LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS
Monday, 8 July, 1985

TIME - 10:00 a.m.

LOCATION - Winnipeg, Manitoba

CHAIRMAN - Mr. P. Eyler (River East)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Mr. Evans, Hon. Mrs. Smith, Hon. Messrs. Storie, Parasiuk, Penner, Uskiw

Messrs. Birt, Enns, Eyler, Mrs. Hammond

WITNESSES: Mr. Don Lugtig, Manitoba Association of Social Workers

Ms. Donna Lucas, Charter of Rights Coalition

Ms. Susan Devine, Northwest Child and Family Services Agency

Mr. Ken Murdoch, Social Planning Council of Winnipeg

Miss Sharon Henley-Taylor, The School of Social Work, University of Manitoba

Chief Jim Bear, Southeast Resource Development Council

Chief Rodney Spence and Mr. Ovide Mercredi, Awasis Agency of Northern Manitoba

MATTERS UNDER DISCUSSION:

Bill No. 12 - The Child and Family Services Act; Loi sur les services à l'enfant et à la famille.

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MR. CHAIRMAN: Committee, come to order. We are considering Bill No. 12 today, The Child and Family Services Act. We have a list of people who would like to make presentations from the public. I will go down the list as I have it before me.

Is Mr. Don Lugtig present?

MR. D. LUGTIG: Mr. Chairman, Madam Minister and members of the committee.

We are very pleased to be able to present some comments to you about the proposed Child and Family Services Act. My name is Don Lugtig and I represent the Manitoba Association of Social Workers. Our board reviewed the act on the basis of certain submissions by a special committee struck to review the act and has delegated to me the responsibility of making a submission. Mr. Ed Moscovitch was also to have been here but was unable to do so.

We're very impressed, as an association, with the proposed act; we think it's a real step forward and it is really excellent. We're particularly impressed with the preventive thrust of the bill and the section on services to families, the services to children which require that their cultural and linguistic heritage be considered.

We're also impressed with the Declaration of Principles at the beginning of the act and the fact that the best interests of the child, I believe, are being included in that.

Our comments then, are really very, perhaps, minor ones and relate to a few concerns, some of which may be wording or housekeeping, but others are related to concerns which our membership in one way or another has expressed. They're divided up into various sections. The first is in Appendix I and concerns comments under the section, Administration.

We recommend that Part I Administration of the proposed act be reviewed for the purpose of making its provisions more comprehensive so that it may better facilitate the realization of the fundamental principles as set forth in the Declaration of Principles.

Perhaps this is superfluous, but we think that the wording of section 4(1)(a) could be strengthened and the Duties of Director be strengthened by adding that the director "administer and enforce the provisions of this act in keeping with the Declaration of Principles as set forth in the act." That may already be assumed, but to have that in the wording would, we think, make it stronger and clearer and would set the parameters for the communications which the Director might have with the Minister and other agencies and the community at large.

Then we would suggest adding a section to 4(1), which would be somewhat similar to 4(1)(b) and could replace 4(1)(b): "advise the Minister on whether the provisions of this act, or any other Manitoba statute, are consistent with the Declaration of Principles as set forth in this act."

One of the concerns, I think, that social workers have had for a number of years is that various operations of other legislation have really sometimes been to the detriment of children and families. We think, just offhand, of The Social Allowance Act and The Education Act. Sometimes families are dismembered from what may appear to be the benign administration of these acts, but in effect are not so benign. We think that this would strengthen the voice of the Child and Family Services Director and would give him or her, as it were, a job of spokesperson in the government for Child and Family Services.

Going on to Page 3 of our submission, at the top of the page, we could also add a section: "That the director" - and this may be presumptuous - "advise the Courts, the Attorney-General, and other departments and agencies of government when normal practices and procedures might in specific cases impede the realization of the intent in the Declaration of Principles as set forth in this act."

Our concern here is similar to our concern under the previous statement, but it specifically arose out of recent operation of the courts in criminal proceedings with respect to the evidence of children in sexual abuse cases. We're quite concerned that the giving - and we'll comment on that later - of evidence by children in open

court can be detrimental to the child. I'm not sure how much of this lies within the jurisdiction of the provincial government, but we think that if the director is given a voice and given the authority to make certain comments, then those comments might be carried forward and eventually create changes in the operation of - and I'm not specifically referring to the courts altogether, but in other ways as well.

Then moving from the duties of the directors, we'd like to look at the whole area of corporation of boards, the membership of boards and so on. In keeping with No. 10, Declaration of Principles: "Communities have a responsibility to promote the best interests of their children and families and have the right to services to their families and children," it is recommended that the following sections be amended to read, and then we suggest these and I'll just go through them quickly:

No. 2. That the Application for Incorporation under (6)(1) be amended to read:

"Any 12 or more persons over the age of 18 years, who desire to associate themselves together for the purpose of providing child and family services, may make an application to the Minister for incorporation in the prescribed form."

We note that in section 6(4) that it specifies that The Corporations Act shall apply to all agencies incorporated under this act, and that in The Corporations Act a minimum of one person can apply for incorporation and a minimum of three persons can constitute the directors of the corporation. Here I believe it suggests that three persons can apply for incorporation and we think that that is too few considering that we are looking to community as being the basis for the agency.

We would like to suggest that even though 12 persons, as contained in the present Act, is an arbitrary figure, it sure is a lot more than three. We would suggest that any 12 persons be allowed to apply for incorporation.

No. 3. Then regarding the directors, our same point really, "The affairs of the agency shall be managed by a board of not fewer than seven or more than 50 directors." That's in the current act and we think that should be moved over into the proposed act, that three or more persons is not really sufficient to set the parameters for community as laid out in the Declaration of Principles.

No. 4. Looking then at the Composition of directors, we note that in the by-laws, which we believe were distributed by the department under the director's office to the new Child and Family Services Agencies in Winnipeg, the membership of the boards of directors would consist of nine members, individuals from the community; three from service providers; three from government appointees; and one staff appointee. Adding up the service provider representatives, the government appointees, and the staff representatives, we would get seven out of 16.

It would be really possible for the formal service providers, that is the professionals, to line up with about 3 community members and control the affairs of the agency. We don't think that that is truly representative of community control. This does happen in other jurisdictions and we would suggest that some wording be included that would make the absolute majority of the community possible in the bill, so that no formal service providers could group together to control the agency, or employee reps or government reps.

I think that the community would pay and give due attention to professionals and service provider reps, but I don't think in the end their will should be thwarted, except insofar as it pertains to the administration of the act.

There was one final point around boards of directors, we felt that the transposition of the Corporations Act's wording under 6(10) that the board of directors should be directly and indirectly responsible for the management of the agency should be deleted because we don't think that the board of directors should be directly responsible for the management of the agency and that this should be clearly spelled out.

I suggest this addition: "Subject to this act, the directors shall be responsible through an executive director, employees, and agents for management of the affairs and business of the agency in keeping with section 7(1) of this act and the Declaration of Principles as set forth in this act." I think we're adding the Declaration of Principles there.

I don't know that community members want to get into case situations, except on the basis of appeal, but certainly not into the direct case or client work which the agency would be doing, nor do I think it would be desirable, nor does our association.

Then we'd like to move, if we may, quickly to the issues of confidentiality and access. When the current act came up for consideration a couple of years ago our board was undecided about the whole matter of having the press present in Child and Family Court, or Child Welfare Court as it is now. After reviewing some of the current articles in the press about cases, these mind you are mostly criminal cases, and the reporting of those, we are concerned about that. We find particularly in sexual abuse cases that the reporting is far too explicit, we don't think that it is to the family or children's best interests that the specific sexual acts committed on a child be published in the newspaper. It might be said that a child can't be identified, but we think that the overall content of the article suggests that the child can be identified and we don't think it is in the child or family's best interest for that material to be public. This is the area out of which this concern arose.

If we had our choice, we would prefer that the press not be there. Because these matters are private, we are trying to get voluntary participation, co-operation and we don't think that publishing this material really is conducive to that. And so we would recommend that the press not be present.

On the other hand, we can see why a Legislature would want the press present and if, in the wisdom of the Legislature it decides that they wish to have the press present, we think that more restrictions should be placed upon the press than are presently in the act or in the proposed bill and we've taken this material solely from the proposed Child and Family Services Act in the Province of Ontario.

Our proposed section 75(3) then would read,

"If upon hearing an application of any party to the proceedings, or upon his or her own motion, the judge or master may:

"(a) exclude all media representatives from the proceedings;

"(b) limit the number of media representatives who may be present at the proceedings;" - and I suggest

that sometimes the number of people at some of these court hearings is quite oppressive, really.

"(c) exclude a particular media representative from all or part of the proceedings;" - we've noted that sometimes a particular writer may include information on a regular basis that really appears to us to be detrimental to the child or family.

"(d) prohibit the publication of a report of the hearing or a specified part of the hearing." This would enable the judge to allow the general reporting of the hearing but would possibly allow the judge to exclude certain parts which relate to very sensitive material.

We think that this would give the judge more leeway and more direction and would be less draconian than the present and proposed section which really only provides for penalties.

Then we'd like to go into another area of concern which our membership has brought to our attention, which relates to what I said before, and that is the whole business of children testifying in court. We note that under the proposed act, children can be present in court and we think that is good. However, the matter of testifying is quite different, we think, and we have noted that this can be quite upsetting to children. There was an article in the press only about a week ago in a criminal proceeding that a 10-year-old child was asked to give evidence against a person for sexual assault, and the child was so upset that she started to cry and she was brought into court, started to cry, she was taken out, she was asked if she could return, she said she would and then she got so upset that she couldn't appear. I think this only illustrates the kind of emotional trauma that these children can go through by being present in court and giving testimony.

We realize that a person who is accused of such a situation needs protection and perhaps the only protection that person can get is through cross-examination of a witness, such as a child. However, we think that we may be able to mitigate some of this by the following suggestions.

It is our strong recommendation, based upon views expressed by our members, having experience in such proceedings, that the evidence of children in Family Court under this act be limited in the main, (1) to affidavits, (2) to hearings before the judge in chambers. Accordingly, we suggest the following section be changed and subsequent subsections be renumbered accordingly.

"(a) A judge shall accept evidence from a child by affidavit except upon application that the evidence be given by the child in person;

"(b) Evidence given by the child in person shall be heard in chambers."

We note that subsection 25(8.a.1) in the current Child Welfare Act provides "A judge may in his discretion consult the child in chambers or in court" but this has been left out of the current bill.

Just to highlight that a bit, or add to it, a child may not - this is only the end of of the proceeding - a child may have already given evidence, or given the same story, to a social workers, mother or dad, to a school counsellor or teacher, to a worker in a child abuse team in a hospital; he may have given evidence in a Criminal Court proceeding and now he's in a Child and Family Service Court proceeding. This is a lot of times to go over this story and a lot of trauma involved in that, and we would suggest that if the committee could do anything to reduce some of that, it would be to the benefit of the children.

Then, going on to sections related to access and records. We'd like to exclude our comments under section 76(5). At first we thought that the provisions here were not adequate for protection of information given by other people than the client, but we feel after a careful review, that the section is really adequate from our point of view and we would like our comments excluded - or ignored, would be more like it.

On Page 9, section D, the issue of privileged communications for solicitors in section 18(2) which exempts the solicitor - or we think it exempts the solicitor - from reporting on child abuse. I'm not sure that it does, but we think it does. Under the current Child Welfare Act, solicitors are considered like any other professionals and are, we believe, required to report child abuse, and we think they should also be in the current Child and Family Services Act. We don't think that a solicitor should be allowed, if he knows that a certain abuse is present and continuing, should be able not to report that under the cloak of privileged communication.

After all, the consequences are too serious for the child and it's not a one-act type of thing, it's usually a progression over a period of time and we think that this should not prevail and that this particular section, that part of it, should be deleted.

Then going to the matter of Private Guardianship of the Person and Access under Part VII. In our original brief, we included an extra page here. We have a number of concerns under guardianship which are on that page and I'll try to go through them really quickly.

One thing we thought was incongruous and the section under Private Guardianship brings it out - it's incongruous that the judge only may require a report of an agency under private guardianship and when you set this up against all that it has gone through in removing guardianship of a child from his family under the previous sections in the act, it really doesn't give due weight to the child whose guardianship is under consideration under the Private Guardianship section. We feel that a child is a child and that the same concerns should really be present in the Private Guardianship that are in the other sections and. therefore, we suggest that a report on the child be required, that the judge be required to obtain that from an appropriate source and that this be made part of his decision as to guardianship. We don't think the judge has adequate information otherwise.

So we suggest that section 77(4), where an order is made under this section, the applicant is for all purposes of the guardian - oh, I'm sorry - I am misreading that. We suggest that that section include that the judge shall require a report.

Then I think what we would like to do is go to the section, the addition here under guardianship, and there are a number of questions which we are not altogether sure that haven't been considered or that were right in proposing, but we would like to bring them forward for possible consideration. There may be some gaps here that have been identified, we are not certain.

No. 1., under definitions, "'guardian' means a person other than a parent of a child who has been appointed guardian of the person by a court of competent

jurisdiction"; yet a parent or parents can surrender guardianship of the child to an agency under 16(1) and (2), and the court can appoint an agency, a temporary or a permanent guardian under section 38(1). So we recommend that the guardian include "agency" as well as "person".

No. 2. Under sections 16(1) and (2) and 38(1)(f), the agency - not the director - becomes permanent guardian of the child. This is supported by the definition, we think, which says that a "ward" means a child of whom the director or agency is the guardian. There appear to be some exceptions to that. Exceptions appear to be where a director has assumed responsibility for an agency: (1) where none is functioning in an area; or (2) where guardianship has been given to a regional office under section 16(3). Yet the director is the only person designated to sign adoption consents under, I think it's 58(1).

Consents of a ward of an agency who has been placed for adoption, it is our view that signing consents, or the power to sign consents, usually flows from guardianship. We would recommend that to remove any ambiguity, it is suggested that the director be given one of two courses: (1) the director be given overriding guardianship over all children, even those who are made wards of the agency; or (2) that consents be signed by the guardian agency as in the current act, section 83(1). This may have already been considered, we don't know, but we are suggesting that.

No. 3, section 46 states "where, prior to apprehension, a member of the child's family had in fact assumed care and control of the child, that the member has the same rights as the guardian under this part". We ask what are these rights? They are access under section 27(3); Notice of hearing under section 30(1); and child to be returned under supervision under 38(1). But the act doesn't really refer to any obligations or responsibility, at least none is mentioned. If the child is returned to the guardian under supervision, it seems to us that guardianship should include responsibilities or obligations as well as rights. Perhaps some reference should be made under Section 46 to that.

Then we look at the definition of guardianship and what it contains. Guardianship under the act, in addition to care and control, includes maintenance and education of the child under 48(a), and (b), maintenance, education and well-being of the child under 77(4). Now the 48(b) refers to guardianship of the child by an agency; and 77(4) includes guardianship of a child by the private guardian. So we are wondering if section 48, the agency guardianship, should not also include well-being as well as education and maintenance. We think that this is really the hope that agencies will have the well-being of children in their mind and that this should be an addition to that section in 48.

We note under our point 4. here that private guardianship refers only to guardianship of the person. We wonder what happens to guardianship of the estate, by whom is this appointed, how does this fit in with guardianship responsibilities under section 77(4)? If the private guardian is to be responsible for maintenance, education and well-being, where does he get the resources for that and how is that handled?

We also note that under section 48 there is not specific mention of guardianship of person and estate. Does this mean that the agency has both? Should this not be spelled out?

Then under our point 5. we also note that guardians do not appear to be able to sign adoption consents as they are under the current act. Yet in de facto adoptions, 71(2), it says no consent of a parent or a guardian is required. We wonder if in this section guardians should be left out to make it consistent with the rest of the act.

Finally, in point 6., we note also that orphans have been left out of the list of children or situations needing protection under 17(1), and are not listed among children who may be adopted by waiver of consent under 58(7). Should some special provision be made to clear up possible ambiguity of legal jurisdictions over orphans, children really who do not have any guardian at all? If they don't have a guardian, how do they get adopted? Particularly, if guardians can't sign consents to adoptions, do they come in under the provisions of children needing protection and do the provisions of children needing protection really include a child who is an orphan? They seem to refer to whether a child is well-cared for or adequately cared for, but I am not sure that would pertain to all orphans. They may be well-cared for but they still need adoption placement, and they still would not need protection. I guess that's the point we're trying to make.

The final point we would like to make is around the subsection related to fathers applying for a recognition of paternity as in the last page of our submission. It notes that a child can't be placed for adoption unless the father's application has been withdrawn, dismissed and all appeals of the dismissal exhausted. Well, I don't know, if you're a little kid six months old, how long you might have to wait until all the appeals to that have been exhausted.

The problem is that, if it's a dismissal, the weight of evidence already has gone against the person applying. We think that this gives an undue amount of weight to a situation that may be quite weak really. While we don't know of any particular remedy to that, we would like to ask the committee to look at that and perhaps ask that a specific solution be found for it. We realize that people have to have rights to appeal, but at some point these rights may have to be limited in the best interests of children who are being considered.

I think, Mr. Chairman and members of the committee these are all the comments that we would have to make regarding our brief. We're very happy to have been able to make it. We're sorry we're so long-winded and had so many points, but we would be happy to speak to anything that we have raised.

MR. CHAIRMAN: Are there any questions for Mr Lugtig?

Mrs. Smith.

HON. M. SMITH: I appreciate very much the thoughtful analysis of the act. Some of the concerns we feel, are tied to legal interpretation, but the court proceeding recommendations we find very persuasive but recognize they take longer to work out.

I would appreciate your opinion as to whether the presentation of videotaped interviews as evidence of children's testimony would be acceptable.

MR. D. LUGTIG: I think that might be certainly a lot better than what is at present, yes.

HON. M. SMITH: Thank you.

MR. CHAIRMAN: Are there any further questions for Mr. Lugtig? Seeing none, I would like to thank you, Mr. Lugtig, on behalf of the committee for taking the time to come today.

MR. D. LUGTIG: Thank you very much.

MR. CHAIRMAN: Edward Moscovitch. Is Edward Moscovitch present?

Donna Lucas.

MS. D. LUCAS: Good morning. I guess I have to kind of get really close to this thing.

MR. CHAIRMAN: It bends.

MS. D. LUCAS: Mr. Chairperson, Madam Minister, members of the committee, my name is Donna Lucas. I'm a member of the Charter of Rights Coalition (Manitoba). The brief that is being circulated contains a summary of the recommendations that the Coalition would like the committee to consider in assessment of its bill.

The Charter of Rights Coalition (Manitoba), which has been established in Manitoba, as elsewhere in the country, to educate women about their rights and potential rights under the Canadian Charter of Rights and Freedoms, is pleased to have this opportunity to comment on Bill 12, The Child and Family Services Act.

As part of its work, the Coalition has received funding from both the Federal and Provincial Governments to undertake an independent audit of selected provincial statutes to assess whether they are in compliance with the sexual equality provisions of section 15 of the Charter, and to make recommendations for changes. The proposed Child and Family Services Act is one of those reviewed by the lawyers who conducted the audit.

The proposed act in relation to section 9(4) recognizes that children who are parents may require special supports and services in order to adequately function as parents. The proposed act places an obligation on a hospital to notify the Director of Child and Family Services upon the hospitalization of an unmarried, pregnant child or upon the birth of a child to an unmarried child. The obligation to report exists only if the minor is unmarried, or if there is reasonable doubt as to her marriage.

Coalition recommends that this section be amended by removing the exception in favour of married minors, so there will be an obligation on hospitals to report to the director upon the hospitalization of all pregnant minors and upon the birth of a child to any minor, regardless of marital status. We feel that marital status alone does not remove a minor from potential risk, nor does the fact of being unmarried automatically place a minor at risk.

Section 16(4) provides that an agreement by a minor to the voluntary surrender of guardianship of her or his child is valid, and there is no requirement that the minor receive any independent legal advice or counselling prior to signing such a surrender of guardianship. What we are recommending is that this section be amended to provide that a voluntary surrender signed by a minor not be valid unless the minor has received independent legal advice prior to the signing of the voluntary surrender of guardianship. That is, a certificate must accompany the voluntary surrender agreement.

We would also further recommend that consideration be given to amending the proposed bill to provide that no voluntary surrender of guardianship is valid unless accompanied by a certificate of independent legal advice, regardless of the age of the parent. We feel that being aware and making sure that you are aware of your rights is something that is necessary.

In section 17(f), in the child in need of protection, the section itself makes reference to, if the child refuses or is unable to provide adequately for the health needs of herself or her child, the fact that the definition or statement does not include a male person is one that we would like to see amended, so that it would include himself or herself or his/her child.

In section 50(2), the support for transitional planning, in Section 50, the proposed act provides that guardianship by an agency automatically expires upon the marriage of a minor or when the minor turns 18. However, there is provision that the agency may continue to provide care and maintenance to its former ward between 18 and 21 years of age, if unmarried.

We recommend that this section be amended to provide that where an order of permanent guardianship expires as a result of the marriage of the ward or the ward attaining the age of majority, ongoing assistance may be provided by the agency until the former ward's 2lst birthday, regardless of the marital status of the former ward. Again, marital status should not be a prohibitor to access to continuing care and maintenance.

We have a number of recommendations on the section around adoptions. The proposed act provides that a husband and wife, or a man and woman who are not married but are cohabiting as spouses, or a single adult may apply for an adoption placement by an agency. Under the present Child Welfare Act, only married couples or single adults may apply to an agency for adoption. The addition of the common-law status does increase the classes of people that may apply for adoption. However, the act does not address the issue of homosexuals or homosexual couples as being eligible for adoption. What we are recommending then in the recommendations to section 55, 58 and so forth, are as follows.

We feel that the definition of "extended family" in section 55 should be amended to remove the exclusion of homosexual couples by virtue of their not being specifically referred to in a relationship of some permanence, and thus remove discrimination on the basis of sexual orientation.

Section 58 again provides that a Consent to Adoption can be signed by a minor and is valid. Our recommendation is consistent with a former one, and we would like the Consent to Adoption not to be valid unless accompanied by a certificate of independent legal advice. We further recommend again that consideration be given by the committee to amend the

act to provide that no Consent to Adoption is valid, unless accompanied by a certificate of independent legal advice, regardless of age.

In sections 66, 67, 68, 69, 70 and 72, we would recommend that the definition of common-law spouses in these sections of the proposed act be amended to include all common-law couples, whether heterosexual or homosexual, and that the definition be in accordance with the uniform definition of common-law relationships to be applicable to all Manitoba statutes.

Our last recommendation deals with the adoption of an immigrant child. In this section, it does not specifically provide that common-law spouses are eligible for the adoption of an immigrant child already in Canada. We would recommend that this section be amended to provide that the same classes of prospective applicants ought to be entitled to apply for international adoptions or the adoption of an immigrant child, as for any other types of adoptions under this act.

Those, in summary, then are our recommendations. We thank you for the opportunity to appear and would urge the committee to give serious consideration to the amendments we have recommended.

Thank you.

MR. CHAIRMAN: Are there any questions for Ms. Lucas?

Mrs. Smith?

HON. M. SMITH: In your recommendation about reporting all births to minors, whether they're married or not, are you implying that you think a social worker should visit every minor who gives birth, regardless of marital status?

MS. D. LUCAS: We toyed with the idea, quite frankly, of recommending that this section be deleted in that the assumption of minors with regard to their ability to parent but decided that since the act provides for various services to minors who become parents, to be consistent, marital status ought not to stand in the way - so, yes.

MR. CHAIRMAN: Are there any further questions? Seeing none, I would like to thank you, Ms. Lucas, for taking the time to come here today.

MS. D. LUCAS: Thank you.

MR. CHAIRMAN: Mr. Bill Martin. Tim Maloney or Susan Devine.

MS. S. DEVINE: Thank you, Mr. Chairman.

I'm Susan Devine, and I'll be presenting some remarks on behalf of the Northwest Child and Family Service Agency. I'm sorry, I don't have a formal brief, but these remarks are the result of a joint board-staff committee of our agency.

Firstly, I would like to start off by saying that our committee found many positive changes in the act, just by way of example, the potential for an order removing an abusive parent from a home, the increased ability for children's views to be represented, etc. But essentially, I'm going to confine my remarks this morning to the areas of concern that we have with respect to the act, rather than dealing with all the positive things that we might be able to comment on.

So turning to the first area of concern and looking at the act, Part I, Administration, we have some real concerns with respect to the tenor of the act regarding the role of the directorate and the role of the board. In particular, I draw your attention to section 7(1) which sets out the duties of the agencies and commences by saying, "According to standards established by the director and subject to the authority of the director, every agency shall . . . "and then the duties are delineated.

Now we recognize a need for consistent standards throughout the province, but we feel the section as worded incorporates a discretionary standard, and gives it almost the force of law in terms of interpreting the duties of the agency. We feel that it would be more appropriate, given the weight that this section gives to the standards set by the directorate, to delineate in the act itself a planning process for arriving at the standards needed, and also delineating the role of the boards and the agencies as a whole in the context of setting these standards. We think that this is a needed addition to the act, and we'd ask that serious consideration be given to amending the act to set out some kind of planning process.

Secondly, with respect to the role of the boards, in terms of the section which allows the boards of directors to be replaced by Cabinet as happened with respect to the Children's Aid Society of Winnipeg, our board and our agency recognizes government concern for maximum accountability by boards and the need for the government to be able to take extraordinary steps where warranted. We are not saying the government should not have the power to remove boards, but we think that there is a need for some form of due process in terms of the procedure.

In this regard, we would recommend that consideration be given to a system somewhat like the Ontario Act, where there are criteria and a process when this becomes necessary that these kinds of extraordinary steps be taken.

Section 22 of The Child and Family Services Act of Ontario (1984) indicates, for example, that the Minister must act on reasonable grounds of belief that an agency is not providing service in accordance with the act, or is breaching regulations, or is in some way violating their responsibilities. The Minister who wishes to take this extraordinary step must notify the agency. There is a waiting period and at the end of that time, if the agency requests a hearing, the Minister or the Cabinet appoints one or more persons to conduct a hearing. In the meantime, the Minister has, because of course this whole process of having a hearing may take some time, extraordinary interim powers if there is a serious situation to be able to step in and take over pending the hearing.

We recommend that this kind of process is less draconian than the process that is set out in our act may appear to be. It has the appearance of being less arbitrary and less open to potential abuse.

One other small point under the Administration section refers to section 6(2). We note that under the existing act, the Minister is the person to whom the application for incorporation by an agency is made, and it's a power of the Minister to incorporate. The

new act changes that to the Lieutenant-Governor-in-Council, and we were unable to discern any policy reason. It seemed to us a more unwieldy process, and we just had a question about why that change was made.

With respect to Part II of the act and, in particular, section 9(1), that section delineates services to families in the following words: "A member of a family may apply to an agency for and shall receive from the agency counselling, guidance, supportive, educational and emergency shelter services in order to aid in the resolution of family matters which if unresolved may create an environment not suitable for normal child development or in which a child may be at risk of abuse."

We recognize what we believe to be the rationale behind that section but, as a service provided, we have some concerns with respect to the high standard of statutory obligation that is imposed on the agency by the very broad wording of the section. For example, the definition of "family" in the definition section of the act is extremely broad. Any member of the family, including a nephew and all the extended members, may apparently apply to an agency. There is a mandatory duty on the agency to provide, it appears to us, ". . . and shall receive from the agency". The section is so broad that it seems to us that, arguably, people may be able to seek from us, for example, shelters for battered women in the sense that is arguably something that would aid in the resolution of family matters and, if it's unresolved, it may create an environment not suitable for normal child development, etc.

So what we would recommend is that, if the words "and shall receive" are deleted, it would still state the aims of what a family should receive from the agency, but may not create this possibly dangerous statutory obligation in terms of the agency. We would feel frankly that unless that is deleted we would perhaps have to ask for a commensurate open-ended budget from the government to contemplate any service that may be requested under this kind of section.

Just in that regard, I would like to point out that the Northwest Child and Family Services Agency which services the North End of the city, our caseload has doubled since April 1st. We feel that with this kind of provision there is much more potential for people seeking a wide range of services which we would be happy to provide if we have the resources.

Moving on to Part III and the abuse registry in section 19, we believe that the idea of an abuse registry is a good idea and we are in agreement with it, but we have some concerns with respect to the particular manner in which the act contemplates this being set up.

For example, we have a concern with respect to section 19(2), which says that: "An agency shall report any information respecting suspected abuse of a child to the director who shall maintain a register for recording the information." We feel that "suspected abuse" is a term that is extremely broad, and may be interpreted very widely from agency to agency or individual to individual. We also have a concern that there is no procedure set out in the act for getting one's name off the registry. So we feel that with these broad criteria for getting onto the registry and no procedure in the act for getting off, it could well lead to an abuse of parents' rights.

We feel that this has practical concerns for the agency, too. If the information is not tested and reliable, it is less useful for our social workers. The credibility of the registry will be in issue and will be less useful for the system as a whole.

So we would recommend that there be some control over who can put names on the registry. We would recommend that the names be accessed through the directors of agencies only, and this would operate as an internal screening mechanism. We would recommend that outside agencies such as police and hospitals not be able to put names on the registry, but that all reporting should be at least through the local agency.

We would also recommend that consideration again be given to looking at the provisions of the Ontario act. In the Ontario act, abuse must be verified abuse, and that's verified by an internal agency investigation. So it doesn't have to be after there has been an actual conviction registered, but just after there has been at least an internal agency investigation which satisfies the agency. There is also a procedure for an individual who has been notified that their name is on the list to request the deletion of the name and, ultimately, to have recourse to the courts to have their name removed.

We believe that this would ensure care on the part of in-putting agencies if the information were subject to possible court scrutiny. We think that this would lead overall to a more useful registry, because there would be a higher standard in terms of people putting names on, names being taken off, the fact that it can ultimately be overseen by the court. We think that it is dangerous to have a statutory registry without these protections, and particularly without any procedure set out for removing names.

Section 37(1)(c) is a new provision which enables a judge or master of the court for the purposes of a hearing under this part to accept as evidence a report completed by a duly qualified medical practitioner, a dentist, psychologist or a registered social worker as evidence without proof of the signature or authority of the person signing it.

We agree that dental reports should be admissible in this way, as are presently medical reports, but we don't think that the kind of opinion evidence that is offered in psychologists' reports or registered social worker reports should be admitted in evidence without being tested under cross-examination.

Even our social workers think the section as drafted is problematic in that it differentiates between different classes of social worker, registered social workers and other social workers. I am advised by them that the distinction appears to be whether or not one has, provided one has the professional qualifications, registered with the professional association and paid the fees. So it may merely be a difference of whether or not someone has chosen to register. I know for our agency, many of our workers would not be eligible to be registered social workers, and it would create several classes of workers within the agency. We would prefer that this section be deleted.

With respect to section 45(3), this is a new section which allows parents to apply to terminate an order of permanent guardianship after one year has passed. Our agency thinks that it's important that parents do

have a right to apply if the child has not been placed for adoption, and there should be an opportunity for parents to apply to terminate an order of permanent guardianship. We just have a question with the one-year period and the possibility that that may be too short a time, particularly with respect to older children.

Similarly, with respect to section 54, which is the review by the director every 12 months of the permanency plans for the children who are wards, again we think this is a good idea to have a ward review and are very supportive of the idea. But in practical terms, given the existing backlog that many of the agencies took over, we think that there may be a need for at least a catch-up provision with respect to existing wards. It may be practical for children who become wards of the new agencies in the City of Winnipeg in particular, over time, for there to be a ward review of them within 12 months, but I am advised that it may be a bit optimistic with respect to the children who are presently on the caseloads.

With respect to Part V of the act, on Adoptions, we are very supportive of the fact that the prohibition and placement of children outside of Canada has been maintained in the act, and we are happy to see - I believe it's section 66(6). But we feel that the practical effect for a child being removed to another area of Canada may be just as dramatic as being removed to the United States. We think that placements outside of Manitoba should at least be cleared through the directorate, and not be made on an individual agency-by-agency basis decision. So this is an additional power or responsibility that we're happy to give to the directorate.

With respect to section 66(1), I would just echo the comments that the speaker before me, Donna Lucas, made with respect to the provision allowing a man and woman who are not married but are cohabiting to apply to adopt a child. Given the lengthy waiting list for adoption, this may not be a practical problem, but we think that there is a need for some kind of uniform definition of common-law spouse in provincial legislation. There should be some form of time limit. People should not be in a position, theoretically, to have been living together for a day at the time that they apply for an order of adoption.

Finally section 73, which is the provision for subsidized adoption, our agency is very much in support of. We think that there are appropriate cases where children will have special needs, physical or mental condition, which will make caring for the child far more expensive, or where there are sibling groups that should be adopted together. We think that there should be that flexibility for the directorate to authorize payment of a subsidy. If this section does remain in the act, which we strongly urge that it does, and is passed, we would also hope that it would be proclaimed in the very near future and at the same time as the rest of the act. Those are all the remarks I have.

Thank you very much for this opportunity of addressing you this morning.

MR. CHAIRMAN: Are there any questions for Ms. Devine?

Mrs. Smith.

HON. M. SMITH: I'm very interested, listening to the presentation. I think the comments show the importance of our community-based agencies and the insight acquired by the hundreds of hours that volunteers like Susan have been putting into the agencies. I'm very grateful for that.

Again, we have noted your recommendations. With regard to the registry on child abuse, would you agree with the registration of children who are suspected of being abused, but not of suspected abusers until such time as they were found guilty or innocent?

Then only the guilty ones would be, in a sense, on. We're reviewing how to handle this registry with a working group and are looking to that type of an arrangement.

MS. S. DEVINE: As I said, my remarks are the result of a committee of our board and staff, so I don't really know how that committee would respond. Personally, I haven't really thought through the ramifications of registering the children as opposed to the parents. I don't know, in terms of the practical problems that I've heard raised about being able to keep track of abusive parents, whether or not that would in fact assist the professionals to the extent that they require. So I feel sort of handicapped in terms of answering that question.

HON. M. SMITH: Thank you.

MR. CHAIRMAN: Are there any further questions? Seeing none, then I would like to thank you, Ms. Devine, for taking the time to come today.

MS. S. DEVINE: Thank you.

MR. CHAIRMAN: Donna Wiebe, is Donna Wiebe present? Robert Daniels, Robert Daniels; Murray Sinclair, Murray Sinclair; Chief Ed Anderson, Chief Ed Anderson; Norma McCormick, Norma McCormick.

Ken Murdoch.

MR. K. MURDOCH: Thank you very much, Mr. Chairman.

I have provided copies. I'll speak to the notes just to indicate that the Social Policy Formation Committee of the Social Planning Council has reviewed the bill and, with the concurrence of the board, endorses the major thrusts of the bill to enact a new statute around Child and Family Services, in Winnipeg particularly for our concerns, and in Manitoba for all of the citizens here.

The following comments pick up some details to which the council would recommend further consideration before the bill returns to the Legislature for third reading. I would deal with the major sections.

In the Declaration of Principles, this section is a significant departure from previous enactments in Canadian or provincial Legislatures. The Social Planning Council is very supportive of such introductions, and would encourage more of this type of innovation which gives direction to the courts and administrators as to the intent of the legislators at the time new acts are added to the statutes of the province.

The comments which follow are suggestions for making this section somewhat better worded and consistent with other declarations having impact on our societies today. If the wording remains somewhat

s contained in the bill at present, we would suggest ome style changes but particularly a separation in rinciple 9 between the decisions to remove or place hildren based on the best interests of the child and ne notion which refers to the family's financial status. Ve support "best interests" as being the test, while ack of money in the family is only one cause for potential emoval at present. We think these two concerns are ot properly contained in the same principle, and should orm two separate principles in their own right.

In a general comment on the principles, the council s of the mind that it would be appropriate to use the best interests of the child" terminology in the words f "rights". Particularly, the phraseology could best raw from the "Declaration of Rights of the Child," roclaimed by the General Assembly of the United lations to keep the Manitoba statute in line with the nternational standards. We have appended the 10 rinciples of the General Assembly for your onsideration with reference to the "best interests of he child" sections of both the principles and the ollowing section on best interests, section 2(1)(a) to n). We are interested that the entitlements that are sted there might be a way of delineating what we nean by "best interests". We feel a reference to the ole and expectations of a family are useful and ecessary to include in the section on principles as hey are now.

I feel that there is an omission that occurs in the Definitions which the council feels should be corrected. The term "communities" is used in the Principles and elsewhere as one of the pivotal points of responsibility or promoting the best interests of children and families. We would propose that the word "communities" refers o several understandings of the term, including not nly communities in the sense of neighbourhoods or eographical areas, but also communities in the sense f cultural groups or affinity groups of several kinds.

If the term is meant only in the broader sense, as n "society," then the latter term might be more ppropriate. On the other hand, we are supportive of he term having the connotations listed above and would, therefore, suggest that the term be included in he Definitions section in order to give clarity to its sages in the act.

In Part I, on the Administration, we have a few comments. This section is now somewhat stronger than ound in the current Child Welfare Act, but is consistent with that found in other similar legislation. The reality s that, given the private nature of the service delivery system, it is necessary to spell out the powers of the director which may need to be exercised in the event f a conflict.

In particular, the sections dealing with standards are oth appropriate and necessary. There are at present o standards in many of the service areas, and they are badly needed. It is important that the statute place a duty upon the director to, in fact, develop and utilize such standards.

However, there needs to be checks and balances to the degree a director or others have power in the administration of any statute. In this regard, the council would highly recommend consideration of an appeal procedure should there be disputes in the conduct of the director, particularly in reference to the development, establishment and compliance to standards mentioned in sections 4(1)(d) and (e).

In fact, the absence of an overall appeal procedure is an item which the council would like to see addressed before the bill gains final reading. In this regard, the council would point the legislators to the discussion and recommendations around this matter, as contained in the Report of the Task Force on Social Assistance of 1983. We are dealing with individuals, that is children and members of families as well as agencies mandated to deliver services, all of whom should have a reasonable recourse to quick and not costly appeal procedures should the administration of an act be perceived as unduly harsh or misdirected. Our reading of the present bill leaves us without a sense that appeals have been considered and allowed for explicitly for just such occasions throughout the bill.

The inclusion of an appeals section would also respond to concerns raised publicly about the powers of the director, section 4(2). Given the duties outlined in section 4(1), we feel that this section gives the necessary powers to the director to carry them out. If used badly, there is always the political advocacy route by agencies themselves. But the council is of the mind that a logical and practical appeals procedure would be even more appropriate for providing checks and balances in this and other items contained in the bill.

I might just mention that I think The Day Care Act might be looked at in terms of an appeal procedure as well, but I'm not sure.

In regard to the powers of directors of incorporated bodies delegated by the director to perform his duties, the council was concerned that the existing section 6(10) is unnecessarily limiting. We would recommend a further clause, such as wording to this effect, ". . . and to undertake other duties indicated by the by-law of the agency which are not in conflict with the intent of this act." This would allow an agency to do things through other funding which may well enhance its role in providing Child and Family Services.

A complementary problem arises with the wording of a following section - that is 6(12) - in reference to agencies receiving other funding which may have consequences at the dissolution of an agency. As these agencies are to be incorporated under The Corporations Act as non-profit organizations, the council feels section 6(12)(b) is in conflict with The Corporations Act, which requires outstanding assets of a non-profit organization to be transferred to another non-profit organization of like purposes. As it stands, article 6(12)(b) requires such assets to be assumed by the government, and is not likely to be appreciated by other funders like the Federal Government - I think of Indian agencies - and foundations. We would ask further review of the article in reference to section 6(4) regarding precedence of this act over The Corporations Act in light of the potential multiple funding sources to the new agencies.

Indeed, section 6(12) may be totally redundant in that the director can order an agency to follow policy, can appoint a new board if it does not follow policy, and can cause a new agency to come into being. Perhaps this section would best be worded to cover the case where the authorization of the director to perform duties has been withdrawn for whatever reason. In such a case, it would be pertinent to put the onus on the director - that is the government - to have made provision for the continuation of Child and Family Services.

The council has two comments to offer regarding section 7(1), Duties of agencies. The first has to do with the language of "shall" in reference to subsection (a) where agencies are now required to "resolve" problems in the social and community environment. We think it more appropriate that the intent is to "address" those problems, much as we would hope that agencies could resolve social problems.

The second comment refers to a previous suggestion, namely, giving the ability of agencies to become involved in other actions pertaining to child and family well-being as long as such is in conformity with the intent of this act. Therefore, an additional subclause (q) could be added which does not limit the scope of the agencies to this act, provided such actions do not affect duties prescribed under the act.

In Part II, Services to Families, there are a few comments. The sections dealing with voluntary surrender of guardianship by a mother, including minors, offer one concern to the council. In sections 16(5) and (6), the concern is for the care of tiny and often medically fragile babies. It is well accepted that infants, particularly those at risk, need care, nurture and a consistent environment.

The way this section reads, it seems likely that the babies may well have to stay in hospital for up to two weeks for essentially legal and social reasons. It should be possible to place healthy infants quickly into high-quality, special foster care homes while the other details are being attended to. It would be appropriate to have maybe a "notwithstanding clause" where the import of section 16 is being attended to, but which allows the director or agency to see to the proper nurture and bonding needs of infants in the immediate post-natal period for healthy children.

In Part III, under Child Protection, the council would like further review of section 19(2), Report of Abuse, as it now includes suspected abuse as well as confirmed cases. The requirement to keep a register under the current explosion of suspected abuse cases suggests such a duty may be either unenforceable or leave agencies wide open to legal problems. We would propose at least a mechanism for purging names from the register based upon a time limit, possibly concurrent with the time frame under the abuse protocols now in force. In short, the register should be for confirmed abusers and, possibly only on a limited time basis, for 'suspected' abusers.

Section 20(1) is an excellent section, allowing courts to move the alleged abuser out of the home rather than the child. The difficulty is that there is a seven-day waiting period for this to happen. Is it not possible to get a temporary order to remove the alleged abuser and then have the requirement of having a court hearing within seven days to decide on continuation? We are talking here about protection of a child which is not being given for seven days or more according to the present clauses in this section.

The council has an observation and recommendation with regard to the sections on permanent guardianships (Sections 45 and subsections thereto). In the interests of the child for stability and predictability over the long term, one questions the appropriateness of potentially opening the planning of future care once a year to court processes. Such may spur agencies to do decent permanency planning, but it may be more to the point to have a judicial review of all permanent wards in whose favour no adoption plan has been registered within one year of the permanent order. These would be appropriate cases for a judicial option, to have the power to reconvene the hearing for a permanent order. In this way, the reconvening becomes a function of the agency's failure to plan appropriately.

In Part IV, under Children in Care, the council is very supportive of the workings of this section, particularly in the flexibility it proposes for overcoming current planning problems around the age of majority issues (section 50(2). Section 51(2) is one instance where an administrative review procedure is outlined for those appealing arbitrary agency actions revolving around foster parents. Our concern about appeals, stated earlier, would wish other than internal system reviews in cases warranting a completely outside opinion of system decisions.

Part V, under Adoptions. Section 61(7) causes the council some concern if it is interpreted that a biological parent may not leave an estate or otherwise confer gifts upon a biological child which has been adopted. We're not sure whether that's the proper interpretation or not.

The council would like to see more consistency between stipulations for extended family adoptions and private adoptions (sections 68 and 69, respectively). It appears to us that a 12-month waiting period for extended family adoptions could be an excessive waiting period. What is the status of the child if such an order is not applied for within those 12 months? Should there not be a penalty for failure to apply? Private adoption procedures seem to be much more detailed and explicit than those for extended family adoptions and for reasons that are unknown to us.

Part VI, under Confidentiality. This section makes mention of the primary duty of the child caring agencies and their agents to maintain confidentiality in all matters under the act, but prescribes no penalty for transgressions. There should be a requirement for oaths of confidentiality and penalties for breaches thereof.

In conclusion, the current bill has incorporated many of the suggestions and concerns registered by the council and other bodies in the community during the consultation process leading to this point. It is a good act and is a substantial improvement over the old Child Welfare Act.

However, a new act will bring with it new problems. One in particular is that there is likely to be greatly increased legal fees associated with elements of the new act, for good reasons, too. It may be appropriate to consider whether there should be a duty placed upon Legal Aid, for instance, to provide duty counsel to agencies and wards to keep these costs reasonable. There are also substantial new workloads associated with increased incidence of abuse and post-adoption service requests, as contained in the act. In passing the new act, one hopes the province recognizes that the act itself places new demands upon agencies and this will mean new costs.

Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Murdoch?

Mrs. Smith.

HON. M. SMITH: Again, I appreciate the very thoughtful presentation. I guess we have a little different legal interpretation. Others are issues that we may take a little longer time to review, but again I'd like to put the same question I put to the previous speaker on an abuse registry. Would you support registration of children who are suspected of being abused, but not of suspected abusers?

MR. CHAIRMAN: Mr. Murdoch.

MR. K. MURDOCH: I don't know all the ramifications of that, except that I would think that an abuse registry is for the abuser and what would you do with children's names on that?

Our major concern though I think is that there was not a way of purging that list and that got us into the field of saying suspected abusers could be put on the lists and on forever; and that there is a protocol under way for review of cases. At the conclusion of that protocol procedure, a decision is usually made and that should therefore indicate whether a name stays on a list or not, but I'm not sure about the purpose of the children. I'm like Susan; I'm not sure what the implications of that would be.

HON. M. SMITH: It's a complex area. There's a group that are reporting to us. What we hope to do is handle the issue in an administrative way this year with a view to see if it's more appropriate to be in legislation another year.

Children are abused by different persons. That's one of the rationales, but thank you for your comments.

MR. K. MURDOCH: I don't know whether the act or whether the regulations should have it, but the question of purging that list is important. There is no mechanism for getting off.

HON. M. SMITH: We agree and would handle it through regulations for this year.

MR. CHAIRMAN: Are there any further questions for Mr. Murdoch?

Seeing none, I would like to thank you for taking the time to come today.

Sharon Taylor-Henley, DeWayne Ward, Rene Toupin, Chief Rodney Spence or Jim Mair, or Mercredi Ovide.

That completes the list of people I have. I could go back and call once again those who have not been present earlier today.

A MEMBER: Excuse me, you had called DeWayne Ward. Mr. Ward is just arriving shortly.

MR. CHAIRMAN: DeWayne Ward will be arriving shortly? How shortly?

A MEMBER: Two minutes, three minutes.

MR. CHAIRMAN: Okay. I'll just go through the list one more time of the people who were not present earlier.

Edward Moscovitch, Bill Martin, Donna Wiebe, Robert Daniels, Murray Sinclair, Chief Ed Anderson, Norma McCormick, Sharon Taylor-Henley, René Toupin, Chief Rodney Spence.

I understand DeWayne Ward will be coming shortly. What's the will of the committee? Wait? The committee will recess then for a few minutes.

Mrs. Hammond.

MRS. G. HAMMOND: I suggest we recess for five minutes.

MR. CHAIRMAN: A five minute recess. Is that agreed? (Agreed)

RECESS

MR. CHAIRMAN: Order please. I understand that one of the people has come we've been waiting for is Sharon Taylor-Henley.

MS. S. TAYLOR-HENLEY: Good morning, Mr. Chairperson, Madam Minister and members of the committee.

I'm here on behalf of the School of Social Work, University of Manitoba. On behalf of the school, I'd like to thank you for this opportunity to speak on this important bill.

We're aware that the bill has been over three years in the making, that the consultation process involved in its development has been extensive. In our observations of the process we have noticed the sensitivity and responsiveness of the government to the concerns of professionals. We think the result is a bill which truly deserves the title, "Family and Children Services Act."

We're very pleased to find a statement of principles in the proposed act. The principles provide a sound, philosophical framework for the development of supportive, comprehensive services, which are developmental in the sense of supporting and fostering the normal development of all children, and preventive in the sense of avoiding, where possible, the placement of the child outside his own home.

The formal recognition of community responsibility to promote the best interests of children and families opens the door for the development of a broad range of creative community-initiated services. We also note the sensitive attention given to the Indian community. This is particularly evident in the definition of the best interests of the child, the inclusion of cultural and linguistic heritage.

The bill is forward in so many areas that we were a little bit surprised that the provision for subsidized adoption, passed several years ago and never proclaimed, has been deleted from the bill. It's replaced by a very narrow provision. We urge consideration of reinstatement of the original subsidized adoption provision and its immediate proclamation. We should not lose sight of the fact that the child, as client, deserves optimum service. Subsidy would mark a shift in emphasis from service to the prospective adoptive parents to the child as primary recipient of service.

In summary, we are pleased that the Minister has brought forward such a comprehensive bill. It clearly meets a number of the standards of quality child welfare legislation, which have been outlined by John McDonald of the University of British Columbia, School of Social Work. Most specifically, it recognizes that apprehension

and placement of a child outside his own home is analogous to a delicate surgical operation on his life. Accordingly, it supports child welfare personnel to work with children and their families in their home environment. We look forward to the services that such a framework provides for.

Thank you very much.

MR. CHAIRMAN: Are there any questions for Ms. Taylor-Henley?

Mrs. Smith.

HON. M. SMITH: I just wanted to thank Ms. Taylor-Henley very much for her presentation. I understand the feeling on the adoption issue. You do recognize that we are allowing it in some circumstances?

MS. S. TAYLOR-HENLEY: Yes.

MR. CHAIRMAN: Are there any other questions? Seeing none, then I would like to thank you, Ms. Taylor-Henley, for taking the time to come today.

Is DeWayne Ward present; DeWayne Ward? Are there any other members of the public who have come today to make presentations on Bill 12?

Seeing none, what is the will of the committee? Clause-by-clause?

That completes the list of presentations from the public. Clause-by-clause, Bill No. 12.

MR. H. ENNS: I suggest page-by-page, Mr. Chairman.

MR. CHAIRMAN: Page-by-page? Page 1, are there any amendments? Page 1—pass; Page 2—pass; Page 3 - Mrs. Smith.

HON. M. SMITH: I move

THAT the definition of "court" in the proposed section 1 of Bill 12, The Child and Family Services Act, be amended by striking out the word and figures, "Part III" in the 1st line of sub-clause (i) thereof and substituting therefor the words and figures "Parts III and VI".

MR. CHAIRMAN: Any discussion on the proposed amendment?

Mrs. Hammond.

MRS. G. HAMMOND: I wonder if the Minister could explain the change.

HON. M. SMITH: It would allow the Provincial Court Judges and Queen's Bench to rule on access to records and confidentiality, etc.

MR. CHAIRMAN: Page 3, any other amendments? Page 3, as amended—pass.

Pages 4 to 11 were each read and passed.

Page 12 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 7(1) of Bill 12 be amended by:

(a) repealing clause (i) and substituting therefor the following clauses:

(i) provide adoption services where appropriate for children in its permanent care;

(i.1) provide post-adoption services to families and adults; and

(b) by adding thereto, immediately after clause (o) thereof, the following clause:

(o.1) maintain such records as are required for the administration or enforcement of any provision of this Act or the regulations.

It clarifies the difference in service to adults, as opposed to services for adopting a child, and clearly requires the agency to maintain records suggested by the Children in Care Alumni.

MR. CHAIRMAN: Any discussion of the amendment?

Mr. Birt.

MR. C. BIRT: Why the separation in the clause (i)?

HON. M. SMITH: It clarifies the difference in service to adults, as opposed to services for adopting a child.

MR. CHAIRMAN: Any further discussion on the proposed motion? Pass. Page 12, any further admendments, discussion—pass.

Page 13 - Mrs. Hammond.

MRS. G. HAMMOND: Mr. Chairman, excuse me. Was this is the area that Mr. Murdoch had suggested that there be appeal procedure in this section, and was there going to be any consideration to adding that?

HON. M. SMITH: Yes, we did look at the appeals question in depth and decided that it was better to have an appeal procedure rather than a board. We're concerned that the result would be that all contentious issues would end up at an appeal board. We believe child welfare is different than social assistance and day care in that conflict is almost between adults or agencies acting on behalf of a child, whereas in the other cases it's between recipient and the agency.

The problem is to get those acting or say they're acting on behalf of children to accept responsibility to resolve their differences together, so the procedures require consultation by the respective groups. If they cannot resolve the issue within a time frame, they may refer it to the director who can set up a board, designate people. There remains the Ombudsman, appeal to the Minister and appeal to the court. We feel this procedure is most appropriate for this type of conflict.

MR. CHAIRMAN: Page 13—pass.

Page 14 - Mrs. Smith.

HON. M. SMITH: I move

THAT the 2nd line of 9(1), that "shall" be changed to "may".

This is in response to the concern raised this morning by Susan Devine about the obligation versus the attempt to resolve the issues, provide the service.

MR. CHAIRMAN: Any discussion of the proposed motion?

Page 14 as amended—pass; Pages 15 to 19 were each read and passed.

Page 20 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 16(13) of Bill 12 be struck out and the following subsection be substituted therefor:

Action prior to accepting surrender.

16(13). Prior to accepting a surrender of guardianship under this section, an agency shall explain fully to the person considering surrendering, the effect of the agreement and shall advise that person of his or her right to have independent legal advice and, after the execution of the agreement, a representative of the agency shall swear an affidavit in prescribed form, that the provisions that this subsection have been complied with.

This clarifies the affidavit of execution and the rights of a mother in voluntary surrender. It's been suggested by various Indian organizations and in the past by the Family Law Subsection and again today by a Miss Lucas.

MR. CHAIRMAN: Any discussion of the motion?

Page 20, as amended—pass; Page 21—pass; Page 22—pass.

Page 23 - Mrs. Hammond.

MRS. G. HAMMOND: This is the area that deals with the registry. The Minister had indicated that they were going to bring in protection under regulation. Would it not be better in this area to be bringing in an amendment to this bill to at least assure people getting their names taken off a registry once they get on?

HON. M. SMITH: There's been a co-operative group working on this issue and their interim report is ready. It's our preference to work via regulations for the coming year and then to put it into legislative form. The recommendations that we have received to date are saying that we should record the child's name and not record the abuser's name unless there has been a charge that has been proven.

They also are working on a mechanism for removing names from the record. We just feel it's premature to put it into legislative form.

MR. CHAIRMAN: Any further discussion on Page 23?

Pages 23 to Page 28 were each read and passed.

Page 29 - Mrs. Hammond.

MRS. G. HAMMOND: Mr. Chairman, there had been a suggestion that the time limit here was too short. Had any consideration been given to changing the time frame? This is in 29(1).

HON. M. SMITH: I'm sorry, I didn't hear the full question.

MRS. G. HAMMOND: I'm looking at just such abbreviated notes here that I realize now that when I'm looking at it that the suggestion had been that the application be completed in six months, that a firm time be . . .

HON. M. SMITH: Instead of being 30 days.

MRS. G. HAMMOND: Well, instead of 30 days or within such further period as the judge, magistrate, may allow, that the time be completed in six months. I was wondering if any consideration had been given to that.

HON. M. SMITH: This is the same as the old act. This is the process at the start of a hearing. There still is the six-month time frame for completion. We don't yet have a mechanism for requiring that courts complete within a time frame, so we don't yet have a time frame for completion.

MR. CHAIRMAN: Page 29—pass; Page 30—pass.

Page 31 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 34(2) of Bill 12 be amended by adding thereto, at the end thereof, the words "and, if the child is 12 years of age or older, may order that the child have the right to instruct the legal counsel".

This ensures the child not only has counsel, but also has the right to instruct counsel. It's been suggested by the Indian organizations and Family Law Subsection.

MR. CHAIRMAN: Any discussion of the proposed motion? Is it agreed? (Agreed) Pass.

Page 31, as amended—pass.

Page 32 - Mrs. Hammond.

MRS. G. HAMMOND: In 35, it has been suggested that the cross-examination should be of parents and of case workers, I think the suggestion was. The Minister, I think at the time, had seemed in agreement with that. Has there been a provision to make a change?

HON. M. SMITH: Because it is our belief that it's the social worker who is already a party to the action on behalf of the agency, they're already subjected to cross-examination. So it's unnecessary to change the other expert evidence clause.

MR. CHAIRMAN: Page 32 - Mr. Penner.

HON. R. PENNER: Fine, I was just going to note that the only thing in this section 35 which is - you really wouldn't require it except for the last five words, "shall be treated as a hostile witness," because the agency can call anyone it chooses as a witness, whether a parent or a guardian or a social worker. But then they're their own witness, and they can only do direct examination. This allows them to call someone who would ordinarily be subject only to direct examination, and allows them to cross-examine.

MRS. G. HAMMOND: So that covers it?

HON. R. PENNER: Yes.

MR. CHAIRMAN: Pages 32 to 43 were each read and passed.

Page 44 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 58(1) of Bill 12 be amended by adding thereto, immediately after the word "director" in clause (a) thereof, the words "who, or an agency which, has been given permanent guardianship of a child either by voluntary surrender of guardianship or by an order of the court".

This was a drafting error. The correction allows agencies to provide consent for their children in care.

MR. CHAIRMAN: Any discussion on the proposed motion? Page 44, as amended—pass.

Pages 45 to 51 were each read and passed.

Page 52 - Mrs. Smith.

HON. M. SMITH: I move

THAT under section 66(6) that the word "Canada" be deleted, and — (Interjection) — well all right, just the way I - ". . . a child outside of Manitoba with the written consent of the director and outside of Canada, except by order of the Lieutenant-Governor-in-Council.

A MEMBER: Could you read it as a whole then?

HON. M. SMITH: Yes. I left out one word.

"An agency shall attempt to place all children for the purposes of adoption first in Manitoba and then elsewhere in Canada but an agency shall not place a child outside of Manitoba except with the written consent of the director or outside of Canada except by order of the Lieutenant-Governor-in-Council."

MR. CHAIRMAN: I'm afraid I need the exact wording of your amendment, rather than the correction as it stands. Do uou have an amendment? You have to read it.

HON. M. SMITH: Okay. I move

THAT the proposed subsection 66(6) of Bill 12 be amended by adding immediately after the word "child" in the 4th line, the words "outside of Manitoba except with the written consent of the director, or".

MR. CHAIRMAN: Is there any discussion of the proposed amendment? Page 52, as amended—pass.

Page 53—pass; Page 54—pass; Page 55—pass.

Page 56 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 68(4) of Bill 12 be amended

(a) by adding thereto, immediately after the word "satisfied" in the 2nd line thereof, the words "as to the suitability of the applicants and"; and

(b) by striking out all the words after the word "applicant" in the 5th line thereof.

MR. CHAIRMAN: Is there any discussion on the proposed motion? Page 56, as amended—pass.

Pages 57 to 66 were each read and passed.

Page 67 - Mrs. Hammond.

MRS. G. HAMMOND: Mr. Chairman, this morning, Mr. Lugtig from the Manitoba Association of Social Workers raised concerns about the media presence. This is the area I believe, 75(1), that he was referring to. Considering the concerns that he raised, has the Minister given any consideration to making any amendments to this area?

HON. M. SMITH: We thought the individual made very persuasive points this morning but, because it has to do with court procedure, we feel that we couldn't really alter this until we had taken time to consult with the courts. So we feel that this is a procedure we can go with for this year, and consult for possible change next year.

HON. R. PENNER: I would just like to note there has been gratuitously a lot of work in recent days on the question of the courts and the media. I'm satisfied beyond any doubt that the proposal that was made would, in fact, be contrary to the Charter, just too sweeping in the way in which it is proposed. A lot of thought has to be given to very specific kinds of limitations when you really interfere not only with freedom of the press but what is closely associated with it, the right of the public to know in most instances.

Now that right of the public to know about the openness and fairness of the system has to be tempered with privacy and the protection of dependent individuals. I think everybody will accept that as a principle, but it will take time to work it out in some detail.

MR. H. ENNS: But we're passing legislation in the interests of the child here.

HON. R. PENNER: That's right, and I think that there is adequate protection.

MR. CHAIRMAN: Any further discussion of Page 66? Mrs. Hammond.

MRS. G. HAMMOND: I just have a further concern here with the Attorney-General present. I hope that he has this brief, because the concerns really were very credible. I think that it's a shame that we're in a position that we can't protect the child in better manner than we're doing, especially in the courts, and that something can't be done very quickly about this. I hope that both Ministers will take this into consideration and get something done tout de suite.

MR. CHAIRMAN: Page 66—pass; Page 67—pass.

Page 68 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsections 76(5) and (6) of Bill 12 be struck out and the following subsections be substituted therefor:

Exceptions.

76(5) Subsection (4) does not apply to

(a) any part of a record which was made prior to the day this section comes into force and which discloses information provided by another person about the subject of the record, unless the other person consents to access being given;

(b) a record which relates to services provided under Part III; and

(c) a record which relates to the adoption of a child under Part V.

Excerpted Summary.

76(6) Where the director or an agency refuses to give access to part of a record under clause (5)(a), the director or agency shall, upon the written request of an adult person who would otherwise be entitled to be given access to that part of the record under subsection (4), provide the person with an excerpted summary of the information provided by the other person.

Preparation of Summary.

76(6.1) Where an excerpted summary is provided under subsection (6), it shall be prepared by the person who provided the information, if that person is available and willing to do so, but otherwise it shall be prepared as directed by the director or agency.

MR. CHAIRMAN: Is there any discussion of the motion? Mrs. Hammond.

MRS. G. HAMMOND: Possibly the Minister could explain.

HON. M. SMITH: The first change allows greater access to records by former clients. This was suggested by the Children in Care Alumni. It also makes the section consistent with Freedom of Information, as amended. The 76(6) change, the wording is clarified. It's mainly a drafting problem. The change to 76(6.1) is as suggested by the Attorney-General's Department to be consistent with The Freedom of Information bill.

MR. CHAIRMAN: Any further discussion of the proposed amendment? Pass. Page 68, as amended—pass.

Page 69 - Mrs. Smith.

HON. M. SMITH: I move

THAT subsection 76(8) of Bill 12 be struck out and the following subsections be substituted therefor:

Information filed by a person given access.

76(8) A person given access to a record under subsection (4) is entitled to submit to the director or agency

(a) a written objection respecting any error or omission of fact which the person alleges is contained in the record; and

(b) a written objection to, or explanation or interpretation of, any opinion which has been expressed by another person about any person referred to in subsection (4) and which is contained in the record.

Information becomes part of record.

76(8.1) As of the date of its submission, any objection, explanation or interpretation submitted under subsection (8) becomes part of the record and shall not be destroyed, altered or removed therefrom.

Correction of factual error.

76(8.2) Where the director or agency is satisfied that a record referred to in subsection (8) contains an error or omission of fact, the director or agency shall cause the record to be corrected.

MR. CHAIRMAN: Any discussion of the proposed motion? Pass.

Page 69, as amended—pass; Page 70—pass.

Page 71 - Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsections 76(13) and (14) of Bill 12 be struck out and the following subsections be substituted therefor:

Application to disclose record.

76(13) Upon application by the director or an agency, the court may order that all or part of a record referred to in subsection (11) be opened or disclosed where there are reasonable grounds to believe that a child or sibling of the adult who is the subject of the record, or a child who is under that adult's actual care and control, is likely to suffer physical or serious psychological harm if the record is not opened or disclosed.

Notice to Adult.

76(14) The director or an agency acting under subsection (13) shall give the adult 7 clear days notice of the hearing of the application unless a judge on application reduces the time of giving notice or dispenses with notice entirely on the grounds that a person mentioned in subsection (13) is in immediate danger.

MR. CHAIRMAN: Any discussion of the motion? Pass. Mrs. Smith.

HON. M. SMITH: I move

THAT proposed subsection 76(15) of Bill 12 be amended by adding thereto, immediately after the word "for" in the third line thereof, the words "bona fide".

MR. CHAIRMAN: Any discussion of the motion? Pass.

Page 71, as amended—pass; Page 72—pass; Page 73—pass; Page 74—pass; Page 75—pass; Page 76—pass; Page 77—pass.

Page 78 - Mrs. Smith.

HON. M. SMITH: I have a general motion. I move

THAT Legislative Council be authorized to renumber the provisions of Bill 12 in order to

(a) eliminate decimal points; and

(b) take into account provisions which have been struck out.

MR. CHAIRMAN: Any discussion? Pass. Title—pass; Preamble—pass. Bill be reported.

Mrs. Hammond.

MRS. G. HAMMOND: Yes, I just have one question. It was to do with the registry and I just can't remember. Is the person that is put on the registry notified of that?

HON. M. SMITH: Under this act, yes.

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Mr. Chairperson, there are I think two separate Native groups who unfortunately arrived late; and they understand the procedure of the committee, that once we started clause-by-clause, we complete; but they are here. They have come a long way and there's always the possibility, of course, of amendments at report stage.

I would suggest, and I hope everybody agrees with me, that we take the remaining time - and understand the time limitation - and divide it up between the two groups so that they can make their presentation; and then be advised that if they have had insufficient time, that time may be found to meet with the Minister or the Minister's staff later in the day.

MR. CHAIRMAN: Is that agreed? (Agreed) Would it be the will of the committee to report the bill before hearing? (Agreed)

Bill be reported.

The two groups are whom, Mr. Penner?

MR. CHAIRMAN: DeWayne Ward?

HON. R. PENNER: Chief Jim Bear.

MR. CHAIRMAN: Chief Jim Bear.

CHIEF JIM BEAR: Thank you very much, I'm Chief Jim Bear, Southeast Resource Development Council. First of all, I'd like to apologize for being late, but I guess we were originally here first and we not only lost our land but our children, so I'm trying a different approach. We have a written presentation that we're also passing out, but I'm not going to get into most of it; I'll just head up on some of the general areas.

I'd like to start off by saying that we regard this legislation as interim transitional mechanism only, to attempt to meet the express needs of our people. You all know that there's a constitutional process going on right now, and hopefully that Indian governments will be recognized shortly in the competence to enter into trilateral and bilateral agreements, covering services with the Federal and Provincial Governments.

The agreements with the Indian Bands, Page 11, section 6(14), (15), (16): Incorporated bodies do not fit into our concept of Indian self-government, since once again, it subjects our institutions to provincial laws. We would prefer a more flexible term, perhaps, "establishment" replace the term "incorporation" in subsections (14) and (15). The sections which do not apply to an Indian agency should be clarified.

"The Director of Child and Family Services" is named as the final authority to enforce the provisions of this act. This is contrary to the concept of Indian self-government and we propose more autonomy be given to Indian agencies to report to their Board of Chiefs as a final authority to enforce the provisions in this act.

Best Interests - Page 4, 5, Sections 2(h). Definitions which are used as the "paramount considerations" in judicial decisions now includes considerations of the child's culture and language. The exact meaning of this, however, remains uncertain and causes concern. In this regard, we wish to bring to your attention that Bill C-31, an Act to amend The Indian Act, recently passed by Parliament and now awaiting Royal Assent redefines an Indian "child" as follows:

> "child" includes a child born in or out of wedlock, a legally adopted child and a child adopted in accordance with Indian custom . . ."

Emergency Assistance - Page 15, Section 10(2). How will this overlap or not with the income maintenance program?

Documents in support of application - Page 57, Section 68(7)(e). What proof will be required that applicants are part of a child's extended family? What forms or documents? A genomap/family tree?

I'll get right into the Areas of Disagreement. In several sections here the "Director of Child and Family Services" must approve placements. In keeping with Indian self-government this authority should be first in the Director of Southeast Child and Family Services, acting on behalf of the Board of Southeast Child and Family Services with the final authority being in the Board of Chiefs of Southeast.

In addition, several sections leave unclear when Directive 18 would apply, Section 58(1), Page 44; Section 64(1), Page 50; Section 66(4), Page 52; Section 66(6), Page 52.

The Application to Approve Out of Province Placement - Page 50, Section 64(1). Does this mean the moratorium does not apply any more?

Post Adoption Services - Repatriation. The Provincial Government held ultimate authority in adoption of our Indian children outside of the reserves at the time that those adoptions took place. In our experience the repatriation of "lost" children is an expensive undertaking in both manpower and financing. It is the responsibility of the Provincial Government to clearly identify adequate funding sources and continued support for our efforts. A particular concern is that of those young people who are over age of majority who need to return and cannot due to legislative and financial inadequacies.

Post Adoption Services. The provision for a more active Post Adoption Registry is a positive step. However, the provision is only for adult adoptive and biological parents and adult siblings. It restricts the natural rights of underage Indian children to be contacted by their siblings who were adopted out. We know some children, particularly those who are in care as permanent wards are falling into this crevice of isolation from natural family.

Voluntary Surrender of Guardianship - Page 19, 20, Section 16(4), (9).

> (4) Disagree strongly that a minor can sign an agreement to surrender her child without the agreement of her parents.
>
> (9) However, termination of her rights could mean the rights of a Treaty child to be placed under Directive 18 could apply?

The Recognition of Indian Child and Family Agencies and their continued Participation in all Aspects of the System. The Indian agencies would expect full participation in any future legislative review; full participation in the development of policies, protocols and procedures flowing out of this bill; full participation in the promulgation of any regulations flowing out of

iis bill; full participation in any "Review Boards", Placement Panels" and the like arising out of the bill; ill participation in the development of preventative ervices; full participation in the development of Court ervices arising out of the bill.

With respect to this last point, we reiterate the ecessity for the development of a Tribal Court System o service Indian communities and we invite the ttorney-General to work with us to ensure the evolution f such a system.

Thank you for your time.

IR. CHAIRMAN: Mrs. Smith.

ON. M. SMITH: I just want to acknowledge the emendous input by the Native agencies in developing iis act and to reassure him that with regard to the ioratorium, it was strengthened in the act and, in fact, i amendments made this morning, even further trengthened.

IR. CHAIRMAN: Are there any further questions?

Seeing none, I would like to thank you, Chief Jim ear, for coming today and making a presentation.

Copies are available from the Clerk.

Was there a second person wishing to make a resentation?

Awasis. Your name please.

:HIEF R. SPENCE: Rodney Spence. Honourable linisters, we wish to thank this Committee for the pportunity to address Bill 12, The Child and Family ervices Act and to state the fears of the Manitoba eewatinowi Okemakanac and the Awasis Agency of lorthern Manitoba on a subject matter of fundamental nportance to the right of Indian self-government and f the future of Indian children and families.

It is our view that the right of Indian self-government oes not derive from statute but exists as Aboriginal ght. We begin our presentation, therefore, by asserting ur right to Indian self-government which we interpret o mean the free determination of our political, social, conomic, religious and cultural institutions including he power to make and enforce the laws as Indian First lations.

We acknowledge the problem and failure of Federal nd Provincial Governments to accommodate the right o self-government, but this does not in any way negate he existence of that right to control over our destinies. o determine, for instance, how we will provide for our hildren and families is a basic Indian right.

In our presentation, we wanted to provide the ommittee members with background knowledge of wasis Agency and the tripartite agreement before we nake comments on Bill C-12, but time doesn't permit, o what we're going to do at this time is present our omments on Bill C-12. I'll ask Ovide here to make a resentation on our behalf.

Thank you.

IR. O. MERCREDI: Thank you, Chief Rodney Spence.

Honourable members of the committee, I think it would be useful to put this in perspective. I mean the participation of the Awasis Agency and the presentation by the Manitoba Keewatinowi Okemakanac to this Committee.

We are here primarily for one reason only, and that is we have at the current time in place in this province a compromise position that does not accommodate the full range of views and aspirations of the Indian people in Northern Manitoba in relation to how they want to control Child and Family Services for their own people.

That is why we thought it would be useful to review the agreement to see how the proposed legislation that's in front of you now impacts upon that present agreement or whether, in view of the fact that time is a factor here, we will reserve those comments and take the suggestion that was given here and meet with the officials or the Minister to deal in greater detail with those concerns that we have with the present arrangement.

I wish, however, to review very quickly just some of the basic concerns that we have identified with your legislation, as well as highlight for you some of the provisions of the agreement that we are happy with. I think perhaps before getting involved with the concerns, I will highlight for you some provisions of your statute that reflect, to some extent, the goals of the Indian people in Manitoba.

For instance, when it comes to your principles in the first part of the bill, we support very strongly Principle 7, Principle 8 and Principle 11. I will not read them because of the time factor.

When it comes to the Definition Section, dealing with the test of the best interests of the child, I can indicate to this committee that we are pleased to have a provision there where the cultural and linguistic heritage of the child will be taken into account for the purposes of this act.

We are also impressed with Section 68 of this bill which recognizes for the first time the concept of placement to an extended member of the family. However, we have some difficulty with putting such a restriction, a 12-month restriction, to the exercise of the right to adoption. Perhaps I should give some background why we have concerns with Section 68.

The practice in the Indian community has always been to place children in extended families where the parents are either not willing or are unable to care for their own children. However, having placed their children with a member of the extended family does not mean that at some point in time a grandparent or any member of the extended family will want to exercise that right beyond the placement, that is, beyond just keeping the child for the natural parent.

I note that whenever there is an intention to adopt, for instance, it has to be acted upon within 12 months, but in the Indian community it may never be acted upon; and yet that arrangement might in fact exist for a long period of time and I think perhaps that is one area that we want to draw to your attention.

Our basic problem with the statute is the withdrawal of the mandate in Section 15 where there appears to be absolutely no control on the exercise of that power and it makes it possible for the Minister to remove the mandate that is given, pursuant to our current agreement, to the Awasis Agency. We don't know under what circumstances, for instance, that power would be exercised, but we feel that there should be some controls in the exercise of that power.

We have concerns particularly with Section 16 that deals with the notion of provincial responsibility, in

situations where the mandate is withdrawn, assuming that the Federal Government does not exercise their jurisdiction over Indian child welfare matters. We see this as having some negative impacts on a number of principles, two of which I will name.

First of all, if the province takes over Child Care Services after it's removed the mandate, say, from Awasis, does it mean that the province assumes fiscal responsibility for their services? And if the answer is in the affirmative, then we have a great problem with that possibility. The reason why that problem would exist is because of the principle that we embrace, i.e., federal fiscal responsibility for services to Treaty Indian people, regardless of residence.

Quite apart from that, it also negates our position that the Indian people have the right to control their own destiny, in relation to things like child welfare and that the unilateral power to remove a mandate from an agency that was negotiated with heads of Indian government is, in effect, not a recognition of that right, but the opposite of it.

Under the powers of the director, when we negotiated the initial agreement, our concern was not to come under Provincial Civil Service control. The Indian experience has been that Federal Civil Service control is enough of a hindrance to the progress of the Indian community and that we did not want - and we still do not want - the Director of Child Welfare to exercise all kinds of extraordinary power on how and what the Indian agencies do; but I am pleased to note that under this provision of the act there is room there for delegation of power and delegation of authorities and we look forward, at least on the part of the agency, to begin discussions for the next agreement to include some of those duties and some of those powers as part of the functions of the Awasis Agency.

On Page 48 of the statute dealing with the status of adopted child, this is completely contrary to an Indian tradition and value. The idea that parental rights can be terminated for all time is totally unacceptable. The Indian tradition has always been that parents, if they cannot provide for their children, will not lose their rights because someone else in the community provides for their children. Our position has always been that in cases where a member of the extended family takes over a responsibility for a parent that, at some point in time, when that parent is able and willing to provide for that child or children, that that right to assume authority over their own children will be respected by whoever has control of the children at the time.

We note that, with respect to adopted children, this law would not - of course the current law doesn't either - respect that Indian value. We acknowledge that this law was not made for Indian people, but we also see evidence in this bill that there was in fact some serious consideration given to accommodate and to provide for the flexibility of the Indian agencies.

I think what I'll do, at this point, before I close my comments, I also want to highlight one other important consideration and that is, when it comes to the regulatory powers of the statute, when we negotiated the Child Welfare Agreement for Northern Manitoba, one of the conditions that we put into effect was that any regulations that are passed by the province would not apply to the Awasis Agency, because we see that as an interference with the way in which an Indian child care agency might want to organize or provide services to their own people.

I note that under the provisions of regulations, there was no provision there that would take that into account; that current arrangement that we now have under the current agreement.

At this point I'd like to thank you for allowing us to make these brief comments and I look forward to more detailed discussions with the officials of the Minister of Community Services.

Thank you.

HON. M. SMITH: Again, just in appreciation, Mr. Mercredi, for the long way the Native agencies and the Provincial Government have moved from very different starting points to some workable compromises. We agree there are some different assumptions and goals, but I look forward to us continuing to work these things through. I want to thank you very much for your presentation.

MR. CHAIRMAN: Are there any further questions? Seeing none, what is the will of the committee - rise?

Committee rise.

COMMITTEE ROSE AT: 12:40 p.m.