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First Session — Thirty-Second Legislature

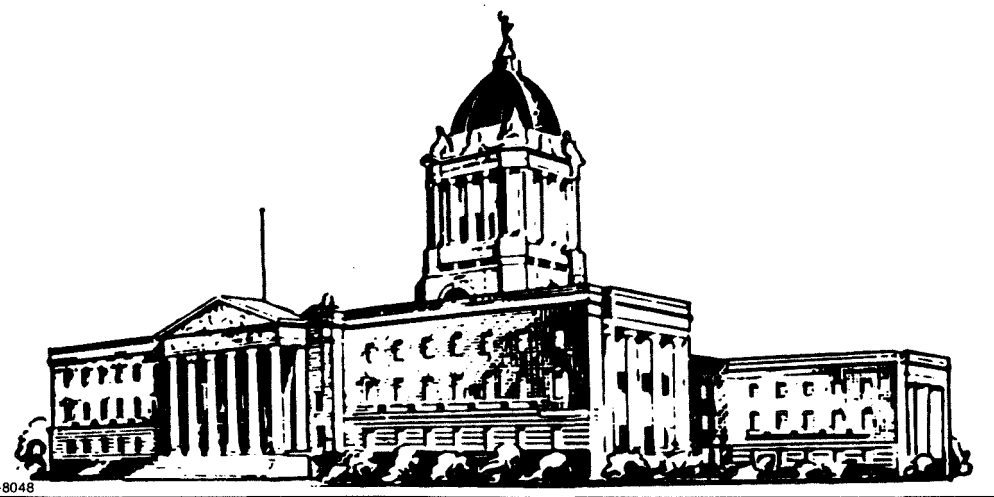
of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
LAW
AMENDMENTS

31 Elizabeth II

Chairman
Mr. Phil Eyler
Constituency of River East



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Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Tuesday, 4 May, 1982

Time — 10:00 a.m.

MR. CHAIRMAN, Phil Eyler (River East).

MR. CHAIRMAN: The Standing Committee on Law Amendments will come to order.

I have a list of persons who would like to present briefs to the Committee, they include:

Mr. David James who would like to present a brief on Bill 6; and Mr. Grant Mitchell who would like to present briefs on Bills 10 and 16.

If there are any other people present who would like to be heard by the Committee, would they please give their names to the Clerk.

Are there any out-of-town persons present who would like to be heard?

How would the Committee like to proceed; would they like to hear the briefs first bill by bill?

Mr. Graham.

MR. HARRY GRAHAM (Virden): Mr. Chairman, I would suggest we listen to the representations first.

MR. CHAIRMAN: Is that agreed? (Agreed)

BILL NO. 6 — AN ACT TO ABOLISH CERTAIN ACTIONS CONCERNING STATUS OF INDIVIDUALS

MR. CHAIRMAN: The first brief will be presented by Mr. David James on Bill No. 6, An Act To Abolish Certain Actions Concerning the Status of Individuals.

Mr. James. Mr. Storie.

MR. JERRY T. STORIE (Flin Flon): Mr. Chairman, before we proceed could we have copies of the bills in front of us so that we could puruse them while the brief's being presented?

MR. CHAIRMAN: The Clerk will be distributing them.

MR. STORIE: I notice that the Clerk has thoughtfully provided copies.

MR. CHAIRMAN: Order Please. Mr. James.

MR. DAVID JAMES: Honourable members, ladies and gentlemen. I'm a lawyer in the City of Winnipeg in my third year of practice with the law firm of Simpkin, Gallagher. I'm here entirely on my own merit with the matter. The bill, as I understand it, proposes to abolish certain common law actions and certain heads of civil damages that may be awarded by a court in the civil context and, as I understand it further, proposes to abolish those actions on the basis that they are largely rooted in a feudal orientation; that they are sexually discriminatory and that they no longer represent the thought of the public with respect to the matter.

Criminal conversation, starting with Section 2 (1)(a) of the bill — and the best way to do my presentation would just be to go through it in the way that the bill is set. Criminal conversation: I think I can do no better, in terms of understanding the action known as criminal conversation than to refer to the Section 40 of The Domestic Relations Act of Alberta where there is a provision which I will comment on as follows: "A person who, without lawful excuse, knowingly and wilfully persuades or procures a married person to leave that married person's spouse against the will of that married person, whereby the married person is deprived of the society and comfort of that spouse, is liable to an action for damages by that married person." So I think the criminal conversation is comprised in that declaration in Section 40 of The Domestic Relations Act of Alberta where someone is deprived of the society and comfort of a spouse.

There is no question that there is certainly confusion in the common-law system as to whether a criminal conversation, in fact, is discriminatory sexually, in that is only available to a husband and not to a wife whose husband is enticed. Perhaps I'll comment on that later.

I think subsection (b), for enticement or harbouring of a spouse, is the same kind of notion. Often the actions have been divided in judgments, therefore I suspect that's why (a) and (b) are separated.

I've referred to The Alberta Domestic Relations Act. I think it notable that in Alberta, what they have done is, if there has been any doubt as to whether the action subsists for a wife whose husband is enticed away, they have provided that it applies to a spouse and therefore have done away with whatever sexual discrimination may be involved in the action and that this is one way that Alberta has found to deal with this matter.

If it is the intention of the Legislature to do away with the civil action of the common-law action of criminal conversation, enticing a spouse, seducing a spouse and thereby affecting or destroying the spousal relationship, then certainly the Legislature will have done that by disposing of criminal conversation and enticement of harbouring a spouse. If it is the intention, however, of the Legislature to dispose of the sexual discrimination that may be involved in those actions, being available only to a husband, then I think the Legislature will be going further than is necessary and I refer again to Alberta where they have declared that it's available for a husband and wife.

Loss of consortium I have considerably more trouble with. Loss of consortium is not so much, as I understand it, a particular cause of action but it's ahead of damages by which a court can award to a spouse who has suffered the loss of companionship and services of that spouse, of another spouse, can seek from the court, damages, in their own right.

Again, I think there is some confusion in the law as to whether a claim in loss of consortium is available to a wife as opposed to a husband, but notwithstanding that, and again, in Alberta, what they have done in Section 43 is say as follows: "When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse

of that married person of the society and comfort of that married person, the person who inflicted the physical harm is liable to an action for damages by the married person in respect to the deprivation." So that again, in Alberta what they have done is, if there has been confusion as to whether this is a disciminatory head of damages and only available to a husband, they have said in their family legislation that it shall be available to a wife by defining it as available to married persons.

It is notable that there was a Supreme Court of Canada case in 1980 which referred to what is now Section 43 which at that time was Section 35, a case in 1980 in the Supreme Court of Canada where an award of $10,000 given to a spouse was appealed to the Alberta Supreme Court Appeal Division and reduced I believe, to $50.00. It was then taken to the Supreme Court of Canada on that issue among others and the Supreme Court of Canada upheld the trial court award of $10,000 on that head of damages. I could go through the facts and I suppose one can imagine cases without having to go through these facts, where one spouse is so badly injured that there is, in effect, a substantial impairment of the companionship and services provided by one spouse to another.

The case of Stein and Stein versus Sawchuck in Manitoba which went to the Court of Appeal, and I suppose I refer to these cases only because it's perhaps the way I have as a lawyer of getting some sense of what at least one group in the community may feel is appropriate with respect to these kinds of damages, and in that case in the decision of Mr. Justice Matas, I believe — I'm sorry — Mr. Justice Huband, he would have increased an award from $2,500 to $4,000 for loss of consortium.

He describes loss of consortium as described in the House of Lords case as follows: "Companionship, love, affection, comfort, mutual services, sexual intercourse all belong to the married state." Taken together, they make up the consortium. So I think, while there is some school of thought that conceives that loss of consortium is the non-pecuniary aspect of the loss of a spouse, that is, the peculiar services that can be liquidated in money that nowadays, I think, when we talk about loss of consortium we include what has anciently been termed, "servidium." So that consortium includes that whole bundle of benefits that one receives from a spouse and by doing away with that head of damages, that significant money compensation given to a spouse in those two cases among others that are very recent, is done away with in my view.

If that again is the intent of the Legislature to do away with significant aspect of compensation which the courts have felt ought to be given some substance. Obviously, at least in Manitoba, not significant substance; but in the Supreme Court of Canada, substantial substance, then that is what's being done.

It's interesting to note The Family Law Reform Act of Ontario. In the Family Law Reform Act these forms of action are abolished in the same way that we have done in Bill 6. "No action shall be brought by a married person for the enticement or harbouring of a spouse or for any damages resulting; no action shall be brought by a married person for loss of consortium of her spouse or for any damages resulting therefrom"; enticement of harbouring is done away with.

MR. PENNER: Mr. James, I hope you'll forgive this comment but we have severeal people wanting to make representations. We've got half a dozen bills, I'm just wondering how much longer you're going to be?

MR. JAMES: In light of those comments I can try and move through it in about 12 minutes?

MR. PENNER: Another 12 minutes? Well, you know, if we run a half an hour per representation then the Committee finishes at 12 without ever having considered one bill. I think we should set a time limit.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I fully understand the concern of the Government House Leader and he may well wish to control the time that members of his own party speak but, when he tries to control the time that the public speaks, I think it's going a little too far.

MR. PENNER: Well, that's a gratuitous comment that is nonsensical. In the House we're limited —(Interjection)—

MR. GRAHAM: No more than yours.

MR. PENNER: . . . we're limited on bills to 20 minutes in Private Members' Hours. I'm not trying to control anything, I was just asking a question.

MR. CHAIRMAN: Order please. Mr. Mackling.

HON. AL MACKLING (St. James): Mr. Chairman, I think the point is that the Committee wants to ensure that the comments in the submission are strictly relevant and on the topic each time. It sounded to me, at the point where the Attorney-General intervened, there was going to be a lengthy quotation from a case and that may be helpful but we can get the principle of the case without an extensive quotation from it. Otherwise, one could take hours reviewing the details of each case that's been referred to.

MR. CHAIRMAN: Mr. Filmon.

MR. GARY FILMON (Tuxedo): For the benefit of the Attorney-General and I, too, understand his desire to get on with the business of government but there have been times in the past where on one bill we have spent four days of hearings listening to public presentation; other cases, my colleague tells me three weeks. So, to try and cut off a representation by one individual whose going perhaps less than a half hour seems to be ludicrous.

MR. CHAIRMAN: Mr. James, could you continue and try to bring your presentation to a suitable close.

MR. JAMES: In The Family Reform Act of Ontario they have created, in about six sections earlier than those abolition sections that I've just noted, the provision whereby if a person is injured or killed by the fault or neglect of another then certain groups of kinship,

including spouse, children, grandchildren, parents, grandparents, brothers and sisters, may seek from the courts damages. So, that they've in fact declared what kinship groups and forms of damages are available in loss of consortium, having done away with loss of consortium and the peculiar, perhaps antique, feudal-oriented law that may apply to loss of consortium, they have declared, in order not to throw more out than they intended, they have declared certain heads of damages that are available to these groups of kinship. They have further declared that the damages recoverable under the subsection include out-of-pocket expenses incurred for the benefit of the injured person, a reasonable allowance for travel expenses and visiting the person during treatment or recovery, where as a result of the injury, the claimant provides nursing, housekeeping or other services for the injured person, a reasonable allowance for loss of income or value of such services and an amount to compensate the loss of guidance, care and companionship. Consortium, in its non-pecuniary sense, is revived in that section and then the older, ancient, perhaps problematic, action is done away with in a subsequent section.

I invite you to consider that, at least in Ontario, where abolition is certainly being accomplished, they have certainly not wanted to do away with all third-party claims which may result from any form of accident or negligence.

There is, I would submit, also divided opinion as to whether, in fact, a loss of consortium claim is discriminatory. There's an Ontario Court of Appeal decision in the early 1950s, I believe, or late '40's that extends it to wives in Ontario.

Another comment that ought to be made is that under our Fatal Accidents Act there is, of course, provision for relatives of deceased persons to make claims in court for loss of companionship and care of that person. There is, of course, the pecuniary section of relief in The Fatal Accidents Act and there is the non-pecuniary section. We would then arrive at an anomoly, it would seem to me, that whereby, if somebody dies, one's close relatives have a right to seek nonpecuniary, or damages for non-pecuniary losses of that particular person, and yet if that person is injured severely and loss of consortium in the general sense follows, that we will have done away with that action. It almost turns the table on the common notion that it would be better if one were in an accident and injured somebody, to kill them, because damages would be lesser than if they were merely injured. This would turn the tables with respect to third-party claims and the opposite would follow.

The comments I have with respect to Section 3, enticement or harbouring of a child, seduction of a child of the parent, loss of service of a child; first of all, I note that when one compares Section 3 (1) with Section 3 (2) which relates to the seduction of a servant, loss of service of a servant, Section 3 (2) with respect to servants or employees does away with the action of the loss of a servant only on the basis of seduction. Yet in Section 3 (1) where one loses the services of a child, the action is done away with on any basis. Subsection (c) of Section 3 (1) for the loss of service of a child of the parent or for any damages resulting therefrom." So it does not confine the abolition of that action to cases where the child is lost by virtue of a seduction but any loss of the child.

I found it striking that in the King's Bench in England in 1945, there was a case where a child of 16 was enticed, as the court found, by a cult society and the court in the end awarded an injunction to the parents that they shall not further harbour the child and awarded 500 pounds damages to the parents. I'd ask the gentlemen if you just bear with me for a moment and listen to the reasoning of the court and reflect on whether, in fact, one wants to do away with that common law right in a parent or perhaps extend it to a wife, to make sure there is not sexual discrimination in cases such as this:

"Dorothy, in August, 1943 was young, though of the age of discretion, she was enticed away from her father the Plaintiff. I think it would be contrary to her interest that she should remain with the enticers. For that reason it is not mere prejudice to consider for a moment who the enticers are. I think there is some force in the suggestion they are a couple suffering from a form of megalomania, taking a delight in high sounding titles. They seem to need to be playing at keeping a nunnery and indulging in make-believe, forming their own rules, extracting vows of obedience from their little band of followers of whom Dorothy is being persuaded by them to become a very young member."

"Ben is maybe attracted by some other form of religion. What is to become of Dorothy if this little community should fall to pieces one day as it might if the Trustees have no more funds coming in? She would be thrown upon the world of which she knew nothing with the breach between her and her parents widened beyond all possible bridging. It was then considered by the court that with respect to that ancient right in a parent to have the exclusive services of his child during the child's infancy, that that would be sufficient common-law right for the parents to obtain an injunction and have their child back until at that time, the age of 21 being the age of majority in England and that after which point, of course, the child would be on its own."

I would ask, ladies and gentlemen, and in the age of cults, whether it's proposed that that be entirely done away with?

Obviously the other consideration with respect to the loss of service of a child would be a circumstance where a child, almost at the point of entering the work force who has a parent who may be disabled, a widowed parent perhaps who is disabled, and that child is badly injured in a car accident as a result of the negligence of a driver, is it contemplated that the mother of that child will not be compensated for what may be clearly a potential loss of service of that child, the care and companionship of that child?

I'd invite again, gentlemen, you might look at The Family Law Reform Act of Ontario to see whether having done away with the sexual aspect or the sexually discriminatory aspect of these actions whether, in fact, it is still appropriate in our community for some third-party benefits and claims to remain alive as they have kept them alive in Ontario.

I'd suggest then and my only comments are, that perhaps some further study — I understand there is a White Paper being prepared with respect to a family

law in Manitoba — it would seem to me that this falls squarely in the domestic relations legislation concern of the lawmaking body of this province in that perhaps it should be further studied in conjunction with the other concerns like unified Family Court.

Thank you very much.

MR. CHAIRMAN: Mr. James are you prepared to answer questions?

MR. JAMES: Yes.

MR. CHAIRMAN: Do any of the members have any questions? Mr. Filmon.

MR. FILMON: I wonder if Mr. James could tell us what advice he is giving us on the matter. Am I correct in saying that he is recommending that rather than have the cause for action under "alientation of affection" removed from the law entirely, he's recommending that it ought to be applied equally or made available equally to husband or wife in the case of Section 2(1). So that we eliminate the sexual discrimination but we still retain the cause for action in the law?

MR. JAMES: I've suggested that if it is the concern of the Legislature that there is a discriminatory bias in the action there's a way to deal with it and Alberta has done so. I must say that I am personally of the view that we may have come to the point where this is truly an anomalous action. I have less problems with an action for seduction of a child. I think there are clearly cases where a child is so naive and a parent is so affected by the seduction of his child, and certainly the criminal code has kept alive seduction of children under 16, so criminally we still believe it's there. So personally I don't have a specific opinion on criminal conversation. I've only suggested there's another way to deal with the discriminatory foundation of that action if it is in fact discriminatory and there's some confusion in the law there's, no question.

MR. FILMON: Mr. Chairman, what justification is there, either from a pecuniary or a non-pecuniary point of view, to retain such cause for action in the legislation in Mr. James' view?

MR. JAMES: Well, I guess I've just sort of stood apart and watched as well that when Bill 6 was announced a couple of actions were immediately commenced by some people; I noted in the newspaper. So, at least there are a couple of people who believe that they have been damaged civilly by their wife having committed adultery with somebody else; I assume that is what has taken place. Personally, I think I am of the view that probably there should be an aspect of malice proven in such a case. We're of an age I think where if somebody over the age of 18 decides to depart from a married state, whether he does so legally or after a separation or before a separation, that nothing should follow unless the circumstances are so peculiar, in terms of malice by the seducer, and that he really doesn't have any affection but has done it in order to get some collateral way at the husband. I can see that as being very difficult to prove but there may be cases where that is a bases. So, perhaps a component of malice could be legislated in such an action. I don't feel strongly about criminal conversation I think is what I'm saying.

MR. FILMON: Yes, because it strikes me and I wonder if Mr. James feels that merely because some people, who hadn't previously been aware of the opportunity to bring such an action, and some lawyers who perhaps saw some opportunity to benefit by bringing such an action, took the step as a result of the publicity that was given this bill and others in the country, does that make it right or is that a sufficient justification for us to keep this sort of thing?

MR. JAMES: I'd be more inclined to think that action is being commenced in order to get more leverage in whatever other domestic relief is being sought, either under The Marital Property Act, that would be my guess, that they're really throwing this in in order to create a little more leverage in settlement. So, I'm not that impressed with the action.

MR. FILMON: Well, okay, Mr. Chairman, if we were concerned that there wasn't sufficient leverage or opportunity for an equal footing to be established under The Marital Property Act wouldn't that be the area to address it rather than maintaining some of this. It strikes me that all of these things establish or infer that people are chattels whether they be children or whether they be spouses or whatever. We're treating them in this kind of legislation as chattels and I don't think they're too many of us who support that kind of view in today's society. I haven't really heard anything that changes my attitude from the position put forward by Mr. James. I'm just asking if there is any strong argument that he has that might change my mind.

MR. JAMES: Under that specific action I have no argument. I would say, however, with great respect the notion that we should do away with actions which treat people as property would, I would submit, if taken to it's logical conclusion, do away with all civil claims because, in effect, all claims for personal injury, whether they're by a third party or by the injured person himself, and again one would think too of The Fatal Accidents Act where one asks the court to put a figure on a person who has died. That is all the courts can do. The courts can't revive people or replace amputated limbs or make a paraplegic walk. They can, however, compensate in money and replace by property what abstract and intangible things, in terms of health and companionship, have been lost by negligence. That's all a court can do. I think it's a little dangerous to think in terms of the law treats people as property in these actions. I think that's all the law can do when giving relief, personal injury of any kind.

MR. FILMON: I think the difference though, Mr. Chairman, would be that in terms of accidents or personal injury that presumably there is no agreement or involvement by consent of the individual whose injured in that kind of things, whereas there obviously is some degree of consent in any of these actions.

MR. JAMES: I think what it's doing perhaps is giving property in somebody affections. It's that which, I think, perhaps has the feudal orientation that we've gone beyond. People are whole in themselves and can make up their own mind as to who they will consort with to place property in that person. I think though with a child we still have some fundamental notions of family life and of the authority of the parents; notions of guardianship; notions of almost monopoly over the discretion of a child with respect to education and a place of living. I think those are still fairly fundamental notions and we may be going a little further in terms of Section 3(1) than society is ready for in that sense, in terms of the family being the basic building block and it having a certain line of authority within the family that still exists and is still important, just because of age and adolescence and that kind of thing.

MR. CHAIRMAN: Any further questions? Thank you Mr. James.

Does the Committee want to consider Bill 6 before continuing to the other presentations or hear all presentations at once? It's agreed then to hear all presentations.

BILL NO. 10 — THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

MR. CHAIRMAN: Mr. Grant Mitchell of the Manitoba Association of Rights and Liberties will now present a brief on The Reciprocal Enforcement of Maintenance Orders Act, Bill No. 10.

MR. GRANT MITCHELL: Mr. Chairman, honourable members. I'm here on behalf of the Manitoba Association of Rights and Liberties which is a citizen's group dedicated to the protection and preservation of human rights and civil liberties in the province, we have considered Bill 10 which replaces the former Reciprocal Enforcement of Maintenance Orders Act with a new statute.

A written brief has been prepared by Maria Kucher who is on our Legislative Review Committee of our organization. I am the co-chairman of that group, and because Miss Kucher is tied up in court, I am presenting her brief today. I don't propose to read the brief; it's somewhat lengthy and, I hope, understandable.

Our basic concern, if I can sum up what we've said, is that while certainly we commend the general tenor of the Act which appears to be to facilitate spouses who have obtained orders in other reciprocating jurisdictions granting them maintenance so that they can enforce those orders in Manitoba against, perhaps, a spouse resident or owning property in Manitoba, we still feel that the respondent spouse, the one who will be required to pay, ought to be entitled to fundamental justice, and if the bill is unclear or if it does not give fundamental justice to the respondent spouse, we feel that certain changes might be considered.

In the previous statute, it was provided that if an order was made in a reciprocating jurisdiction where the respondent spouse was not present, was not part of the proceedings, and an order was made in his or her absence, they would have a chance on an application to have the order registered in Manitoba to raise any defense which they might have raised in the original court. We feel this is fair because there may be many circumstances where the respondent spouse, residing in Manitoba or perhaps working in Manitoba, is not in a position to attend to the many reciprocating jurisdictions where proceedings may be taking place. He may also never even receive notice of the proceedings in the other jurisdiction as some order for substitional service may have been made. On that basis we look to Section 2 of the bill which is quite a departure from the previous Act, and looking specifically at Section 2 (2) of the bill, it indicates that the notice has to be given to the respondent of the registration of the order. It does not say how notice must be given. It doesn't say whether indication of a registered letter, or something even less, notifying the respondent of the order will be sufficient.

Going then to Section 2 (5) indicates that a respondent may, within one month after receiving notice of the registration of a registered order, apply to the registration court to set the registration aside. It doesn't say what "receiving notice" means and if receiving notice means that it's been posted in the mail, it may well be that a respondent spouse will not become even aware of the registration of the order until the month has expired.

In most cases of statutes where a limitation period is imposed, there is usually a residual discretion in the court, if it sees fit if there are compelling circumstances, to extend the limitation period. In this case there is simply a 30-day limitation with no opportunity for the respondent spouse to extend that if he didn't actually become aware of the registration of the order until more than 30 days had elapsed. Certainly, if he's sleeping on his rights, he shouldn't be entitled to extend that period, but if there are circumstances in which a court would see that it would be just to extend the limitation period, they ought to be given that power. The power is not given to the court under the legislation; the judge would lack jurisdiction to extend that time.

Section 2 (6) says that on application under Subsection (5), the registration courts shall set aside the registration if it determies that the order was obtained by fraud or error or was not a final order. This is a change, as I indicated at the outset, from the previous Act which said that if the respondent had not had an opportunity to attend the original hearing, he would have a chance to raise any defense which he could have raised in the original hearing. In this case that is all reduced to the simple word, "error," which could be interpreted either narrowly, which could mean such things as some denial of natural justice or something of that nature, something very restrictive and not a reconsideration of the merits of the case, all the way to a complete reopening of the case which would mean that there was, effectively, no reciprocal enforcement. The word is so vague and so poorly defined that it's really left to judges to decide what "error" constitutes, and because it is so vague, it is our recommendation that word either be defined more closely or it be expanded upon.

We have made recommendation in the brief that consideration be given to the provisions that are in

The Reciprocal Enforcement of Judgments Act of this province with some adjustments because of the difference in the two types of orders sought to be enforced but on Page 4 of our brief, it's set out, what we would recommend to be those circumstances in which error would have been committed including such things as fraud, which is already set out in the statute, but if it's not a final order, which also is in the statute, but other defenses which might be available in particular, Subsection (g) of our proposal in The Reciprocal Enforcement of Judgments Act is the judgment debtor in this case, the respondent would have a good defense if an action were brought on the judgment because, indeed, this may be the first and only chance that a respondent spouse has to raise whatever defenses he had before.

I don't believe this would be a unfair imposition against the applicant spouse. Under the previous legislation there was provision for the reciprocating state, if the order was a provisional order, because there had not been an opportunity for the respondent spouse to be represented at first instance; that if there was a provisional order, the reciprocating state would send a transcript of the proceedings to this court, to this province, so that the applicant would not have to re-prove her case. Then it would simply be a matter of the respondent being able to raise such evidence as he saw relevant to the proceedings which the court might consider in determining whether the original order was in error, but it appears that under the proposed bill there are very limited rights on the respondent spouse to present his defense at any time, and certainly on the question of notice, and I'm going now to Section 9 (4), where it says that, where a proceeding is brought to enforce a registered order it is not necessary to prove that the respondent was served with the order, it is our submission that the essence of fundamental justice is that, when an order is made against a person he should be aware of what it is that's being enforced against him, and there ought to be a requirement that service of the registered order be made upon him and perhaps, at the same time that the applicant is giving notice of the registration of the order to the respondent, they could be giving notice or serving a copy of the registered order so that at least he would be aware of what it is that is being sought to be proved against him. He could trace the order to the originating court and have an opportunity to present a full answer in defense to the action, which again, may be his first opportunity to do so.

The brief spells out our position in more detail, but just in general terms, that was the concern which we're expressing in terms of this bill.

That's my submission.

MR. CHAIRMAN: Thank you, Mr. Mitchell. Are you willing to answer questions?

MR. MITCHELL: I'm prepared to try, although I must confess that Miss Kucher has a greater familiarity with the law relating to Reciprocal Enforcement than I do but I'll do my best to respond to any questions.

MR. CHAIRMAN: Do any members have questions? The Attorney-General.

MR. PENNER: Just three questions to Mr. Mitchell. First of all, with respect to the problem you raise about notice under Section 2, would it not be your understanding, Mr. Mitchell, that it speaks in that context of notice that must necessarily mean, unless those words are limited, that it is in effect, effective notice, either by personal service or failing that on the order of the court? The court will make an order, as you know, only make an order for substitutional service, where it is demonstrated a personal service cannot be affected, but unless it said "Notice by Mail" or by "Registered Mail," it must mean "notice." Would you not take that view of the words in Section 2.(2)?

MR. MITCHELL: I might be in a position where I would have to argue that; I don't understand that to be the state of the law. My understanding is if it says, "give notice that the words have no greater connotation than their natural meaning" which may be, not that the respondent has received notice, but that notice has been given in the sense that perhaps something has been sent without any proof that it's been received.

MR. PENNER: The court must be satisfied that there is notice. How can you give notice without serving notice? I mean, giving notice means giving notice, does it not?

MR. MITCHELL: Let me pose this scenario. The applicant spouse is in court seeking to register the order and is asked, "have you given notice to the respondent," and she says, "yes, I sent him a letter on August 12." Has she given notice?

MR. PENNER: No, no. Would the court say as they do, "have you any proof that the respondent received that letter," and in the absence of that proof it's not notice.

MR. MITCHELL: If the courts were to interpret those words in that fashion then, of course, our concern would be less. If they were to interpret it loosely then we would be concerned.

MR. PENNER: My second question, in the point that you were making in 2.(6) your concern —and I'm appreciative of your concerns, Mr. Mitchell —but I want to see whether we're understanding words in the same way.

Where it talks about "the registration court shall set aside the registration if it determines that the order was obtained by fraud," we'll leave that aside, "or error." Wouldn't you say that the word "error" opens the thing completely because that must necessarily, in that context, include errors of fact and errors of law so that all you have to demonstrate to the court as the person seeking to set aside the order, that there was an error of any kind.

MR. MITCHELL: Well, my submission is, that the word "error" is so broad that you have in effect left it to the judges to decide what the word means and what the intention of the Legislature was in putting that word in. I'm saying that some judges may interpret the word "error" so restrictively as to involve some denial

of natural justice as opposed to an error on the merits of the case. If it's interpreted so broadly as to include "any possible error," then really what's involved is a re-hearing of the entire case.

MR. PENNER: And your position or the position of MARL as expressed in the brief, is that they want to narrow the grounds upon which a registered order can be set aside or to broaden?

MR. MITCHELL: To define what "error" means and hopefully to have it sufficiently broad so that a person who has not had an opportunity to defend himself in the original jurisdiction would have an opportunity to defend it now. Our concern is that a judge may interpret the word "error" narrowly so that the Respondent spouse is denied his opportunity to present his full answer in defence.

MR. PENNER: My third question has to do with the point that you were making latterly about Section 9 (4), "Where a proceeding is brought to enforce a registered order, it is not necessary to prove that the respondent was served with the order." Since a registered order is defined in the definition section as, "a final order," must it not be the case that the respondent prior to there being a final order must, in fact, have been served. It can't be a registered order unless it's a final order and it can't be a final order unless the respondent has been served.

MR. MITCHELL: I think we're getting back to Section 2 and that is, to what extent must the respondent be served? If he must be served why is Section 9 so poor there?

MR. PENNER: What it is saying is, that now we're not dealing with the registration of the order, we're dealing with its enforcement and in effect it's saying, you've gone through all the steps, you've got your order, why does the woman, in most cases, have to go through the business every time she wants to enforce that order, of going through the whole business of finding that husband again? She's done it.

MR. MITCHELL: So you're saying that Section 9 so far deals only with enforcement and not with . . . well, of course, that is the concern.

MR. PENNER: Yes, that's what it says.

MR. MITCHELL: I think Section 9 (4) is an extension of our concern with the earlier parts which, in our view, don't sufficiently set out what must be done to ensure that the respondent spouse has been notified. It's really part and parcel of the same concern.

MR. PENNER: Thank you.

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

MR. SANTOS: I suppose the courts normally will define notice as the impinging of information upon the person to whom the communication is to be sent and, of course, if it never reaches that recipient of the information there will be no notice.

MR. MITCHELL: I welcome the day when both Mr. Santos and Mr. Penner are sitting on the bench.

MR. CHAIRMAN: Any further questions? Thank you, Mr. Mitchell.

BILL NO. 16 — AN ACT TO AMEND THE FATALITY INQUIRIES ACT

MR. CHAIRMAN: Mr. Mitchell, would you like to present your brief on Bill No. 16 — an Act to amend The Fatality Inquiries Act.

MR. MITCHELL: Yes. Again, there is a written brief in connection with our position on this bill. This brief was prepared by me and discussed by our committee and I am hopefully better able to discuss its contents with the members.

Bill 16 is an Act to amend the Fatality Inquiries Act. My understanding is that what prompted its being brought before the House was a concern about the publication of the names of involuntary residents of mental institutions in the province, whose names have had to be included in a report to the Legislature because of the inquiries into their deaths if they died in institutions.

As a consequence, Section 29(1), which was in the previous Act, has been amended so that there is no longer a requirement that the name be furnished to the Legislature. This is apparently in the interests of protecting the privacy of the persons involved and their families and we certainly have no objection to that.

It also appears under Section 29(1), that the former requirement that the recommendations of the Provincial Judge at any inquest held under this Act in connection with such a death which formerly did have to form part of the report to the Legislature, is no longer part of the report to the Legislature.

I'm not sure about the motivation for that change. It may be because the name of the person would necessarily be in the report of the Provincial Judge but it is our position that it is important that where provincial judges do make recommendations as a result of inquests, that those recommendations be brought to the attention of the members of the House and that this section ought to be changed back insofar as subsection (c) is concerned, so that the actual reports of the inquest should be furnished to the House with the names of the persons involved deleted to preserve that confidentiality which was the original motivating factor for the section, apparently.

Going to Section 6 (1.1), this is a different provision and has to do with a requirement that was in the previous statute and the section will continue in existence, Section 6 (1.1), which required that in every case where a medical examiner became involved in a death, or at least must become involved in every death of an involuntary resident of an institution, in the previous case in the existing statute he must take charge of the body; he must inform the police and he must make an inquiry into the death of the person and, subsequently, in 6 (4) make a report to the Minister about the results of his inquiry.

6 (1.1) has been amended in the bill so that in the case where a medical examiner is satisfied that a

person who is an involuntary resident of an institution has died of natural causes, he may determine not to do those things, that is, to take charge of the body, to inform the police, to make an inquiry. Presumably, once he is satisfied that the person died of natural causes he need take no further action and the matter will end there.

Our concern is that the existing statute had this provision in order to, in our view, protect the interests of involuntary residents of institutions who are incapable of looking after their own interests and are often persons who have been lost in the shuffle and are no longer of any interest to members of their family. They're people who have no protection except for the public and it appears that the reason why this protection was there was to prevent any hanky-panky in these institutions such as have been set out in some notorious cases and, indeed, in novels which are well-known.

While we don't anticipate that situation arising in Manitoba, we still feel that the notion of having statutory protection for these people, in terms of an investigation into their death, was a useful one and to simply have the words, "is satisfied" that a person died of natural causes could mean that a medical examiner, on receiving a phone call from an institutional physician that a patient has died of natural causes, or perhaps looking at a chart and seeing that it's indicated that a person died of natural causes, would make no further inquiry and some act of negligence or even foul play would go undetected, whereas, under the previous statute, hopefully, it would have been noticed. It doesn't even appear that where the words, "is satisfied" appear in Section 6 (1.1) that it's even a requirement on the part of the medical examiner to conduct a physical examination of the body of the deceased.

This appears to us to be really an abdication of the role of the medical examiner and we feel it's essential that he do at least that. While we don't feel that it's essential that the previous protection, which involved taking charge of the body, informing the police and making an inquiry, may be necessary because it may be too cumbersome and costly which is likely the motivation for the change, there still ought to be something set out in the statute which will protect the interests of these residents and make sure that they're not the victims of some unlawful act, including negligence.

Therefore, it's our recommendation that perhaps the words, "is satisfied," in the subsection could be added to and that after the words, "is satisfied," the words could be added, "based on his/her physical examination of the body." At least that much we're involved in the statute, at least, there would be a check from the outside, that is, the medical examiner on what's going on inside one of these institutions. Naturally, if the Legislature is inclined to continue to require that the medical examiner take charge of the body, inform the police and make an inquiry and to report to the Minister, we would support that view as well, but if it's considered that's too costly or cumbersome we would ask that at least there be a requirement that the medical examiner satisfy himself on some terms as set out in a statute rather than relying on the judgment or actions of the medical examiner.

We're aware that within these institutions there are such things as a medical audit of all the deaths that occur in the institution. This is not something that's done as a matter of statute or regulation, but as a matter of policy of an institution. Those policies can change and they're not subject to anything ordered by this Legislature, certainly there's also the review mechanisms in the College of Physicians and Surgeons. We're aware of those as well, but we feel that a situation could easily arise which would escape the scrutiny of either of those two bodies and that the original idea that the rights of these people be protected by statute ought to be maintained. If this system has been too cumbersome, then streamline it but maintain the protection. That's our position on that.

MR. PENNER: I'm just wondering, given the kind of concern that you're expressing which, to some extent, addresses confidence or lack of confidence in medical staff in, or attendant upon, institutions, how far do you want to go? Why wouldn't you, expressing that concern, go beyond the mental institution or the jails and apply the same requirement with respect to hospitals, personal care homes. If we can't rely on the fact that there are extensive staff in these places; there are medical audits as you point out where, in the larger institutions, there is concern about medical treatment itself, certainly where, in the rare case, there is something untoward, the notion that there's going to be some — untoward I mean in terms of the death really being caused not by natural causes but by violence or something of that kind by a member of staff or another patient — surely one expects and has no reason to believe otherwise that these matters are immediately brought to light and become the subject of an inquest. I guess I'm posing the question a bit rhetorically, Mr. Mitchell. Do we want to have mini-inquests, and that seems to be what's being requested, every time a person dies in any kind of institution and at what cost?

MR. MITCHELL: The previous Act said, "institution in the province"; the present bill says, "institution as that word is defined in The Mental to Health Act." We have specifically addressed ourselves in Committee that issue and we've specifically decided not to raise that issue here. We've agreed that, although we have concerns about persons who are involuntary residents of hospitals, of nursing homes, even of schools, perhaps ought to be subject to the same protection, that it's reasonable for the Legislature to restrict the definition of that term, "institution," to confine it to those persons under The Mental Health Act because those are the persons who are the least likely to have others from the outside protecting their interests.

In terms of whether there must be mini-inquests in connection with each death, hopefully, there aren't so many deaths in the mental health institutions that that would create a cumbersome procedure, but most importantly, we're not asking for a mini-inquest in each case. What we're asking is that the words, "is satisfied," not be left so open so that the medical examiner might be satisfied by a phone call, by a look at a chart, by a word in passing from a physician, so that the medical examiner has to do something so that his function is meaningful; not an inquest, not an inquiry, not taking charge of the body, but simply a

physical examination of the body to verify that this was, indeed, a death from natural causes. We don't believe that would add a tremendous amount of expense or time on the job of the medical examiner. Of course, we're placing our faith in the medical examiner that he will be the protector of these people's interests, but we're certainly not asking for a mini-inquest or any inquest unless the situation warrants. Naturally, if there's anything that he discovers that may be untoward an inquest ought to be ordered but he ought, at least before he makes a determination that an inquest is not necessary, to conduct a physical examination of the body.

MR. PENNER: Just one supplementary question. Then I again appreciate the concern that in some way the medical examiner should be satisfied other than a phone call type of thing. Would it not be the case — I don't pretend to have extensive understanding, indeed, not very much, of medicine — but would it not be the case that a medical examiner is going to learn a great deal more from the chart than from looking at a body? When you look at a body it's a dead body unless it's black and blue from strangulation — by that time you're into an inquest — it's a dead body. If a medical examiner really wants to be satisified, I can think of nothing better and perhaps we can make that clear than saying that the medical examiner should have the chart because the chart . . .

MR. MITCHELL: I welcome that suggestion. I'm saying that under the existing bill there's no requirement that he even consult the chart.

MR. PENNER: Well, we'd certainly be prepared to look at that as something that might be a lot more practical than the idea of a physical examination by the medical examiner. Do you think that might . . .?

MR. MITCHELL: Well, anything would be better than what is there. We think there should be more and that this check is there for a reason and it ought to be meaningful. If it's simply a matter of rubber stamping a decision or a comment of a physician in the institution, then you're leaving it to the perpetrator to enforce his own conduct.

MR. PENNER: So if there was a requirement that the medical chart in each case of a death at this type of institution went forward to the medical examiner that might meet the problem that you're posing?

MR. MITCHELL: It certainly would be a start.

MR. PENNER: Yes, thank you.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you, Mr. Chairman, it seems to me that one of the concerns here is the information, the lack of information, or the amount of information that is disclosed and to whom it is disclosed. I remember several years ago when I was approached by a constituent to ascertain the cause of death of an immediate family member, that person had great difficulty getting that type of information as to the cause of death. I was wondering if you have had any occasion of something similar occurring.

MR. MITCHELL: . . . have personal experience of that, but it's certainly our view that in any case where there are persons from outside who are concerned about one of these deaths when they would require some sort of examination or autopsy to be performed, that it ought to be performed on request. It seems to me that this section is designed to meet the case of where there is no one else except for the physician involved in dealing with the decease of the person, because I would say it's absolutely essential that if someone questions the finding of the physician that there was death by natural causes that there ought to be some inquiry into that because nobody really has access to what goes on in the institutions except for the persons within it.

MR. CHAIRMAN: Are there any other questions? Thank you, Mr. Mitchell.

MR. MITCHELL: Thank you very much. I appreciate the opportunity of addressing the legislators this morning.

BILL NO. 4 — AN ACT TO AMEND THE GARAGE KEEPERS ACT

MR. CHAIRMAN: The first item of business then is to consider Bill No. 4, An Act to amend The Garage Keepers Act.
Mr. Penner.

MR. PENNER: Mr. Chairperson, when we last considered this the Member for Virden made a very good suggestion, namely, that we contact the Associations of Garage Keepers. Two were identified; the Manitoba Motor Dealers Association and the second one, the Automotive Trades Association. We did hear from the solicitor for the Manitoba Motor Dealers Association, Mr. Ken Houston who forwarded what I thought was a very constructive suggestion. I've asked Chief Legislative Counsel to put that in the form of a proposed amendment that I would now ask be circulated. I'm prepared to recommend that amendment.

MR. CHAIRMAN: How would the committee like to deal with Bill 4? Clause by clause, page by page? Mr. Penner.

MR. PENNER: On the amendment that's being circulated, there is a question which arises in terms of the time limit following which the vehicle can be sold. In Section 1 of the amendment dealing with Section 11, the time limit is stated at 30 days. I'm proposing 60 which is consistent I think with the notice form itself which states 60 days.

MR. CHAIRMAN: Clause by clause or page by page? Yes, clause by clause.

MR. MACKLING: Mr. Chairman, the practice I think is you read the title — or the title comes last and the first section is amended, isn't it?

MR. PENNER: Yes.

MR. MACKLING: So I think you have to read the amendment and deal with that.

MR. CHAIRMAN: Does the amendment need to be read? Who would like to move the motion?

The Member for Elmwood, Mr. Doern.

MR. RUSSELL DOERN (Elmwood): "MOTION:

"THAT Section 1 of Bill 4, An Act to Amend The Garage Keepers Act, be struck out and the following section be substituted therefor:

"Section 11 rep. and sub.

1 Section 11 of The Garage Keepers Act, being Chapter G10 of the Revised Statutes, is repealed and the following section is substituted therefor:

"When vehicle may be sold.

11 The sale as aforesaid may be held at any time after the expiration of 30 days —(Interjection)— I'm sorry, 60 days after the day on which the notice is given to the owner under Section 13.

"Section 13 rep. and sub.

2 Section 13 of the Act is repealed and the following section is substituted therefor":

MR. PENNER: This is similar to the bill as first . . .

MR. DOERN: "Notice to Debtor.

13(1) Unless, at the time of, or within a reasonable time after

(a) the detention of the motor vehicle, farm vehicle, accessory or equipment under Section 4; or

(b) the seizure of the motor vehicle, farm vehicle, accessory or equipment under Section 8; the garage keeper gives the owner of the vehicle a notice in Form 3 of the Schedule, or a notice to like effect, the garage keeper is not entitled to sell the motor vehicle, farm vehicle, accessory or equipment, as the case may be, in accordance with the provisions of this Act.

"Notice by registered mail.

13(2) Where, at the time of receiving a motor vehicle, farm vehicle, accessory or equipment for service or at any other time prior to the completion of the service . . ."

A MEMBER: I'm sorry, there is no "other" in there, "or at any time."

MR. DOERN: Okay, I'll go back — "accessory or equipment for service or at any time prior to the completion of the service, the garage keeper has given written notice to the owner that he intends to rely upon the rights of a lienholder under this Act in collecting the account for the service, the notice required under subsection (1) may be given by sending it to the owner by registered mail to the latest address of the owner known to the garage keeper and in that case the notice shall be conclusively deemed to have been given to the owner on the 3rd day after the day on which it is posted. Motion . . ."

MR. CHAIRMAN: The Minister of Natural Resources.

MR. MACKLING: I'm just wondering if we can have the detail of this explained now.

MR. RAE E. TALLIN: The first criteria is that there must be notice to the owner of the vehicle that The Garage Keepers Act is going to be relied upon. Generally speaking, that notice will be given after the service has been done and the account is not paid, but there may be difficulties in serving a person at that time because he may have disappeared. So what was proposed by Mr. Houston was that the garage keeper be allowed to give notice at the time he gets the vehicle, that he may rely upon The Garage Keepers Act and if when he does that, he does not have to worry about giving actual notice of the personal service after the service is completed. He can then give it by registered mail and if he sends it by registered mail then it be conclusively deemed to have been served upon. So what the process that Mr. Houston suggested would be that when the owner takes the car in to the garage and authorizes the work to be done, as most garage keepers do, there will be a notice on that authorization signed by him that will indicate the garage keeper might be relying upon The Garage Keepers Act and he will get a copy of that. After that has happened, then all that's necessary under Subsection 13(2) will be that the actual notice is sent out by registered mail rather than by personal service.

MR. MACKLING: Would the notice form be prescribed under the regulations?

MR. TALLIN: It is a simple form in the schedule which would be on the next page, but that's not the notice that necessarily has to go on the order because this notice sets out a lot of things like the amount of the account and that sort of thing which the person should know.

MR. MACKLING: Yes.

MR. TALLIN: This is the notice that goes out by registered mail . . .

MR. MACKLING: Yes.

MR. TALLIN: . . . or if he hasn't had that previous notice, it will be personally served on him. But the notice on the work order will be . . .

MR. CHAIRMAN: Order please. Could you slow down and wait until you are recognized please. The Hansard recorder is having problems.

MR. MACKLING: My apologies, Mr. Chairman. The notice on the work order that's provided for here will be a like notice, similar notice — what will be the contents of that?

MR. TALLIN: I would think all that would be necessary would be to comply with 13(2), and that is the garage keeper puts on there that he intends to rely upon the rights of a lien holder under The Garage Keepers Act in collecting this account, that's all.

MR. CHAIRMAN: The Attorney-General.

MR. PENNER: The problem that is being addressed here is this, that in a remarkably large number of cases, persons drive in with a vehicle, leave it and are long gone. Then the garage keeper is stuck with the vehicle in storage and storage costs and then has a problem in exercising his or her or its rights in selling the vehicle. Hitherto, reliances being placed on these notices posted in the garage and in many cases, they are simply not there and in other cases, there are notices under some former version of the Act and the garage keeper could be at risk relying on that notice posted. This, first of all, satisfies two concerns: it gives the vehicle owner or the person bringing it in a notice of the fact that there are lien rights which may be exercised; but secondly, it enables the garage keeper to deal with the horrendous problem.

MR. CHAIRMAN: The Minister of Natural Resources.

MR. MACKLING: Just one question, was there no provision for notice by registered mail before, there wasn't. So this is a distinct improvement?

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, we have changed this notice from 30 days to 60 days. I believe the request for 30 days was a request of Mr. Houston, was it?

MR. CHAIRMAN: Attorney-General.

MR. PENNER: No, it was not. I'm sorry Mr. Chairperson. The way in which it was put by Mr. Houston, that the right to sell on the part of the garage keeper shall not arise until 60 days or whatever shorter period of time may be appealing to these circumstances. Well, there was no shorter period of time that was appealing to those circumstances that I thought. I thought 60 days was pretty minimal.

MR. CHAIRMAN: Mr. Santos.

MR. SANTOS: Thank you, Mr. Chairman. In the work order itself, would it not be fair to the owner of the car to read exactly this notice on Form No. 3 right at the time that there was admittedly a job to be done?

MR. PENNER: The difficulty with using the notice in Form 3 is that it already assumes an amount for the account which really cannot be ascertained in most cases until the garage keeper has finished the work, but the essence, other than that, can be printed at the bottom of the estimate sheets.

MR. CHAIRMAN: Mr. Lecuyer.

MR. GERARD LECUYER (Radisson): It seems to me that in the original amendment as it was given to us and looked at a few weeks ago, that the owner of the vehicle had to authorize the garage keeper to make the work and agreed to the indebtedness. I am not sure that this new amendment does that, or does it?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Could I explain, that question of the acknowledgement of the debt is under a different section. That is where the person comes in and says, I don't want to pay for it right now but I acknowledge the debt. Then the garage keeper is allowed to give him back the vehicle and may register a lien under The Personal Property Security Act or in the Personal Property Security Register rather, but his right of lien does not cease. He may go back and seize the car if the account is not paid, but that is under a different provision all together and these provisions do not affect that type of situation.

MR. CHAIRMAN: Section 1 as amended—pass.

Section 2 as amended — the Minister of Natural Resources.

MR. MACKLING: There is a motion about renumbering there that should be read.

MR. DOERN: "MOTION:

"THAT sections 2 and 3 of Bill 4 as printed be renumbered as Sections 3 and 4 and the following section be added thereto after section 4 as renumbered:

Form 3 added.

5 The Schedule to the Act is amended by adding thereto, at the end thereof, the following Form:

Form 3
Notice to Owner

To: (name and address of owner) being the owner of (here describe the motor vehicle, farm vehicle, accessory or equipment in respect of which the lien is claimed).

Take notice that (name and address of garage keeper) intends to rely on the rights of lienholder under The Garage Keepers Act, including the right to sell the motor vehicle (farm vehicle, accessory or equipment) described above if the amount of $ _____ for service to (storage of _____) the motor vehicle (farm vehicle, accessory or equipment) is not paid within 60 days after the giving of this notice.

You have the right under section 13.1 of The Garage Keepers Act to pay the amount of the account, plus 10 percent thereof or $50.00 whichever is the lesser, into a county court and upon compliance with the provisions of that section respecting notice to the garage keeper, the lien of the garage keeper will cease to exist and custody of the motor vehicle (farm vehicle, accessory or equipment) will be returned to you.

DATED this _____ day of

_____, 19____.

_____

(signature of garage keeper)

MR. CHAIRMAN: Section 2 as amended—pass; Section 3—pass.

Section 4 — Mr. Doern.

MR. DOERN: "MOTION: THAT section 4 of Bill 4 as printed be renumbered as Section 6 and be amended

by striking out the words "the day it receives the royal assent" and substituting therefor the words and figures "September 1, 1982."

MR. CHAIRMAN: Section 4 as amended—pass; Title—pass; Preamble—pass; Bill Be Reported—pass.

BILL NO. 6 — AN ACT TO ABOLISH CERTAIN ACTIONS CONCERNING STATUS OF INDIVIDUALS (Cont'd)

MR. CHAIRMAN: Bill No. 6, An Act to Abolish Certain Actions Concerning Status of Individuals.

Mr. Penner.

MR. PENNER: I'd like to respond very briefly to the points made by Mr. James. I agree with Mr. Filmon that the essence of the proposal, the main part of the proposal, or the main consideration leading to the proposal is not a question of sexual discrimination but the notion, which really is feudal and Mr. James did recognize that substantially, that there is a proprietary right that persons have in other persons arising out of status relationships. Husband, wife, parent and many jurisdictions have recognized that archaic feature of the law, these actions for criminal conservation, loss of consortium, alienation of affections, harbouring and enticing, have come down to us from the common law over a lengthy period of time. The action for criminal conversation has been abolished in Ontario, England, Saskatchewan, to my knowledge, is under consideration by Law Reform Commissions in other jurisdictions.

With respect to the action for criminal conversation, and I'm reading from a Law Reform Commission text, this action and the actions of enticement and harbouring rest on the conception of marriage which is essentially proprietary, as Mr. Filmon pointed out, and exhibit an attitude towards the causes of marriage breakdown which does not accord with contemporary opinion.

With respect to the loss of consortium, again Mr. James in a good thoughtful presentation nevertheless admitted its feudal characteristics. It does, as I understand it, at present apply to husbands only so that some jurisdictions have taken the approach that maybe the way to reform this particular action is to include or to broaden it so that wives may bring the action and therefore its discriminatory aspect would be dealt with, but it would still leave the notion of property. It's true that something of that kind may by analogy be said to exist in actions under The Fatal Accidents Act, but that does not argue for the continuation of this particular tort which is, as I say, badly outdated.

Finally, in terms of the submission, I think that, with respect, Mr. James misread Section 3(1). What action is being abolished with respect to a child is for the loss of service of a child. There are other actions relating to a child which may be brought under many circumstances and I should point out that in terms of things like injuries to the person, particularly assaults, things of that kind, that protection is offered by society through the Criminal Code. We're not talking about that; those remain. We're talking about whether somebody can go to court and sue for the alleged loss occasioned by these antiquated torts.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Thank you very much, Mr. Chairman. I have long been a proponent of removing statutes that seem to be obsolete and of no further value in the Province of Manitoa, but I also understand that there may be two court cases that are presently under way that may involve something that is involved in this bill.

I think there are probably two ways to get around that. One, we could either change the last clause in the bill which brings it into effect on Royal Assent; if we changed that to Proclamation then it could be withheld until those two court cases are completed. The second one would be that we not report the bill, which would just hold it in abeyance.

I just throw that out for the consideration of the Committee.

MR. CHAIRMAN: The Attorney-General.

MR. PENNER: The Interpretation Act of the Province of Manitoba states, and I'm not quoting here, but in effect, that a bill or an act which amends, removes a cause of action. Well, I'll read it exactly. "The provisions of enactment do not affect litigation pending at the time of its enactment unless it is so expressly stated," so that those actions are protected.

MR. GRAHAM: Mr. Chairman, once again, maybe the outcome of those two particular court cases may influence thinking of people that are charged with the responsibility of legislation and I was wondering if there is really that great necessity to move ahead at this particular time if the things have been there for some 50 or 60 years whether it would be advisable to hold it in abeyance for a short period of time?

MR. PENNER: There are a number of problems. If this is a reform in the law whose time has come, I really can't see an argument just waiting for the sake of waiting. The actions which are under way are protected, but it may be the case that we'll always find actions in the pipe no matter how long we wait. I see no virtue in just waiting. This has been examined. There was a report by the Law Reform Commission prepared for the former Attorney-General of this province by the Manitoba Law Reform Comission recommending the ending of the action for criminal conversation, which I understand he was favourably considering, but for the events about which we need not say more and it's time to move. That's why we have a Law Reform Commission, and in many instances these reforms in the law are based on the work of independent Law Reform Commissions, they are able to stand back and look at the archaic features of the law. Judges have often expressed themselves, with respect to these actions, that they wish somebody would do something about them but it's up to the Legislature. Being creatures of the common law, judges can do no more than limit their scope; only Legislatures can make the reforms required and I think it's here, we should do it.

MR. GRAHAM: Mr. Chairman, the action taken by the

.aw Reform Commission, was that self-initiated or vas it requested by the Attorney-General?

MR. PENNER: It was requested by the former \ttorney-General.

MR. CHAIRMAN: Mr. Lecuyer.

MR. LECUYER: We're on Section 3 so I don't know if 'ou want to deal with or as we . . .

MR. PENNER: Clause-by-clause.

MR. CHAIRMAN: Clause-by-clause.
Mr. Santos, did you have a comment?

MR. SANTOS: Thank you, Mr. Chairman. Apparently he presumption, why we are abolishing all these ıctions, is that it is equating a person as if they are ›roperty. Maybe there's another alternative assump-ion that we can consider. Namely, that there has been ın injury done to the party. If it's always just a basic ›rinciple where there is an injury there should be ;ome kind of a remedy. If there is no remedy in the Criminal Code or criminal law, there should be some ;ind of a civil remedy for injury done to any of the ndividuals such in the form of damages.

MR. PENNER: Thank you, Mr. Chairman, tort actions ıre still available on a whole number of circumstances vhere there is pecuniary laws. What is being dealt vith here again, as pointed out by Mr. James, is not he question of pecuniary laws but the nonpecuniary ıotion of property in persons.

MR. SANTOS: Mr. Chairman, this is what I'm going to lispute, that just because it cannot reduced into noney in the sense that it is nonpecuniary, it doesn't nean that it is not an injury. We are equating as if it vere in any sense connected always with the idea or ıotion of property. In civil law there is such a situation vhere a single law may give rise to both criminal ıction as well as a civil action, what they call ıuasi . . ., the basis of which is to recompense for the njury although the operator may not be criminally iable.

MR. PENNER: Well, I think we should consider this ›ill clause-by-clause. There will be a chance to con-;ider in principle on third reading of the bill.

MR. CHAIRMAN: Section 1—pass; Section 2—pass; Section 3 — Mr. Lecuyer.

MR. LECUYER: The point raised by Mr. James a vhile ago that if a child becomes a supporter of, for nstance, a paraplegic parent and were to lose his life n an accident — I believe that perhaps has been :overed in the last comment by the Attorney-General – that would not preclude action from that parent vho is being supported by that child to recover the oss of the services of that child?

MR. PENNER: What would happen supposing that a ›erson, adult or infant is injured and becomes a para-›legic and requires care for the rest of that person's life, that is addressed in the damages which are awarded by the court. The court awards damages on the principle usually of a one-time award and will specify amount. Usually in cases where you're dealing with a child, say someone under the age of 18 with a long-life expectancy, in the hundreds of thousands of dollars which are put aside for the care of that person. Now, if the care is in the home of the parents, then all of the care that is necessary will be afforded either through the nursing services or provisions can be made in such damage awards and this doesn't affect it for recompensing any service rendered by the parents to the paraplegic.

MR. LECUYER: Actually, what I was referring to is, what if a child is not a paraplegic but dies as a result of such an accident, could the parent, who is himself handicapped or paraplegic, have claim for loss of that child?

MR. PENNER: Yes, we should amend that.

MR. LECUYER: Okay, cover it another . . .

MR. PENNER: Section 4(4) of The Fatal Accidents Act deals with that. It should in fact — I'm glad you're raising it — we'll look at it perhaps in this Session. Section 4(4) should be made clearer in that regard in any event, that is 4(4) of The Fatal Accidents Act.

MR. CHAIRMAN: Mr. Johnston.

MR. FRANK JOHNSTON (Sturgeon Creek): Thank you, Mr. Chairman, I'm not completely adverse to the law, but the action shall be brought by a parent for the enforcement of harbouring of a child of the parent or for the seduction of a child of the parent, Loss of services, which has been discussed. I don't really care whether it's archaic or whether judges think it should be changed or the Law Reform Commission recommends it, I would only like to ask is the Attorney-General satisified that there is other legislation or laws in place that if you take, for example, seduction of a child, and as Mr. Santos says uses the word injury, there is injury to that child where the parents have to maintain large hospital bills or whatever for a length of time, is the Attorney-General satisified that there is other law or other sections of legislation that protect the parents in that situation and by protecting the parents you maintain the care of the child. Is that right in other legislation?

MR. PENNER: Well, as I understand the question where a child has been injured and requires care, is that the point, as the result of seduction?

MR. JOHNSTON: Yes, which would be very expensive to the parent and, of course, the child would benefit from whatever funds the parents would receive to take care of that child.

MR. PENNER: The child itself has a claim as any other person for injury done to the child and would be recompensed by a monetary award by the court assessing what those damages were to the child and damages as if they were based on personal injury,

would take into account care that is required. Then the court would deal in its order with how those funds are to be administered and would be administered in most cases in a way which provided the payment of those funds to a parent acting on behalf of the child in obtaining necessary services.

What we're talking about, Mr. Johnston, is third party claims; that is, the child can still have a court action and obtain compensation through the court. What is being done away with here, or it's proposed to do away with, is a case in which the parent can come along on a different ground entirely and say that I, as a parent, have lost the service of this child, whatever that may mean, and I want money for myself based on that fact alone.

MR. JOHNSTON: I think I understand what the Attorney-General is saying, but I would like some clarification. Who brings the action for the child? When the child is 13 or 14 or 11 or even younger, shouldn't the parents and — I know the word services is not a good word and I might agree that is archaic —but, I am saying that where in the case of injury, and I don't really think that a child under 18, which is the age of majority or even a child that is very young, should be the one to bring action. Shouldn't the parents be bringing action on the basis of something to care for that child if the child is injured? If that is in other legislation, it satisfies me, but I really get concerned not from the point of view of the parent losing services, but from the point of view of the parent having some vehicle to make sure he or she is capable of taking care of that child if there is an injury.

MR. PENNER: Yes, Mr. Johnston, under The Queen's Bench Act and Rules, a child can bring the action, but the way in which it takes place is that the child brings an action by, and this is the legal term, its "next friend." That is usually the parent acting for the child who retains the lawyer and then carries the action forward in court. In the course of those proceedings, the claim for damages in an appropriate case will include amounts for the care of the child where the injury to the child is of such a nature that it requires ongoing care within the home. So the law does deal with that as it is; this is not affecting that aspect of the law.

MR. CHAIRMAN: The Minister of Natural Resources.

MR. MACKLING: Mr. Chairman, I just have two concerns with the wording and that is the delegation was concerned about the effect of this legislation on any redress that a parent might want to seek against a cult. Cults are a problem in our society and I don't know what techniques or what rights are available to parents otherwise than, say, right of action for seduction. Maybe the Attorney-General can look at that or respond to that.

The other one is in respect to the wording of (c). It's clearly — the intent here is not to take away the rights of a parent to claim monetary value from the expectations that child was going to be supportive of the parent and so on, and that will continue to be the thrust within the courts that if there was a child killed or incapacitated that otherwise would be contributing to a dependent parent in those situations, that the courts are bound to take that into consideration, but I'm wondering about whether or not some insurance company may want to play games and suggest that this removes that right of the parent. So that I am wondering whether it should read, "subject to rights contained in any other statutes, no action may be brought." So that if there is a specific right, for example, under an insurance act or anything else to claim, that is not in any way impaired by this. This strictly, I think, is intended to take away the ancient rights that really put treated children as property until they were even 21, but I don't think the intention is in any way to impair the reasonableness of other claims. So I am just wondering about some phraseology there to make sure that someone does not have fun and games with this in court.

MR. PENNER: Well, I think I might just throw that to Legislative Counsel. My understanding is that the wording there is very specific and it deals only with the loss of service of a child of the parent or for damages resulting therefrom, that is, from loss of service. I can't see it being interpreted any wider than that.

I am wondering, Mr. Tallin, whether you see any problems with the wording in the way in which the Minister of Natural Resources has addressed the question?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: No, I find difficulty in seeing how it could be anything other than service. Apart from the fact that the Section 4 of The Fatal Accidents Act talks about the care that a person might expect to receive from the deceased person, that kind of service should be looked at, I think, to make sure that would continue.

MR. MACKLING: That's what I'm concerned about because I can see an invalid parent having a child that was providing service that otherwise a homemaker might have to provide and in the event that child then herself, or himself, is incapacitated, in any claim the parent might bring, they would like to claim a loss of service that the child provided. But if this was strictly interpreted by the courts or someone urged the courts to strictly interpret it, it might create a problem which I don't think is intended here at all; that is my concern.

MR. TALLIN: I think that the reports of Ontario and Saskatchewan addressed this point and they said that the loss of a service of a child, when it's not the same kind of a thing as the loss of service of an employee, is tending to make the law expect that all children shall render certain services to their parents and that was the thing that they were trying to get away from, I think. They said if children are not expected, as a rule, to provide services for the parent, then there should be no general rule of law that allow the people to recover for loss of that service. So this really goes beyond the loss of service that arises only from the seduction. It provides loss of service for anything, a personal injury claim or anything of that kind.

MR. MACKLING: Well, Mr. Chairman, that's exactly my concern because in the kind of situation that I think where this would possibly work havoc is where you do have a child, say 16 or 17 years of age, that is really providing useful service to a parent and that is vital to that parent because otherwise they would have to have someone else. If that's lost, then they have to put out money to provide that service, you know, someone sleeping in, looking after them and so on, a handicapped person.

MR. TALLIN: The question is, I think, and I must admit that I'm not particularly one way or another on this point, should that loss of service be recoverable when it arises from a physical damage, why should it not be recoverable when it arises from seduction?

MR. CHAIRMAN: The Attorney-General.

MR. PENNER: Well, in the example given by the Minister of Natural Resources, parents have been dependent for something that they require from the child. The child in your example presumably has been killed — disappears from the scene?

MR. MACKLING: Killed — maimed themselves riding a motorcycle and thrown off and then becomes a paraplegic. The parent had a stroke and was an invalid and the child was looking after the nightly problems of the parent. Instead of the parent having a homemaker living in, the child was able to look after this, but when the child went out and got herself injured or was subject to an injury, then the parent now had to hire someone; the parent was providing the room and so on.

MR. PENNER: Would you extend that to any person who is living in the same home with someone else and voluntarily rendering them service?

MR. MACKLING: Well, I would think so, yes. I think that if a person has a right in court to claim that he has lost something, something valuable, then we shouldn't take that away from them. I'm just afraid that in the wording of this, we might be providing that opportunity, and that is not our intention. Our intention is to take away the concept that if a child runs off and takes up a different lifestyle, the parent is going to claim from the person that damages and so on, and I can understand that we want to remove these ancient claims, but in doing so I just didn't want to impair what would be a right that the courts would ordinarily provide to a parent that was relying on some assistance from a child.

MR. PENNER: And if friendly Mrs. Jones next door has been coming in every day to render some service and is killed in an accident, then the Browns in your example can sue in court for the loss of Mrs. Jones?

MR. MACKLING: Well, I would think that they may have a claim, yes. I haven't thought that through, it could be.

MR. PENNER: Does the law permit such actions now?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: I'm afraid I'm not sure. I couldn't positively say one way or the other.

MR. PENNER: Let's reserve on that and we can come back to 3 (1).

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, earlier we made and throughout the discussing we've been making comparisons with The Fatal Accidents Act and am I correct in saying one of the differences is that there is an opportunity for action to claim compensation both ways; if a parent were killed that a child would have a right to claim for compensation for the loss of whatever services and comfort and so on, and similarly if the child were killed that the parent would have a right to sue, so that it's different from this particular action in which it's only the parents who can claim for loss of services as a result of these various things, seduction or harbouring of a child or, so on.

MR. PENNER: I don't think there was a question, there was a statement that I agree with.

MR. FILMON: Is it true that under The Fatal Accidents Act it can go either way the parent claiming for the loss of a child or the child for the loss of a parent?

MR. PENNER: You're right. Yes, Mr. Filmon is right.

MR. CHAIRMAN: Mr. Graham.

MR. GRAHAM: Mr. Chairman, I've sat on Law Amendments I don't know how many years, I missed for four years, but most of the time at Law Amendments Committee meetings we're dealing with new legislation and we become concerned about the effect it is going to have on society. In this particular case, where we're dealing with a statute that's been on the books for years, and years and years, we already know the effect it's had on society, and if it has been injurious to society then I say we should remove it. I haven't yet heard any argument about what is really wrong with the statute that is on the books at the present time.

Probably somebody will have some very good arguments on what is wrong with the statute and I think that is the area that probably we should be addressing. If there is something particularly offensive about this and it should not be on the statutes, then we should remove it. But at the present time it's been there for years, we've lived with it for years. To my knowledge it hasn't created great waves and we have several other matters to deal with before the committee. Maybe we should be taking a second look at it, we can do that in several ways. We can leave it here till the next meeting, we can move that it not be reported or we can change the Royal Assent to Proclamation and let the attorney implement it at his discretion. There are several avenues to the committee on which way they want to proceed with it.

MR. PENNER: First of all, what we're dealing with

other than The Seduction Act, which we have yet to come to, is not statute but common law, and as I pointed out earlier, it is common law goes away back into a different notion, a different concept, than is generally shared these days about the relationship between persons. The recommendations that have been made, not only here, but in other provinces with respect to actions of this kind, the old common law actions, is to get rid of them because they reflect values that are no longer values held in our society. They stemmed from different kinds of property relationships, different kinds of family relationships, some of them going back to the 16th Century. I see no virtue in maintaining something which has its origins and its justification in another time and in another system.

I can go along with, certainly, the notion that the act comes into force on the date of which proclaimed, to give us an opportunity to look at the point raised by Mr. Mackling and the point raised by Mr. Tallin to make sure that Section 4(4) of The Fatal Accidents Act addresses the kind of problem which has been raised, but I think subject to that, I'd be quite happy to go along with that.

I think we should go through the bill and deal with it, we've really dealt with most of it in fact now.

MR. CHAIRMAN: Mr. Santos.

MR. SANTOS: If I understand right, what we are trying to get away from is the antiquated notion that a child is in bondage or servitude to the parents. But (c) is so broad, let me present a scenario; supposing here is a single parent invalid and say he is dependent on a child, who is 16 years old, the child was seduced and became a psychiatric case; did the parent suffer an injury that under this provision she cannot find a remedy?

MR. PENNER: I really answered that question previously. The child itself has a cause of action in the remote kind of event supposed in the question but let's deal with it even though it's hypothetical. The child itself has a right of action.

MR. SANTOS: But she is now insane and she cannot bring action.

MR. PENNER: Of course, the child can bring in action through someone in law called its committee under The Mental Health Act.

MR. CHAIRMAN: The Minister of Natural Resources.

MR. MACKLING: I'll just point out that in answer to the question the Attorney-General put to me, I would say no I don't think there would be privity of contract between a neighbour, but there have been, I think, claims honoured by people in respect to services that are rendered to others. No, my concern was that clearly the principles of the bill are sound, what we're doing away is a concept that wives and children were property and could be used as such and we want to remove that.

My concern was that the wording be such that my brothers-in-law, and I'll that expression, who like to use statute law and like to use any new law to their advantage, wouldn't be in a position to argue this at all if the wording were improved somewhat. I can't provide that wording here, I'm just concerned that someone might argue that we're taking away some rights that we don't want to take away.

MR. CHAIRMAN: Mr. Johnston.

MR. JOHNSTON: Mr. Chairman, I'd just like to make a comment on it and I won't dwell on it. As I said, I'm not knowledgeable in the law. I just read (a), (b) and (c), Enticement or Harbouring. I don't really want my child back to be a servant; I just want to know that if somebody entices my child away from my home that I have some legal way of getting that child back or going to court or getting after that person.

The same thing in (b), if the child is harmed and there needs to be money to take care of, the Attorney-General has explained that, and loss of services for a parent. If the Attorney-General is satisfied that there is other law or other parts of legislation that handles that protection, I think, because everybody doesn't agree with the word "service," that's pretty obvious, but if he's satisfied that we're getting rid of legislation and we have other legislation that takes care of those protections, fine, but, you know, we must be very careful when we eliminate legislation that we don't unintentionally harm somebody.

MR. CHAIRMAN: The Attorney-General.

MR. PENNER: I think that point is well taken and that is why I agreed with the suggestion that we can change the commencement of the act to the date of Royal Proclamation so that, with respect to the specific concerns raised, we can have another look at it but I must say that I have, prior to agreeing to go ahead with this bill, looked very carefully at reports from the Manitoba Law Reform Commission, the Ontario Law Reform Commission and the Saskatchewan Law Reform Commission and am satisfied that the concerns being expressed are met in this bill.

MR. CHAIRMAN: Mrs. Hammond.

MRS. GERRIE HAMMOND (Kirkfield Park): I just have one question here and I suppose it's on the enticement or harbouring of a child.

If a parent had to go to court to get a child back, and I don't know the law, but if they had to go to court and that are involved law fees, is this the sort of thing that they would not be able to recover? What happens in cases like that or does that not apply at all?

MR. CHAIRMAN: The Honourable Attorney-General.

MR. PENNER: Well, I'll just answer the question in general. Where someone goes to court and has what is called a cause of action, that is the right to sue, then in doing that, if the person wins the action the person is awarded, normally, costs by court, which may be just part of the costs incurred in going to court or in some exceptional cases all of the costs.

MRS. HAMMOND: Say a child was living with someone that the parent thought not suitable and wanted

to get them back and had to go to court, and yet they couldn't say, afford a lawyer, how does this work? Is this the type of thing that action could be brought by a parent? Is that the type of thing that we might eliminate or is that the type of thing that happens?

MR. PENNER: Under the old common law, a parent could bring an action for enticement or harbouring. I'm unaware of any such action having been brought in the Province of Manitoba in the last 100 years and whether or not if an action of that kind was brought it would succeed . . .

MR. TALLIN: Harbouring is not an action to recover the child.

MR. PENNER: Okay, it's been dealt with by Legislative Counsel.

MR. CHAIRMAN: Section 3.(1)(a).
Mr. Johnston.

MR. JOHNSTON: I just have one more comment and I hesitate to make this comment, because putting three or four lawyers in a room to decide whether this is right or not there'll never be an agreement, but we are, to put it bluntly, elected members and we aren't all lawyers and we're concerned about the people. I would only make a request then to the Attorney-General that when it comes up on third reading to consider Proclamation or to take a look at it before third reading in the House, very closely, and possibly come up with some wording that would clear up any doubt regarding eliminating this legislation.

MR. PENNER: I thank the member for the suggestion and, in fact, just talking briefly to Mr. Corrin, and I think we can come up with some words for (c) which makes it much clearer than it is and meets the concerns which have been expressed.

MR. CHAIRMAN: Section 3(1)(a)—pass; 3(1)(b)—pass; 3(1)(c)—pass.
Mr. Corrin.

MR. BRIAN CORRIN (Ellice): I move an amendment, which I think will accommodate Mr. Mackling's concern. At the end of the sub-clause, I would move the addition of the words, "arising from seduction or enticement of such a child," so the clause would now read: "for a loss of service of a child to a parent arising from seduction or enticement of such a child," So it's clear that in cases where a parent had a claim in law for a loss of service, which did not relate to seduction or enticement, they would not be precluded from following that in the usual course.

MR. CHAIRMAN: Is there a seconder for that motion?
Section 3(1)(c) as amended.
The Attorney-General.

MR. PENNER: Just call the question on the amendment.

MR. CHAIRMAN: 3(1)(c) as amended—pass.

MR. TALLIN: Could we be authorized to get the French version of those words tied in without it being moved in French?

MR. PENNER: Je vous que les mots passon en Francaise passer.

MR. CHAIRMAN: Thank you, Mr. Penner. Section 3(2)(a)—pass; Section 3(2)(b)—pass; Section 4—pass; Section 5(1) — the Attorney-General.

MR. PENNER: I should just point out in general, all of the following sections are based on the foregoing changes that we've already made. They just changed The Queen's Bench Act to take out those phrases dealing with criminal conversations seductions.

MR. CHAIRMAN: Section 5(1)—pass; Section 5(2)—pass; Section 5(3)—pass; Section 5(4)—pass; Section 6—pass; Title—pass; Preamble—pass; Bill Be Reported—pass.

BILL NO. 10 — THE RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

MR. CHAIRMAN: Bill No. 10, The Reciprocal Enforcement of Maintenance of Orders Act.
Mr. Penner, do you have an introductory statement?

MR. TALLIN: There are a couple of corrections in the French version. Perhaps, if you wanted to know what they were, Mr. Yost could point them out to you, but could we have authority to treat those as corrections?

MR. CHAIRMAN: Mr. Pennér, do you have any introductory comments to make on Bill 10?

MR. PENNER: In introducing this bill for second reading, I pointed out that it was a draft act intended to repeal and replace the existing Act. What it does is take some 10 years or longer, in fact 20 years experience with the Act and strengthens the Act in a number of particulars. The points that were raised by Mr. Mitchell are addressed in a way — in questioning Mr. Mitchell, he raised some good points but I think they are really adequately dealt with in the Act. One had to do with notice under 2(2) and I am satisfied. I can say this to the committee, that notice, as that term is used in Section 2(2), means effective notice and not just the attempt to give notice. There is a difference in law between attempting to give notice and giving notice and this talks about giving notice, so I am satisified that is adequately dealth with.

Again, the question was raised about whether or not the grounds for the setting aside of an order were sufficiently wide. The response I gave to Mr. Mitchell and I think is right, namely that the term "error," unless limited, means error both in law and in fact. So that the respondent, who obviously ought to have a chance to put in his or her defence, can come before the court and say that the order, as given in the other jurisdiction, was given contrary to law in that the other court did not have jurisdiction or there was an error in law in some way or that it was based on an error in fact. That can be done and I think it ought to be done. I

don't think that the word error is too wide. We wouldn't want to, and this I understood to be the concern of MARL, restrict the rights of respondents against whom an order has been made in another jurisdiction to be able to have his or her day in court.

Finally, the definition of registered order in the act or final order — I'm sorry — of a registered order on Page 2 of the Bill makes it clear that it means a final order and a final order cannot be obtained without notice.

MR. CHAIRMAN: How shall we proceed — clause by clause?

Mr. Filmon.

MR. FILMON: I just wonder, if in view of the fact that the Attorney-General has seen fit to expand upon some of the concerns, for instance, saying error either in law or in fact, whether or not that little additive clause should be put in?

MR. PENNER: Mr. Goodman points out and I pointed out in speaking to it in the Legislature, this Act as it is being proposed is what is called a Uniform Act, that is, it's all the provinces are carrying it through.

MR. FILMON: So, in fact, the resolution of that problem is going to be the first time that a judge is faced with making that determination. What the word "error" means will likely become a precedent right across the country.

MR. PENNER: I am often given, as Mr. Filmon knows, to instant answers which tend to be wrong but I think I'm right in saying —(Interjection)— It's very hard for me to say, I don't know. I guess that is why I qualified as a university professor. But I am satisfied that the judicial interpretation of the word "error" is that unless otherwise limited, it does mean error in law and in fact.

MR. CHAIRMAN: Page by page or clause by clause? Page by page — it's agreed by the Committee.

Page 1—pass; Page 2—pass; Page 3—pass; Page 4—pass; Page 5—pass; Page 6—pass; Page 7—pass; Page 8—pass; Page 9—pass; Page 10—pass; Page 11—pass; Page 12—pass; Page 13—pass; Title—pass; Preamble—pass; Bill be reported—pass.

BILL NO. 12 — AN ACT TO AMEND THE FAMILY MAINTENANCE ACT

MR. CHAIRMAN: Bill No. 12, an Act To Amend The Family Maintenance Act.

Mr. Penner, do you have an opening statement?

MR. PENNER: No, I think made the point. All we are really doing here — well, there are two different things.

One is, there are some minor amendments to bring our Act into conformity with the decision of the Supreme Court of Canada as to the jurisdiction of Provincial Judges' Court. I may say that it's hoped that ultimately, we can obtain a Constitutional amendment to Section 96 of the BNA Act to give provincial judges wider jurisdiction. There seems to be agreement between all ten provinces and the Federal Government, so I expect that kind of constitutional change to be made relatively soon. In the meantime, we have to make our law conform to the law of the land as pronounced by the Supreme Court. So that is really what Section 1 is about.

MR. CHAIRMAN: How shall we proceed — clause by clause? Page by page.

Page 1—pass; Page 2—pass; Title—pass; Preamble-pass; Bill be reported—pass.

Bill No. 16, an Act to Amend The Fatality Inquiries Act.

Mr. Penner, do you have an opening statement?

MR. PENNER: Well, the Minister is Mr. Uskiw, the Minister of Transport — well, of Highways in this particular context. As explained by Mr. —(Interjection)— Oh, I'm sorry, I was doing 17. Yes, yes.

With respect to Bill 16, there was a point made during the discussion by Mr. Mitchell about 6(1.1). I am concerned about how the medical examiner would be satisified. I would accept an amendment, that I will ask somebody else to move, that was drafted by Legislative Counsel which would have the section read — and I'm not moving it, I'll just explain it — "Notwithstanding subsection (1), where a medical examiner is satisfied after examining the medical records of the institution relating to the deceased or by other examination . . ." and then goes on. Move.

MR. CHAIRMAN: Moved by Mr. Filmon, seconded by Mr. Santos.

MR. SANTOS: The amendment is to insert after the word "examiner," the phrase, "after examining the medical records of the institution relating to the deceased or by some other examination."

MR. PENNER: You're right, I think it would go after "examiner" — would it not, grammatically?

MR. CHAIRMAN: Mr. Filmon.

MR. FILMON: Mr. Chairman, should it be "and by?" Because I think the prime agreement was, at the very least, at "medical records" — it ought to be, and if you want to make it more than that — but if you say "by some other acceptable methods," then you may eliminate the possibility of at least the medical records being examined.

MR. PENNER: It does say, Mr. Filmon, after examining the medical records of the institution related to the deceased or by other examination, not just by other means but by other examination.

MR. SANTOS: It will always be an examination.

MR. PENNER: Maybe in some cases where there are, I suppose if we're dealing with — there could be circumstances where there would not be medical record on which reliance could be produced. Somebody might have just come into a mental institution and died shortly thereafter.

MR. CHAIRMAN: Section 1 as amended. Mr. Filmon.

MR. FILMON: I wonder if it should be then "or by physical examination."

MR. PENNER: I just don't how anybody might interpret "other type of examination."

MR. TALLIN: It is the examination of the body of the deceased.

MR. FILMON: You might orally examine the medical officer who signed the death warrant and that might not be a sufficient examination, I don't know.

MR. CHAIRMAN: The Attorney-General.

MR. PENNER: I think, Mr. Filmon, that we'd probably be wise to leave it "or by other examination" because it could include clearly physical examination, but we are dealing with — I forget the last report, in the three institutions there was something like close to 100 deaths, perhaps not that many, but very close to 100 deaths, and I think that if we're dealing with those cases in which arguably it's natural causes, after examining the medical records of the institution relating to the deceased or by other examination which might include where the medical examiner perhaps is close by, physical examination or by examining in a sense, orally examining the medical staff.

MR. CHAIRMAN: Section 1 as amended—pass; Section 2—pass; Section 3—pass; Title—pass; Preamble—pass; Bill be reported—pass.

BILL NO. 17 — THE PROCEEDS OF CONTRACTS DISBURSEMENT ACT, 1981

MR. CHAIRMAN: Bill 17, The Proceeds of Contracts Disbursement Act, 1981. The Minister of Natural Resources.

MR. MACKLING: I think if all the members have read the Bill, I would call the principles of it, having looked at it before. It provides for a decent mechanism where claims can be dealt with by the department.

MR. CHAIRMAN: How should we proceed? Page-by-page? Page 1—pass; Page 2—pass; Page 3—pass; Page 4—pass; Page 5—pass; Title—pass; Preamble—pass; Bill be reported—pass.

That completes the business on the Order Paper unless there are other items.

Committee rise