respondent and"

MR. MINAKER: That puts it in the proper sequence, Mr. Chairman, just for the committee's information, the proper sequence of events.

MR. CHAIRMAN: I'll guess we'll have an amendment. Maybe this one suffices, does it, Mr. Corrin?

MR. CORRIN: No. What is the amendment again? It might actually address the concern we had, so if we could just have the amendment repeated.

MR. CHAIRMAN: Immediately after the word 'appellant" in the last line thereof . . .

MR. CORRIN: The first line.

MR. CHAIRMAN: The words 'the board shall forward a copy thereof to the respondent and"

MR. McGREGOR: In the first line, Mr. Chairman.

MR. CORRIN: It's the first line.

MR. CHAIRMAN: The first line, I'm sorry, yes.

MR. CORRIN: Yes. There is nothing wrong with that, so I'm not going to criticize that amendment, Mr. Chairman, except that our concern about this is that there doesn't seem to be I'm still worried about the evidence being provided to the board. It seems to me that there should be, beyond the requirement that the department inform the appellant of what evidence it's putting forward on the appeal, it seems to me that there should be some protection from unreliable evidence being put forward without an opportunity for the appellant to exclude it. In other words, there has to be some provision, and I'm not sure that we can amend this in any way without taking it apart, but this point was made by I think, all the groups again: There has to be some provision so that the documents that are provided by the department are held at the Welfare Appeal Board so that the appellant or the appellant's lawyer can review them prior to the hearing and determine whether or not they are to be the subject of a challenge. Do you follow? It seems to me that the amendment that you put in, it simply allows the appellant to see the evidence but it does nothing to help the appellant in view of the fact that the damning evidence can still be put on the record. It seems to us that this is simply unfair. I think this happened in the Wuziak, case too. I think that there was some evidence tendered by affidavit; maybe I'm wrong on this point but in any event it's certainly able to happen. Evidence can be tendered that is based wholly on hearsay, that could be quite illegal and yet once it's there, what do you do about it? The damage has been done. The board has seen it.

In my submission, it's not enough for the appellant to be able to say to the board, well, it shouldn't have gone on the record, it should be struck from the

record, because once it's there it's done its harm. If the Minister follows that, the Legal Aid Lawyers Association suggested that the I'm just looking at their brief now they said that, 'The documents should not be seen by the board members until the hearing, when objections as to relevancy and reliability could be made by the appellant." They didn't suggest an amendment. They just said that that was what they thought should be provided in the legislation. It's not an easy amendment to write. It's not one we're going to do on the spot.

But otherwise, obviously you're moving in the direction of trying to protect the appellant and you're going halfway but you don't really go all the way and you don't go far enough.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, with regard to the comments of Mr. Corrin, in the item he mentioned about the fact that possibly there might be something on the record that was not correct, that would probably come from the files anyway and would be recorded prior to the Appeal Board receiving it. So it would be very difficult to say that it was put on the record because of the Appeal Board receiving the report.

As the honourable member knows, the format of procedure before the appeal board is very informal and is not a formal courtroom atmosphere. The appellant can speak on his own behalf or by counsel, and speak freely. So that we've tried to keep it, I guess in the past, to this type of a format in the interests of the appellant. It's our opinion that it's being handled fairly and will be handled fairly and the proposals put forward will hopefully give the appellant the best opportunity to put forward his or her case.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: We did propose an amendment, Mr. Chairman, and it's not perfect but I think it's a better mousetrap. I'll just read it because we changed the whole thing. We put:

"Upon receipt of the notice of hearing from the Appeal Board, the respondent shall forthwith deposit at the office of the Appeal Board a copy of any document which has been relied upon in making the decision or order under subsection 89(1)" it's not in there, but the word 'been" should have been between 'has" and 'relied" 'in making the decision or order under subsection 89(1) which is being appealed. The deposited document shall be open to examination by the appellant, or the appellant's representative or counsel, but not to members of the Appeal Board. A document which has not been so deposited cannot be introduced into evidence at the hearing of the appeal even if otherwise admissible under the Rules of Evidence."

So we have said that it's not open to review by the Appeal Board until both sides have seen it and are ready to argue it. That's not to say they won't get to see it and we're willing to admit that the Appeal Board would still be made privy to it, is just that at least they might not have got to the point where they'd made preconceptions on the basis of it, or they had come to preconceptions or made decisions on the basis of it. That's always a problem with the administrative tribunal, Mr. Chairman, if they can read this material beforehand. And I've sat on administrative tribunals and I know it's a bad habit of everybody who does that sort of work because of the volume; you just get into the habit of reviewing your material before the hearings and, having read a lot of the material, you come to certain preconceptions on facts and it's damned difficult to convince a person that they should become disabused of that, once the appeal is in full flight. In this case, Mr. Chairman, it seems only fair that something be done to address this problem.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: Mr. Chairman, I just might comment that the amendments as put forward, I'm not a lawyer but we are talking about discovery and so on and I would presume that it's not just a one-way street, that then the appellant's legal counsel would have to deposit their case there as well, or otherwise the suggested rules as to evidence and admission of documents is more stringent than in that of a court of law.

I think what I was trying to indicate is that up until now it has been basically an informal-type of atmosphere at these appeal hearings and to require the board members not to be allowed to see and read all the documents until the time of appeal, then obviously, then the appellant and his counsel or her counsel would have to sit outside while the board members had a chance to read the particular documents that they would be dealing with.

So I would think that you're going to get into a real courtroom atmosphere and extend the requirements and the length of time and expenses, and so on, and I just want to draw to the attention of the committee that this appeal committee is not the final stages. What the honourable member is almost trying to do is put the courtroom right into the Appeal Board location and then further to that, go on to the Appeal Court. So I would have difficulty in supporting that particular amendment because I don't think it's necessary or would achieve really anything, other than put the Appeal Board into a courtroom situation and courtroom atmosphere.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: It seems to me, Mr. Chairman, that what's important is that the respondent and his counsel have a copy of the information that has been provided for the board ahead of time, and they can refute any incorrect information.

I've had the same experience as the Member for Wellington has referred to, on an administrative tribunal. It's exactly the procedure that is followed in zoning hearings in City Council and if somebody comes forward and refutes an assumption that you've made from reading the administrative presentation, then obviously you take that very seriously. Surely what's important is that legal counsel for the respondent, and the respondent, have an opportunity to refute the information provided. It seems to me that the amendment provides exactly what he's looking for.

MR. CHAIRMAN: Mr. Corrin.

MR. CORRIN: As I said before, I am given to be moderate in my demands and, Mr. Chairman, I'm not sure that our amendment, frankly, is a lot better than the one that's being presented. So if you want to vote on this, the only thing I can say is that I think we should look at this in the future; if we're looking at ways to improve the Act, we should take a long hard look at this particular section and consider it, I guess, with appropriate people and, I guess, primarily that would probably be the board and the lawyers who are charged with the responsibility of adminstering this particular Act. I presume some departmental counsel are seconded to do this sort of work. So it seems to me that that's probably the best approach, in view of the fact that it's not really a black and white situation, it's very difficult.

MR. CHAIRMAN: 9(4)(a) as amended pass.

MR. CORRIN: Could we have the amendment?

MR. CHAIRMAN: 9(4)(b) . . .

MR. CORRIN: Just a minute, Mr. Chairman. I asked, as amended by Mr. McGregor? Okay, as amended by Mr. McGregor. Let's have the amendment read so we all know what Mr. McGregor's amendment is.

MR. BALKARAN: May I read the first line of the subsection?

MR. CHAIRMAN: Okay, proceed, Mr. Balkaran.

MR. BALKARAN: 9(4) with the amendment would read as follows:

> "Upon receipt of a notice of appeal from an appellant, the board shall forward a copy thereof to the respondent and the respondent and shall . . .".

MR. CORRIN: Mr. Chairman, how does that address the problem of making sure that the appellant gets a copy of the material filed by the department? Have I missed something? I don't understand. Maybe Mr. Balkaran can explain that to me. How does it provide that assurance? That's what we've been arguing and discussing and I don't see how that . . . I thought that there was a provision for some sort of notice to the appellant.

Why can't we say: 'Shall forthwith provide the Appeal Board and the appellant with a copy of the appellant's application", and then, 'particulars of the financial resources and a copy of any other record or document that may be relevant in determining the appeal." Why can't we just make sure that the appellant gets equal access to all the material along with the board, so they come prepared?

As a matter of order, Mr. Chairman, and I'm not chastising the chair but I think as a matter of propriety we should have all the amendments read by somebody qualified to make a motion before the committee. I think that may cause problems later on in terms of the legality of it; if an amendment is read by Legislative Counsel, I'm not sure whether that's in the rules.

MR. CHAIRMAN: We've all kinds of amendments in our records but we don't have any copies of them, so it's basically goodwill and word of mouth and that's not the best way to make legislation.

Was there any changes from Mr. McGregor's amendment?

Pass.

MR. CORRIN: Just before we go on, Mr. Chairman, are we not going to put in those words? I mean, if we just put in the words: 'Shall forthwith provide the Appeal Board and the appellant", we've done it and that's at least the halfway house, I think.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: The problem, Mr. Chairman, is that if we do what Mr. Corrin is proposing then it becomes a one-way street the other way as well, that the appellant and his legal counsel gets all the information but, on the other hand, there is no information traded the other way, and that's the problem.

MR. CORRIN: It seems to me that by simply putting a little catch-all at the end and suggesting, that the appellant must also provide the respondent with copies of any other records or documents that may be relevant. It's a bit difficult because you have to remember, Mr. Chairman, and I think in fairness, that it's the appellant that's usually at the disadvantage because they have lost; the department has ruled against them in the first instance so they're coming to the Appeal Board on appeal. So if anything, I think it's necessary, in order to assure the appellant that he knows what case he's going to have to meet in its entirety. Because the department can make a decision fairly arbitrarily in some respects and the appellant may not even know what the department relied on.

Let's say the department relied on a letter provided by a neighbour suggesting that a lady was living common-law with a man and therefore, on that basis, they ruled that the lady was ineligible because the combined income went beyond the eligibility ceiling.

MR. CHAIRMAN: Call the committee to order. We have to change the tape.

Proceed, Mr. Corrin.

MR. CORRIN: I just wanted to make the point that in the case of that sort of situation where there was that sort of documentary evidence that had not been released to the appellant, obviously it's fairly germane that the appellant know that there's a piece of heresay evidence on the record. You know, a matter of fact, one could also argue that it might speed up these things because I'm sure that this sort of information is not always revealed to applicants for social allowance. I am sure that some of these decisions are made and that the applicants don't even know why they were ruled ineligible. So why not make it compulsory that the material be tabled and placed before the appellant. Surely we can provide just a simple little thing. I think that it would be satisfactory to require that the respondent should provide the Appeal Board and the appellant with this

sort of material. I can't see what sort of harm can befall the respondent or the department on that basis.

MR. CHAIRMAN: 4(a) pass.

MR. CORRIN: I mean, what are they doing, they are just telling the appellant what particulars were received respecting financial resources, so that must come from the appellant herself. They are providing the appellant with a copy of her own application for social allowance; they are showing the appellant that they have met all the requirements of the Act relevant to notice, and they are providing copies of the documents that they are going to be tabling before the Board, the Appeal Board. This to me is just due process.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: If I can make a suggestion to the committee, Mr. Chairman. We are almost through the bill here, I would like to review with certain people suggestions that have been made under this section that could be brought in at the committee stage at third reading. The thought at this point is that there be another section besides the 9(4) that the appellant to provide certain documents; and have a similar clause in that section that would, upon receipt of notice from the department that the appellant shall provide the Appeal Board with and (a), (b), (c) and (d).

MR. CORRIN: There is only one caveat on that and that is the different degrees of knowledgeability as between the parties. I mean clearly putting that sort of onus on a welfare recipient who approaches the Board without legal counsel is pretty onerous, and I just think what will happen is we'll find it impracticable because they are not going to read the legislation and very often they won't understand it if it's explained to them. You know, the department, well, it's somewhat simpler.

MR. CHAIRMAN: Mr. Minaker.

MR. MINAKER: I wonder if we could maybe then just leave as is, Mr. Chairman, because we never have any lawyers present on our behalf at the Appeal Board and if we start to overformalize the scene, then we are going to have legal counsel there on both sides and it will become much more costly. I am just saying that maybe we leave it as is then. It appears from the reaction of the honourable member that he's of the opinion that I am, what's going to happen if we start to insert these things.

MR. CORRIN: Come on, we're not going to suggest that just because the welfare department doesn't send a lawyer that the person who appears there isn't just as articulate, if you will, just as smooth, just as capable of word play and sophisticated levels of argument as any lawyer. I have been before these sorts of tribunals and I guess the classic example is using the zoning analogy, the developer who decides to represent himself. Believe you me most of those fellows don't need lawyers, they know their business and they know the law inside out and they are more than capable of making the most technical sort of submission and appreciating it. You know, Mr. Chairman, when you've worked a few years and you've got a Masters Degree in Social Work, as a lot of the employees of that department do, and you've worked in the department for a few years, you can become just as sophisticated as any lawyer, more so I would argue, more so.

I would suggest, Mr. Chairman, that there is no reason to believe that the welfare worker is going to be just any more compassionate, given the fact that they are defending their own department. I would expect the lawyer might even be more objective than the worker who is defending his own decision, or his boss's decision; otherwise, it is going to be making his boss look very bad in front of the Appeal Board. So I can't accept the fact that we are all just coming there as good folk and we are all just going to be ever so reasonable.

In my experience with the Planning Department, and the Member for River Heights will remember well, when the Planning Department decided to represent itself, Mr. Chairman, the arguments could be quite esoteric and sophisticated, and no one would argue that they didn't know their by-laws and didn't know the precedence of law and weren't capable of making a very highly legal and technical argument for themselves. So I just don't think it will wash in practicality.

MR. CHAIRMAN: 4(a) as amended pass; 4(b) pass; 4(c) pass; 4(d) pass; 9(4) pass; Section 8 pass; Section 9 pass; Section 10, 20(3) pass; 20(4) pass; Section 10 pass. Mr. Corrin.

MR. CORRIN: Excuse me, Mr. Chairman. What precisely are you doing? I mean you're doing the subsections now of the Clauses of the bill? You are doing the clauses of The Social Allowances Act?

MR. CHAIRMAN: I passed Section 10, subsection 20(3) and (4), and we are on 11 now. Subsection 22(1) as amended.

MR. CORRIN: Come again.

MR. CHAIRMAN: Subsection 22(1) in 11.

MR. CORRIN: Well, how about 23, Mr. Chairman, which we gave notice of in writing on the last day on your suggestion?

MR. CHAIRMAN: I've already passed 23, sir.

MR. CORRIN: Well, Mr. Chairman, we had our hand up and you went right through it, that's why I asked you what you were doing. This is nothing new, Mr. Chairman, we raised this, as the Minister will attest, at second reading and everybody knew that this was a major concern. This, Mr. Chairman, was the concern raised by all of the delegations. This is an amendment that will allow the department to unilaterally make deductions from . . .

MR. CHAIRMAN: Do you have you an amendment Mr. Corrin?

MR. CORRIN: We've already tabled it, it was tabled last day, it's the one that says . . .

MR. CHAIRMAN: I thought I had all the amendments.

MR. CORRIN: Well, the Clerk has them all.

MR. CHAIRMAN: I don't. Okay, I'm sorry because I still don't have it.

MR. MINAKER: Do you want to read the amendment?

MR. CHAIRMAN: Would you put it in the record please? I apologize.

MR. CORRIN: Section 10 of Bill amended by adding at end of 20(3), as follows:

However, no such deductions shall be made if the alleged debt is the result of an error by someone other than the recipient, and the recipient did not know that the alleged debt was being incurred.

All the delegations made the point that it was simply unfair to take away, unilaterally remove from the welfare allowance of a recipient, moneys that had been paid to the recipient inadvertently as a result of a bureaucratic error.

These aren't moneys that the recipient took by fraud, these are moneys that were the subject of small overpayments over a period of time. And the argument was that in the absence of evidence of theft, or fraudulent misappropriation, both of which can be prosecuted under the Criminal Code, that the department shouldn't be allowed to, as a matter of right, make these sorts of deductions, because we're talking about a living wage for families, and it seems simply unfair to make deductions from what is considered to be a basic wage.

I mean how can you tell somebody that even 5.00 off of what we say is the basic cost of living allowance necessary to sustain a family is acceptable? I mean I just don't know how you can say that. So you're taking 5 off the food allowance; and then you are, on the other hand arguing that's the basic. So we can't have it both ways and we have to remember that under the Criminal Code the Crown can approach the Court if they can prove any sort of fraud, any theft, any misappropriation of funds and get an Order of Restitution, so there is no problem. There is also provisions for somebody to be cut off welfare completely if they have committed any sort of fraud.

We're just saying that if the department makes an error, they should bear the responsibility, not the recipient. You know, obviously the court, in reviewing that, is going to look at the amounts of the overpayments. If somebody was receiving 100 a month for three years, more than they should have, and obviously it was a windfall, one day they started getting a cheque for 100 more than they had received the previous month and they kept mum, they hadn't said a word to anybody, you know, obviously there's reason to believe that you could establish fraud. They should have asked the welfare worker, did we just get a 100 a month raise, I don't know why. But, you know, it's different if you've got a 5.00 or 10.00 overpayment over a period of three or four years and it can mount up.

So what we're saying is that these people should have the same protection as other people and should be protected by basic exemptions. If a civil debt is incurred by any other citizen The Garnishment Act and The Executions Act, which is currently before the House, as a matter of fact, which will be up for debate this week, provides statutory exemptions, so there is certain minimum amounts that can be attached, certain amounts of the assets of the debtor cannot be attached. So what we are saying is that the same rights should be accorded somebody who is on welfare; again it is basically a human rights provision. Why not give them the same respect as you would give anyone else? In fairness, I don't see why it can't be done. All the groups, Legal Aid Lawyers Associaton, MARL, and Mr. Reilly in his own submission made that point.

It is a simple thing, all you do is add those words and we know that deductions can't be made arbitrarily unless in the case of a departmental error. I know the department suggests it, and I also know what the department said about that. You know, the department, in their submission, made it very very simple I think I still have the brief as a matter of fact, yes, I do. Okay, here's what the department said, Mr. Chairman, and I am reading from the explanatory notes provided to the Minister, not written by the Minister.

It says: The judgment of the Court in the Findlay case limits the authority to recovery under subsection 20(1) to the judicial process. So they admit that you have to go through the courts. This is costly, cumbersome and time-consuming. Well, that's what everybody has to do if they have a debt, Mr. Chairman, that's what every person in the civil courts has to do. It is no different from what I would have to do or you would have to do if somebody owned us money. You can recover the costs, by the way, Mr. Chairman, it is not impossible, you can get an order for the costs as well.

In order to avoid recourse to the courts they are quite blunt, I guess in collecting overpayments, it is proposed to add two new subsections, namely, 23 and 24, so they don't want to go through the courts any more. They are quite explicit, they want to do an end run. Mr. Chairman, I don't see why the welfare authorities should have special privileges in society and I would like to know why they think they should. It is the old question, either we enshrine rights in legislation or we have an all-encompassing Bill of Rights in the Constitution of this country because people are being treated differentially.

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, I was just wondering whether the intent was to collect it back while a person was still on welfare or that they would be collecting it back after the person was off welfare, and in that case then you can't argue the hardships or consensus which Mr. Corrin has been arguing.

MR. CORRIN: Well, that would be a good argument, Mr. Chairman, just for clarification. Oh, I'm just explaining because the bill doesn't say that . . .

MR. CHAIRMAN: Mr. Minaker, please.

MR. MINAKER: Mr. Chairman, Mr. Corrin, in one case doesn't want us to go to court and now he is suggesting in this argument that we do go to court, so he's skating in circles. But with regard to the question of collecting overpayments, and I indicated in debate that the computer could spit out a cheque for 100 a month more and the individual might not recognize it, but I think the member being a lawyer recognizes that under the Social Allowance Program, the amount that a recipient receives is determined by legislation and it's not unlimited and that government, if he had ever sat in government would recognize, is accountable to the provincial auditor as well as to the public, with regards to how this money is expended. And where an overpayment occurs, and I indicated to the honourable members, I think two or three times now that has not been authorized, the amount that we deduct never exceeds the personal allowance that that individual receives in the budget form. In other words, we would, in the amount that the person receives for the fuel or the heat and light and the rent and the food and the clothing, is taken off and not considered. But the personal allowance that might be, I forget what it is now, 27 or something, would never ever exceed that. And if you notice in the Act, the bill before you, it says, 'the Director may authorize a deduction''. It doesn't say 'shall'', and that the policy has been and will continue to be that no deduction is made which would result in hardship and that is the reason why it is done and will continue to be done in that manner.

MR. CHAIRMAN: Mr. Uruski.

MR. BILLIE URUSKI (St. George): Mr. Chairman, I'd like to ask the Minister, in a case where the recipient either receives an overpayment or is alleged to have what one would consider excess assets and when those excess assets are considered in the deduction, I believe the case is appealable in terms of the deduction that is being made, if I'm not mistaken. Rather than going to court, I think the deduction is appealable to the welfare advisory board. Well, I think it is, where excess assets are considered and that were not used originally and now the department wants to that they should have been considered in the original application of assistance, now there is a deduction being made. That deduction is appealable, so that . . .

MR. MINAKER: If, in the opinion of the person receiving it, it provides a hardship, yes, they can go to the appeal board.

MR. URUSKI: Okay. Would then, in a case like this, if this could be shown that it may create a hardship, could this deduction be appealable to the welfare advisory in a case like this?

MR. MINAKER: I get copies of results of appeals, not with the names of people necessarily on them, and there have been cases where I've seen there has been a reduction that has been appealed and it's been awarded and it's been increased, so that process is there.

MR. URUSKI: Then if that process is available in terms of deductions, we are then asking for an additional process. Is that your interpretation in terms of allowing someone to be able to, or having to go to court? If there is an appeal against the deduction at the present time and if you are indicating to me that under these sections that deductions can be appealed if they create a hardship so that in the event that they do create a hardship, the appeal board can grant either a reduction or a complete removal for the present time that the deductions can be held back for a period of time as may be determined by the appeal board. Is that my understanding?

MR. MINAKER: Yes, that is my understanding, the same as Mr. Uruski.

MR. CORRIN: I just want to make a point because, well, before you run away, sub 20(4) goes on to say that the unpaid amount of an overpayment continues to be a debt owing to the Crown, if and when the allowance is discontinued or terminated until the debt is fully forgiven or paid, so you know, there is still a comeback, so there's a Catch-22 even if that were an assurance. The point is though, that it's not fair to why should welfare recipients only have the protection of an appeal tribunal as opposed to the law? Everyone else gets the protection of law. We're creating a special class of citizens. You know, it just doesn't seem fair. It's very arbitrary. The New Democrats can come in and they can appoint, let's use the classic situation, the New Democrats can come in and in the submission of the government, can appoint all sorts of people who the government feels are irresponsible and untrustworthy and are purely political appointees to this sort of tribunal. So that the government, according to the accusations that are often made, the New Democratic government could manipulate the tribunal to their own ends and purposes. Now you wouldn't be happy with that. You wouldn't want your welfare recipients, the people who are in Conservative ridings, to be subject to that sort of nonsense, so why not give them their rights, give them the same rights as you would have in a court. Why let them fall prey to New Democrats? You know, I've heard that argument with respect to several boards, and frankly, I sort of go along with that. I don't think that people should be left to the whim of politicians, bureaucrats, or political appointees. I think rights should be enshrined. I believe it's important. So it's just a question of allowing somebody the same rights as you or I or any other member at this table have right now. That's all we're asking.

MR. CHAIRMAN: 20(3) as amended by Mr. Corrin pass. All those in favour of Mr. Corrin's motion, please signify in the usual manner.

A COUNTED VOTE was taken, the result being as follows: Yeas 1; Nays 9.

MR. CHAIRMAN: 20(3) pass; 20(4) pass; Subsection 10 pass; 11 pass; 12 pass; 22(3) pass; 12 pass; 13 pass; Preamble pass; Title pass. Bill be reported.

BILL 51 AN ACT TO AMEND THE HIGHWAYS PROTECTION ACT

MR. CHAIRMAN: Mr. Boyce.

MR. BOYCE: On Bill 51, I think there's a consensus that the bill be passed but the Minister has an amendment so perhaps they could move the amendment and we could pass it page by page.

MR. CHAIRMAN: Okay. Mr. Einarson.

MR. EINARSON: Mr. Chairman, the motion that proposed new Clause 2(0.2) to The Highways Protection Act as set out in Section 3 of the Bill 51, be amended by adding thereto, at the end thereof, the words 'or survey monuments or posts that are authorized to be placed under the provisions of any Act of the Legislature.

MR. CHAIRMAN: Page 1 pass; page 2 pass; page 3 pass; Preamble pass; Title pass. Bill be reported.

BILL NO. 59 THE FATALITY INQUIRIES ACT

MR. CHAIRMAN: Page 1. Mr. Boyce.

MR. BOYCE: The consensus on the Dutch Elm Bill, that the Minister has some amendments, that perhaps we could deal with that one.

BILL NO. 93 THE DUTCH ELM DISEASE ACT

MR. CHAIRMAN: 1(a) pass; (b) pass; (c) pass; (d) pass; 1 pass, there are amendments. Section 2(1) pass; 2(2) pass; 2(3) Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I have an amendment.

MR. KOVNATS: Proceed, sir.

MR. KOVNATS: I would move that subsection 2(3) of Bill 93 be amended by striking out the word 'threatened" in the second line of clause (b) thereof and substituting therefore the words 'in danger of becoming infected".

MR. CHAIRMAN: Any need for explanation or anything? Pass? 2(3)(a) pass; (3)(b) pass; (3)(c) pass; 2 pass. Section 3 pass; 4 Mr. Kovnats.

MR. KOVNATS: I would move that subsection 4(1) of Bill 93 be amended by adding thereto, at the end thereof, the words, 'or otherwise treated in a manner satisfactory to the Minister".

MR. CHAIRMAN: Questions? 4(1)(a) pass; (b) pass; (c) pass; (1) pass. 4(2) Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I would move that subsection 4(2) of Bill 93 be amended by adding thereto, at the end thereof, the words, 'or less".

MR. CHAIRMAN: Agreed? 4(2) pass; 5 pass; 6(1) pass; 6(2) pass; 6(3) pass; 6(4) pass; 6 pass. 7(a) Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I would move that Bill 93 be further amended by striking out the word 'threatened" where it appears in the fourth line of Section 7 thereof; and again in the third line of Section 10 thereof, and substituting therefor, in each case, the words, 'is in danger of becoming infected".

MR. CHAIRMAN: Agreed? 7(a) pass; 7(b) pass; 7 pass. 8(1) pass; 8(2) Mr. Hanuschak.

MR. HANUSCHAK: This was a section that was of concern to us in second reading. We made mention of a point that there is no provision within this bill for any recourse against a bad or erroneous decision on the part of the Minister or through him the department, that is, if the department should think that trees are afflicted with Dutch Elm disease and steps are taken to remove them, only to discover later that all or some of the trees were in fact not affected by Dutch Elm disease, because, and I'm looking at Section 8 which gives the Minister the right to make such a decision unilaterally and there is a further section says that the decision of the Minister is final. I'm wondering, Mr. Chairman, whether the Minister or his Acting Minister or anyone appearing here on his behalf, is prepared . . . oh yes, I'm sorry, the Minister is here. I was looking for him and not around the table. Perhaps he is prepared to comment on our concerns.

HON. BRIAN RANSOM (Souris-Killarney): Mr. Chairman, I have discussed the concern that the member has raised with my staff and we really don't see that there is the problem in the sense that the member describes it. My understanding that an individual would have the right to go to court and seek a restraining order, not being familiar with the legal terminology maybe I'm using it incorrectly, but that it is possible for an individual to seek that kind of protection and prevent it from happening and, if it does happen, they have recourse if the duties have been carried out in a negligent fashion, to seek compensation through the courts. And our concern is that we don't place so many difficulties in the way of the staff that would have to enforce this that it could not be effective.

I know there's a fine line to be walked here, but if I could use an example of the situation in Minneapolis-St. Paul, where in 1972, for instance, there were 801 diseased trees and in 1973 there were 585; in 1974 there were 1,594; in 1975 there were 2,682; in 1976 there were 32,000; and in 1977 there were 46,000.

The nature of the disease is such that it can virtually explode in terms of the number of trees it's infecting, and there absolutely has to be a mechanism in place to deal with it or else the whole program becomes ineffective.

MR. HANUSCHAK: I appreciate the seriousness of the disease and what it has done to many other parts of the world where it's virtually eliminated the whole Dutch Elm, which at one time grew there and graced the environment, the landscape.

But look on the other side of the coin, Mr. Chairman. The method of either preventing the further development of Dutch Elm disease, curbing it, or restraining it to some extent, the research is still in its infancy stages and new methods, new chemicals, come on the market from time to time and whether they're effective or the extent to which they're effective, no one really knows as yet because they haven't really been tried or tested on that large a scale or for a sufficiently long period of time. So you may have, Mr. Chairman, instances where both the owner of the elm trees and the department may have the same purpose in mind, but each may want to take a different approach.

The department might say, well, the Dutch Elm infection is so bad we've got to get rid of that stand of elm trees, or they might be trees gracing your front lawn or something. The owner says, well now, just hold the phone, I picked up something that I think might work and I'd like to try it. This section seems to give the Minister the last word and if he should decide to destroy the tree, this bill would give him every right to do so. The owner really would have no recourse.

MR. FILMON: Mr. Chairman, we had certainly a great deal of experience with this when I was on City Council and I can suggest that there are no known chemicals to treat this disease, that the process of identifying a tree and getting rid of it as quickly as possible before the beetles can spread to neighbouring trees is the only process that is proven at the present time and I don't think that we can afford to wait while people are saying, hold the phone, I'd like to try something else and so on and so forth, because thousands of trees could then be destroyed.

I can tell you that, representing an area that is very heavily affected by this disease and the potential for this disease, this is exactly the type of power that people were asking me for. People were suggesting that the city was identifying and getting rid of trees on public property, but that the danger was that there were trees on private property that could be identified even to the layman as being diseased and there was no way in which we could cause it to be removed. This kind of authority and this kind of power was necessary, it was in the public interest, and those people who are in the areas that will be affected will support this, I assure you, because I've had discussions with them. This is what they want to see. They'd rather take the risk that perhaps the odd tree might be taken away. I doubt that that will happen, because the disease is readily identifiable and the people that we have working and the city have working, have had quite a great deal of experience over the last few years with it and if by some unfortunate set of circumstances one tree is needlessly cut down, it will be in the interests of savings many hundreds and thousands of trees, and I think it's the only way to go.

MR. HANUSCHAK: Let me ask the Minister, then, does this bill offer any protection to the owner of trees other than diseased elm trees that might be destroyed or damaged in some way in the process of removing the diseased elm tree? In other words, I think the Minister understands that in the process of chopping down the elm tree you also knock over my spruce tree or something.

MR. RANSOM: Mr. Chairman, my understanding is that this bill deals only with elm trees and that removal of any others would be negligence.

MR. HANUSCHAK: Would be negligence on the part of the department, and the department would be held accountable? Fine.

MR. CHAIRMAN: 9 pass; 10 as amended pass the words "is in danger of becoming infected" is in that amendment 11(1) pass; 11(2) pass; 11 pass; 12(a) pass; (b) pass; (c) pass; (d) pass; 12 pass; 13 pass; 14(1) pass; (a) pass; (b) pass; (c) pass; 14(2) pass; 14 pass; 15 pass; 16 pass; 17 pass; 18 pass; Preamble pass; Title pass. Bill be reported as amended.

Bill No. 59. Do you want to do the others? 85 and 94, The Health Act, do you want to do it?

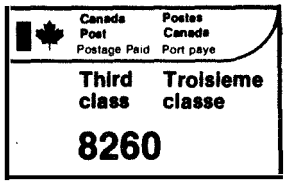
A MEMBER: No, I am sorry, No. 38 was the one deferred for Bill Jenkins.

MR. CHAIRMAN: Yes, we are holding that for Mr. Jenkins, and 85, The Mental Health Act, and 94, The Health Sciences Act.

Mr. Corrin.

MR. CORRIN: I don't think we can do the bills where the Ministers have not come, can we? The Ministers should be here.

MR. CHAIRMAN: Okay. Committee rise.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