LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

Tuesday, 9 July, 1985

TIME - 8:00 p.m.

LOCATION - Winnipeg, Manitoba

CHAIRMAN - Mr. C. Santos (Burrows)

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Penner, Kostyra, Hon. Ms. Hemphill

Messrs. Corrin, Harper, Kovnats, Santos, Steen, Birt, Downey

WITNESSES: Bill No. 19

Mr. Fred Smith, Director, Manitoba Heavy Construction Association

Mr. George Creek, Insurance Agents Association

Bill No. 14

Ms. Vicki Shane, Manitoba Association of Independent Child Care Operators

Fred Chapman, Manitoba Child Care Association

Patrick Ritter, Citizens for Better Day Care

Abe Arnold, Manitoba Association for Rights and Liberties

Bill No. 16

Mr. Harry De Leeuw, Winnipeg Real Estate Board and Manitoba Real Estate Association

Prof. W.P. Thompson, Manitoba Historical Society

Ms. Moira Jones, Manitoba Historical Society

Mr. Sid Kroker, President, Association of Manitoba Archeologists

Mr. Gordon Breckman, Manitoba Archeological Society

Mr. Terry Wright, Pembina Mountain Clays Ltd

Bill 36

Mr. Frank Cvitkovitch, Legal Counsel, Mortgage Loans Association of Manitoba

Bill 37

Mr. Murray Smith, Past President, Manitoba Teachers' Society

Bill 55

Mr. Bob Sparrow, Vice-President, Manitoba Hotel Association

Mr. Terry Wright, Medical Research

Bill 57

Mr. William Olson, Manitoba Law Society

Bill 58

Mr. Frank Cvitkovitch, Legal Counsel, Mortgage Loans Association of Manitoba

Bill 72

Mr. Murray Smith, Past President, Manitoba Teachers' Society

Mr. Walter Melnyk, President, Manitoba Association of School Superintendents

Bill 74

Donna Lucas, Charter of Rights Coalition

Bill 78

Edward Lipsett, Manitoba Association for Rights and Liberties

Ray Boehler, Manitoba Video Retailers Association

Murray Smith, Past President, Manitoba Teachers' Society

Liz Coffman, Manitoba Action Committee on the Status of Women

Bill 85

Dr. Ian Sutherland, President-elect Manitoba Medical Association

John La Plume, Manitoba Medical Association

Dr. James Briggs, President, College of Physicians and Surgeons

Dr. W.B. Ewart, private physician

Bill 98

Wayne Hancock, private citizen

MATTERS UNDER DISCUSSION:

Bill 19 - An Act to amend The Highway Traffic Act (2); Loi modifiant le code de la route (2)

Bill 14 - An Act to amend the Community Child Day Care Standards Act; Loi modifiant la loi sur les garderies d'enfants

Bill 16 - The Heritage Resources Act; Loi sur le patrimoine

Bill 36 - The Mortgage Dealers Act; Loi sur les courtiers d'hypothèques

Bill 37 - An Act to amend The Public Schools Act; Loi modifiant la loi sur les écoles publiques

Bill 55 - An Act to amend The Liquor Control Act; Loi modifiant la loi sur la réglementation des alcools

Bill 57 - An Act to amend The Law Society Act; Loi modifiant la loi sur la Société du Barreau

Bill 58 - An Act to amend The Mortgage Act; Loi modifiant la loi sur les hypothèques

Bill 72 - An Act to amend The Teachers' Pensions Act; Loi modifiant la loi sur la pension de retraite des enseignants

Bill 74 - The Equal Rights Statute Amendment Act; Loi modifiant le droit statutaire afin de favoriser légalité des droits

Bill 78 - An Act to amend The Amusements Act; Loi modifiant la loi sur les divertissements

Bill 85 - An Act to amend The Health Services Insurance Act (2); Loi modifiant la loi sur l'assurance maladie

Bill 98 - An Act to Validate an Expropriation under The Expropriation Act; Loi validant une expropriation effectuée en vertu de la loi sur l'expropriation

* * * *

BILL NO. 19 - THE HIGHWAY TRAFFIC ACT (2) - LE CODE DE LA ROUTE (2)

MR. CHAIRMAN: The Standing Committee on Statutory Regulations and Orders is called to order. We shall continue with the presentations under Bill 19, An Act to amend The Highway Traffic Act (2).

Mr. Fred Smith, Director, Manitoba Heavy Construction Association.

MR. F. SMITH: Thank you, Mr. Chairman.

Ladies and gentlemen: I'm here on behalf of the Manitoba Heavy Construction Association to express our views and the views of the gravel truckers in the Province of Manitoba.

First of all, I'd like to read a letter which we addressed to the Motor Transport Board back in May. We'll give you some overview as to what we feel are upcoming problems for our industry. "We're writing on behalf of the Manitoba Heavy Construction Association to raise our concerns about the possible changes in trucking regulations and licensing which will have a very costly and damaging effect on our industry. At present, our truckers are able to haul sand and gravel anywhere in the province on a T-plate. We note, at the present time, the board has these items on a suggested new list of designated commodities which, if approved, would require the gravel trucks to purchase PSV-licences which will likely be approximately 300 to 400 percent of the existing T-plate premiums.

"It was mentioned, I believe, by your chairman to one of the board members at the MTA convention that we will require a PSV-plate and that there will not be any restriction of entry or rate filing or authority protection that present PSV-carriers now have. As we see it, the new changes will be very drastic increases in licence and insurance costs with no additional benefits to the trucker.

"At the present time, we estimate some 700 trucks are owned by our association members. These truckers are subject to seasonal work and require specialized equipment and need the freedom to be able to go and work wherever the work is. In these tough economic times that we are all facing, I hope the Transport Board understands our feelings on this matter and will give our concerns serious consideration."

To add further to that, with these new proposals, the Highways Department and the regulation review has recommended eliminating the T-plate if gravel is hauled for hire and then forcing us to buy a PSV-plate. I note as an example of rates, for an 80,000 pound T-plate is $537 and a PSV-plate is $1,947; or 120,000 pound T-plate is $814 versus a PSV-plate at $3,381.00. The task force review and regulated carriers have said we should all pay equitable fees, but what is equitable in gravel haulers paying the same licence fees as regulated carriers? The PSVs are protected from others entering the business in a particular area or commodity. The plate will not be protected with an authority, so t restriction of entry and rate protection that the PS have enjoyed in the past and in the future is well wo the extra licence fees they have been paying. T average PSV-carrier puts on 120,000 to 150,000 mil per year; and the average T-plate puts on 25,000 30,000 miles per year.

If the government is looking at equitable fees, it th should be the fuel tax that they collect. That w whether we go 25,000 miles per year or 125,000 mil a year, you pay on the fuel accordingly. I'm not sayi we should increase the fuel tax, but the collecti system would be equitable.

Also the end use of the gravel should be delet from the act, and I'll make a comment on that. Wh it comes to the enforcement portion of licensing, t way it is in this recommendations under review, if you' hauling sand or gravel for the construction maintenance of a public highway, that could be do on a T-plate. So to my understanding, if you were taki it to another project besides this, even in the pa would have been required to have a PSV-licence. S the example I use, if I had two trucks going down t highway, and one going to a highway project and o going, saying to a local concrete plant, one should ha a T-plate; one should have had a PSV-plate. I do know how in the world you would ever have any id of enforcing that kind of a regulation, because it impossible. The end use shouldn't have any bearir on the type of plate.

The way we see it, these proposed changes will b of no benefit at all, just drastically increased costs i the neighbourhood of a 300 percent to 400 perce increase. Also I think if the gravel industry and oth T-plates are forced to buy a PSV, it will greatly add t your enforcement problems which I have just state and I will comment on that.

At the present time that the gravel industry has T-plate, if they have no gravel to haul, if they woul go and try and haul another commodity, say, lumb or whatever, if the inspector saw them on the road, h only has to spot that T-plate and he knows the shouldn't be doing the job. But if they have the PS on in the future, as recommended, if they have no wor the only way of enforcement would be - if they wer hauling something that they shouldn't be - if they' stopped and the authorities checked. So the way I se it, it's going to create a further enforcement problem and that was one of the reasons for this review becaus of the complaints about enforcement.

Another comment is that a lot of the highway contractors when they're out doing road constructio jobs, they do about 25 percent or 30 percent of thei miles in the course of the business year of municipa roads, and they generally, when they're on these roads have to maintain the municipal roads at their ow expense. So if they have to pay equitable fees on to of it to a PSV and then maintain the roads, I don' think that makes it very equitable either.

Another is commodity restrictions. If they have t pay an equitable fee to a PSV-carrier, then they ca still only haul gravel, they still have to go and hire a PSV to haul their asphalt or whatever.

Furthermore - there's somebody else here tonigh that will comment on this - insurance agents, if yo

take all the T-plates away from the small Autopac agents and hand them over to the Motor Transport Board or whatever, I think you're going to be taking business out of the hands of the small businessman and giving it to a government agency which I think is a further hindrance to the problem.

I'd just like to make some comparisons out of this review book. I went through and I took a category from 20,000 kilograms, which is approximately 44,000 pounds, about a tandem truck size, up to 125,000 pound maximum; and I grouped the PSV- and the CT-carriers together because they pay the same licence fee, and of all those groupings we came up with 2,905 trucks, which brings a revenue of $5,858,000.00.

Then I grouped the T-plates and the farm-plates which both pay very close to the same kind of fees and we came up with 4,609 trucks, which generates a revenue of $1,918,000.00. So you see that there's a vast difference in dollars and I hope we're not just looking at these changes in regulation to come up with another $5 million or $6 million of revenue because it's basically hitting all the small businessmen in the province and I just don't see how any of us can afford it, if it's just strictly a money thing.

I think the regulated carriers are getting good value for the extra money they're paying, without criticizing them; but if I had the protection in business and a number of things that they've had over the years for their money, I wouldn't mind paying a little extra for licence. But in the gravel business, we have no protection. We just have to go out and try and drum up our business and I don't think it's equitable to be asked to pay the same kind of fees.

MR. CHAIRMAN: Are there questions from members of the committee? The Member for Pembina.

MR. D. ORCHARD: Thank you, Mr. Chairman.

A question to Mr. Smith. He's bringing to the attention of the Minister and the committee a dollar-and-cent problem which will face all currently T-plated or CT-plated trucks, in that their individual licence fees will increase, and I believe the figure used was from 300 percent to 400 percent, if now they have to be forced by this legislation to carry a PSV.

Your last series of figures, Mr. Smith, indicated approximately $5.8 million from PSV; $1.9 million from just . . .

MR. F. SMITH: The $5.8 million was . . .

MR. CHAIRMAN: Mr. Smith, wait until you're recognized, because of the recording.

MR. D. ORCHARD: This is not like an ordinary business where you do things instantly.

MR. F. SMITH: We're not normally that slow, I guess.

MR. D. ORCHARD: We have to abide by government rules.

MR. CHAIRMAN: The Member for Pembina, the recording man . . .

MR. D. ORCHARD: I'm sorry, Mr. Chairman.

MR. CHAIRMAN: Mr. Smith.

MR. F. SMITH: The $5.8 million that I took out of this review book from the task force was on 2,905 PSV- and CT-trucks in a category from 20,000 kilograms up to the total weight of over 48,000 kilograms, like up to the 124.6; and in the same weight category, from 20,000 kilograms, we totalled up 4,609 T-plate and farm-plate trucks, which is relatively close on plate fees and we came up with $1,918,000 of fees for those two categories.

MR. D. ORCHARD: So then have you got an approximation, Mr. Smith, that you can give to the committee as to what revenue impact this may well have? Does this mean a $3 million revenue increase to the government, $4 million; have you got a rough guesstimate?

MR. F. SMITH: I would estimate that it could be a $4 million or $5 million increase in revenue.

MR. D. ORCHARD: Mr. Smith, I presume you're in the gravel business because that's one of the areas you've been addressing tonight. Given the competitive nature of the industry that you're participating in right now, is there $4 million or $5 million of extra paying capacity there that you can donate to the government with this legislation?

MR. F. SMITH: No there isn't, but in this group, I grouped the farm plates with that too in that rating, so it wouldn't be just the gravel industry because they pay about the same kind of a licence fee as we do, and they have a similar problem.

MR. D. ORCHARD: That's something the Minister didn't tell us about.

MR. CHAIRMAN: The Honourable Minister.

HON. J. PLOHMAN: Mr. Chairman, I just want to thank Mr. Smith for his presentation. I wanted to ask him a little bit about the figures that he had. Could he explain how he says the farm trucks are in the same situation with regard to the proposals that are put forward requiring the T-plated trucks, gravel trucks and dump truck operators to have a PSV-licence? Could he explain why he categorizes them the same and where he gets his figures, and includes them in the changes for the revenue that the province would get?

MR. F. SMITH: Basically I'm not here to speak for the farmers, but in the review, they said over a three-axle truck would be required to have a PSV-plate, so that's why I assumed they'd be in the same category as what we are going to placed in.

HON. J. PLOHMAN: Of course, Mr. Chairman, that wouldn't be the case. The only proposal there was that those over three axles that were used then for hired transportation would be required to have a PSV-licence for the period of time that they're used for hauling for compensation. But all semi-trailer trucks could be licensed as farm trucks if they're used for the farmer's

own use. So I think maybe you've taken that a bit out of context there.

You also included the CT-plates in the computation you had?

MR. F. SMITH: Yes, the PSVs and the CTs pay the same fee.

HON. J. PLOHMAN: That's correct.

MR. F. SMITH: So out of this review book, I totalled up the trucks in the categories and totalled up the fees and that's how I came up with the money. It's right out of the review book.

HON. J. PLOHMAN: Mr. Chairman, I'd just like to ask - as the presenter is aware, the Federal Government, of course, just recently applied the 6 percent sales tax to concrete and asphalt materials and we've had complaints from the construction industry that they aren't able to pass that on in their contracts; in many cases it happened is . . .

MR. J. DOWNEY: What's it got to do with the bill?

HON. J. PLOHMAN: No, what I wanted to ask . . .

MR. D. ORCHARD: Yes, what do you want to know?

HON. J. PLOHMAN: . . . as it applies to this, if we were able to have sufficient notice on this proposal, so that the dump-truck operators would be able to be ensured that they could recover the revenues from the contracts that are left if there was sufficient notice, would that lessen the impact on your industry and on your operation?

MR. F. SMITH: I don't think so because probably these days the majority of the people aren't working for highway contracts. So if we just assume that they're working for highway contracts, we're probably only talking about a small percentage of the overall industry I think. I honestly couldn't give you the percentage, but I mean there are an awful lot of people that don't work for highway construction that still haul gravel.

HON. J. PLOHMAN: I realize that, Mr. Chairman. What I was asking Mr. Smith was whether a significant amount of the income generated in that industry comes from highway or government work?

MR. F. SMITH: A fair amount of it, but like I just previously stated, there's a lot of construction that's done locally, throughout the country that isn't government work.

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

The next person on our list is Mr. George Creek, representing the Insurance Agents Association of Manitoba.

MR. G. CREEK: Mr. Chairman, members of the committee, my name is George Creek and I represent the Insurance Agents Association in my capacity as past president. It is our association's desire to expres our concerns regarding the effects of Bill 19 may hav on our industry, as we perceive it, affecting th distribution system of vehicle licences and registratio and basic insurance.

Our association represents, as voluntary members over 300 independent insurance agencies in th province, most of whom are considered small business These agency members directly employ over 70(licensed general insurance agents, in addition t approximately 1,000 support personnel.

Currently we believe that our members account fo 80 percent of the property-casualty premiums writte in Manitoba, and we've been advised by officials fro Autopac that we handle approximately 95 percent o all vehicle registrations and basic insurance that i available to us.

We feel these figures support our contention that i competent, quasi-professional small businessmen, w are adequately servicing the public and being wel received by the public as important elements in th communities, both rural and urban, in which we reside and conduct our business. Agents, in general, provide a wide variety of services, advice, and fulfill othe functions for other clients, in addition to being an outle for vehicle registrations. They are often opened wher the MVB branches are closed.

Any changes in the current system can only affec cause, disruption and inconvenience to the existing agency-client relationship. Please accept my apologies for not providing written statements. It was not unti yesterday that we were able to perceive the proposed effect of Bill 19 on our business.

With regard to the actual bill, it's our concern tha certain amendments dealing with commercial and farm trucks will have the effect on both vehicle owners and insurance agents alike. The distribution system o vehicle registrations and insurance as it now stands will be directly affected. We feel that gravel and farm truck owners who currently purchased their registration and insurance from independent agents would no longer be able to do so, as current administrative rules, set out by the Motor Vehicle Branch and Autopac, prevent independent insurance agents from handling PSV registrations.

A change in certain vehicle classifications will impose considerable inconvenience and unnecessary expense through lost time and travelling costs, if truck owners cannot go to their local Autopac agent for registration and basic insurance.

Previous presenters to this committee representing the farm community have put forth strong arguments and have pointed out how the proposed bill will affect them. Perhaps the simple solution for the committee would be to redefine and requalify within the act what is a bona fide farmer, and who is operating a commercial hauling operation with an expectation of realizing a profit. I understand that farmers now merely share expenses on common shipments. In other words, what is hauling for compensation?

As the act would affect agents, the remuneration and fees earned by the independent agent from vehicle registrations and insurance on many classes of vehicles is returned to the community through direct employment and the purchasing of goods and services from other small businesses in each community. Any reduction in

an agency income will have the effect of reducing the amount of money being redistributed back to the community.

In conclusion, while it may be desirous of the regulatory authority to reclassify certain types of vehicles and their use to achieve a change in the system, the inconvenience to those vehicle owners and the increased registration fees, along with financial effect on agents must be considered. Of course, should the government and the Motor Vehicle Branch require assistance in enhancing the distribution system of vehicle registration and insurance by eliminating the restrictions as to what classes agents can handle, we'd be more than happy to accommodate them.

Thank you.

MR. CHAIRMAN: Any questions from members of the committee?

The Member for Pembina.

MR. D. ORCHARD: Thank you, Mr. Chairman.

Mr. Creek, the agents that you represent at present cannot offer to your customers a PSV-plate and the service.

MR. G. CREEK: That's right.

MR. D. ORCHARD: The proposal would eliminate the T in CT and roll them into a PSV plating system. Currently you can write up T and CT?

MR. G. CREEK: That's correct.

HON. J. PLOHMAN: Mr. Chairman, on a point of order. I just want to clarify because the Member for Pembina has mentioned on several occasions that this proposal would eliminate the CT-plate. That is not the case, and I stated that in the House. The CT-plate would remain for those commercial operators who are hauling their own goods. What we're dealing with here is the T-plate, for exempt commodities, would be required to have a PSV-licence in the future.

MR. CHAIRMAN: That's a point of new information or clarification, but not a point of order.

MR. D. ORCHARD: Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Creek will have to be recognized before he answers because the recorder will not identify the voice.

The Member for Pembina.

MR. D. ORCHARD: Thank you, Mr. Chairman.

The current T-plate, with this legislation, when it's replaced with a PSV-plate, would not be written up by your agents. The scenario with the farm-plate, if a farmer with a semi-trailer undertakes any commercial hauling or hauling for compensation, would have to switch his farm-plate to a PSV-plate. That switch would presumably have to be done at other than an Autopac agent. The scenario was developed this afternoon by some presenters who were speaking on behalf of the farm community that within a week they may have to switch their farm-plate to a PSV-plate once or twice or three times a week.

Mr. Creek, could you indicate the kind of administrative nightmare that that would pose to you as an independent agent who operates, presumably, quite efficiently?

MR. G. CREEK: Yes, it wouldn't present as much a hardship on the agent, other than we would lose the business, but to the farmer it would present to him a major thing because he would have to . . . First of all, if he had a farm-plate, he could have validated that or got it at an independent agent. If he has to turn that over into a PSV-plate, he must travel to a Motor Vehicle Branch no matter how far it may be, turn in his farm-plate and acquire a PSV-plate, travel back to his business, do his business. Now he wants to transfer his PSV-plate back to a farm-plate, he must go back to the Motor Vehicle Branch. In each case, he would be penalized one month's premium.

MR. CHAIRMAN: The Member for Niakwa.

MR. A. KOVNATS: Mr. Creek, how many independent insurance agents will be put out of business if they are not allowed to sell PSV-plates?

MR. G. CREEK: I suspect, none, but we'll hurt a little.

MR. CHAIRMAN: There are no other questions for Mr. Creek? The Chair thanks Mr. Creek for his presentation.

Are there any other delegations unnamed under Bill 19? Hearing none, we proceed at the top of the list. Is Mr. Abe Arnold here?

BILL NO. 14 - THE COMMUNITY CHILD DAY CARE STANDARDS ACT; LOI SUR LES GARDERIES D'ENFANTS

MR. CHAIRMAN: Bill No. 14, An Act to amend The Community Child Day Care Standards Act. Phyllis Patricia Brodsky and Lisa Fainstein. Mr. Abe Arnold is going to present. Is he around?

We go to the next person on the list, Heather Calligan, Manitoba Association of Independent Child Care Operators. Hearing none, we go to the next person on the list, Vicki Shane, Manitoba Association of Independent Child Care Operators.

MS. V. SHANE: Thank you, Mr. Chairman.

I think it's important to make very clear that independent centres support fully the strengthening of legislation with regard to Bill 14 and governing day care centres.

As independent centres, we don't object to standards and regulations governing the safety and well-being of children. There's no question that standards play a vital role in creating the best day care possible for our children. However, we as independent operators are concerned that perhaps there is going to be some overregulation in this regard.

We're well aware that this present government was publicly embarrassed by a most unfortunate situation in Charleswood where loopholes were used and abused. A tough stance was necessary in order to prevent a similar incident from occurring again. Amendments to The Child Day Care Act were implemented to give power

to those in the day care offices to offset a repeat performance with this regard; and our concern is that, in some instances, it's a very loose power that's being given.

We take exception to being compared with an isolated incident and in the same breath suggest that if all centres were government run, with high standards and trained personnel, this type of incident would perhaps never occur. Please bear in mind that we are licensed centres as independent operators. This particular centre in question was not licensed. If this centre in Charleswood made it difficult to determine how many children were in the centre at any given time, let us remind you, please, that we as independent operators have registers and files regarding each of the child information availability to those in authority to see them.

We don't think it's fair to have the public think that simply because we're not a government funded centre that our standards and our programs and our staff are not as good as those in government centres. After all, do we not all use the same manual and check list and criteria in order to meet the licensing requirements? Have we not all been given the same deadline for upgrading our facilities in having to meet staff upgrading?

I think perhaps we should make clear what exactly is a day care centre. Under this present government's philosophy, it means a service provided only by a Provincial Government or a Municipal Government body or an authorized agent, such as a parent, a co-operative or a funded community group. Muriel Smith continues to emphasize the right of every child to good day care and we agree, but does this mean that only the government has the right to make the decision as to what constitutes a good day care?

It seems to me that someone else has been overlooked - the parent. Does the parent not have a right to choose the kind of centre that the parent feels is best for his or her child? If we only have government sponsored centres in this province, and clearly, Bill 14 encourages this monopoly, what alternative does a parent have if he or she should become disenchanted with the kind of centre that his or her child now attends? Perhaps this government is suggesting that the parent is not capable of making a decision as to what kind of a centre that child should go to.

Just as parents are given the opportunity to change from an independent centre to a government centre, we feel the reverse should be applicable as well. If we only have government centres, how can a parent make a choice for another centre?

As independent operators, our view of day care is a service provided by Provincial or Municipal Governments or anyone who meets the licensing requirements. In other words, we want both government sponsored centres as well as independent centres. Since we are all licensed under the same conditions, there is room for both.

A real concern, as far as Bill 14, as an independent person, is with the question of business records. Is it really this government's suggestion that access to books of account, which in this case are financial records, are going to show whether or not a centre is offering a safe environment for these children? If so, then certainly we'll no longer need the services of our licensing co-ordinators, our health inspectors, our fire inspectors and so on. After all, these books of accou are going to show everything that this government nee to know.

I would remind this government that the accountabil of our books is not subject to public perusal wh public funds have not been used. By the same toke government centres are subject to public accountabil because it is the taxpayers' dollars that running the centres. Perhaps it might be a wiser step at this tin to concentrate on the government's own method accountability in order to offset many of the defici that we see.

If this kind of legislation will be passed regardi private financial records for independent operators day care centres, is this also then a first step for t same kind of legislation to be applied to oth businesses which are licensed as well? For exampl if a health inspector comes into a restaurant ar chooses to say, yes, this restaurant will pass inspectio can he walk out the door and come back and say, o by the way, I want to see your financial records or yc won't get your licence or you won't be applicable f the licence. I don't think, in fact, this is what Bill 14 trying to do. However, that's the way it reads. Clearl we have other bodies in our government which a privy to this kind of financial record seeking.

Secondly, one of frightening aspects of this bill is t power which can be yielded almost at whim. We' concerned about this. To suggest that these powe will only be used in extreme circumstances questionable. Who makes the final decision and wh recourse does the centre have to defend itself? As lon as the possibility of that authority exists it can b entertained as a loophole, so it be, if you will, to b rid of any undesirable situation.

Thirdly, the power of a government director to ente a day care premise and simply take over its ban account and to continue running a centre is shockin Will this director also have the power to sign the cheque in that centre? If the past record of day care finance is any indication, I shudder to think how long, or perhap a short period of time, it's going to take to exhaus the centre's resources.

This kind of takeover, under questionabl circumstances, cannot be tolerated. The possibility c this kind of power is there and to suggest that it ma never be used leaves it open to question.

In closing, I might remind this government tha independent operators were offering child care lon before the government stepped in. There had bee sweeping changes in legislation and, for the most par can be shown as a model for other provinces. Howeve those of us who have taken great pains to provide, a independents, the best measure of care for childre today, we wonder why we are treated as something t be tolerated for the time being, when the governmen continually insists there is no room for independen centres. May we ask then what they plan to do wit us? Where are we supposed to go? We're offering service that's being legislated the same as any othe subsidized centre. We have to follow the same criteria the same licensing, the same upgrading, the sam licensing all around.

Our care and our concern is for the children firs and foremost. If we offer the same care as subsidize centres and were licensed accordingly, perhaps it's time

o appreciate the fact that we, too, put the care and afety of children first and can exist in harmony. We're aying there is room for both, independent centres and overnment centres.

As citizens and taxpayers in this province, as ndependent operators, we'd like to remind this body hat we have a right to continue with our livelihood vhen we know it is not at the expense of children's velfare.

These are a few of our concerns and I conclude at his time.

Thank you.

MR. CHAIRMAN: Questions for Vicki Shane from nembers of the committee?

The Attorney-General.

ION. R. PENNER: I'd just like to thank Ms. Shane for ier presentation and just offer three very brief omments. The presenter referred to government day :are centres. There are no government day care entres; there are centres which receive some form of nancial assistance; there are some that don't, but there re no government day care centres.

The policy which was enunciated by the government vhen we first enacted The Community Child Day Care standards Act of allowing, indeed in some meaningful vay, welcoming the continued existence of the private ector has not been changed by anything in this act nd I'm sorry that the presenter thinks that it has. I hink we share a common goal and that is the well- eing of children, and I'm pleased that she notes that nost of the amendments that are being proposed trengthen those provisions of the act which have ndeed that object, the well-being of children. But I vant to assure her that there's no intention in this egislation, or any legislation that is contemplated, to trike out at the private sector.

MS. V. SHANE: If I may respond to that. Contrary to vhat you're saying, as far as not wanting to put us out f business, this government has made it very clear hat there is no place for independent operators. They've stated that publicly; they've stated that in their hilosophies. Where do we stand? If the government ays we are not needed, does that mean we cease to xist?

ION. R. PENNER: That has never been said by iovernment or any spokesperson for government.

MS. V. SHANE: I beg to differ, it's been made public. Muriel Smith has said there is no place for us in day are, as independent operators.

ION. R. PENNER: Apparently we're going to have to gree to differ.

MS. V. SHANE: I will do so.

MR. CHAIRMAN: Are there any other questions? Hearing none, thank you, Ms. Shane.

Wanda Wishart, representing Manitoba Child Care ssociation.

MR. F. CHAPMAN: Mr. Chairman, my name is Fred Chapman. I'm assistant director of the Manitoba Child Care Association. Ms. Wishart has asked me to speak on behalf of the association this evening. She extends her regrets for being unable to attend.

MR. CHAIRMAN: Sorry, I didn't catch the last name.

MR. F. CHAPMAN: Chapman.

MR. CHAIRMAN: Chapman, C-h-a-p-m-a-n?

MR. F. CHAPMAN: That's correct.

MR. CHAIRMAN: Mr. Chapman.

MR. F. CHAPMAN: I just have a short presentation this evening. As a community-based organization concerned with the quality of child care services in the province and representing close to 1,000 members, we'd like to express our support for Bill 14, An Act to amend The Community Child Day Care Standards Act.

We believe that the proclamation of legislation three years ago allowed Manitoba a standard to begin developing a quality service for children and families. Although the act represents a minimum standard, it was nevertheless progressive and fundamentally essential, so the building of an ever-improved child care system could be established.

Now that the act and regulations have been operational, and to some extent tested in the day care community, it is apparent that amendments to various areas are necessary and appropriate. Members of the community appreciate that many of the amendments are simply a statement of clearer definition which is necessary to make them effective.

There are, however, some sections that represent more significant change. It is in the interest of better day care to support the following points: that there be greater refinement of how we describe day care, so that the jurisdiction over licensing and funding be adequately applied; that there is more extensive authority for the director, again so that the responsibility for day care programs can be assumed where it was intended; and that there be stronger guidelines for provincial administrations for centres that may be in difficulty and require external resources to effectively continue the operation of their programs. My last point, the ability for greater amounts of information be called for from centres so that accurate assessments can be made.

In conclusion, we are in agreement with the Honourable Muriel Smith in her attempt to continue to improve the standard by which the day care community should operate. We note, very clearly, from research conducted through our office and with the Social Planning Council of Winnipeg, that parents, by majority, are preferring licensed, regulated, affordable and accountable programs for the care of their children.

With this being the case, it should remain an important priority for government to continue to enact legislation that will allow for quality care for children in Manitoba.

Thank you.

MR. CHAIRMAN: Thank you, Mr. Chapman. Are there questions from members of the committee?

Mr. Attorney-General.

HON. R. PENNER: May I thank Mr. Chapman and, through him, the Manitoba Child Care Association for appearing here and for its support to the program.

MR. CHAIRMAN: Thank you, Mr. Chapman.

MR. F. CHAPMAN: Thank you, Mr. Chairman.

MR. CHAIRMAN: The next person on our list is a couple, I think, Lynn Cranstone and Patrick Ritter representing Citizens for Better Day Care.

Patrick Ritter.

MR. P. RITTER: Thank you, Mr. Chairman.

Only I will be speaking this evening, and thank you for the opportunity to address you.

A little over a year ago, I and 60-other-odd Charleswood parents opened the Pandora's Box that was the operation of a certain day care centre. In the process that followed we encountered much that was unimaginable. A brief litany of our experiences must include dismay over our own ignorance, bureaucratic mazes, ostriches who refuse to believe facts no matter what the corroboration, and an amazing array of journalists, health inspectors and, of course, many Civil Service staff members. We look forward to the passing of Bill 14 as one end point in that process. Bill 14 represents the success of the labours of many and we must take exception to those who oppose various aspects of it.

Resistance to the concept of covering some types of facilities and the regulations rather than in the act itself as expressed by Mr. Birt, the MLA for Fort Garry, we feel is unwarranted. He stated, and I quote, "To leave it in the regulations which means leaving it to staff members in a department and then flowing through for approval at Cabinet, I think is doing a disservice to those people who want to properly operate good, valid and careful centres for the care of children."

At the risk of sounding like cheerleaders for the Department of Community Services, I have the utmost confidence in the professional integrity of the individuals that we have dealt with today. Furthermore, it would be cogent to note that the appeals process provides more than adequate checks against any arbitrary or loose use of power that the Honourable Member for Fort Garry seems to be concerned about.

We submit that his distrust of the regulatory process, and from our experiences, the professionals involved in it is at best rhetorical and at worst counterproductive cynicism. Mr. Birt and others have also taken exception with subsection (18)(1.1)(c) that states that the director may refuse to issue a licence if he has reasonable grounds to believe that any person associated with the operation of the proposed facility is not suitable to provide day care.

Couching objections to any issue in the rhetoric of rights ignores a fundamental reality of our society, that of the fact that rights are tied to responsibilities. Therefore, we submit that if a person has demonstrated irresponsible behaviour towards children, they have indeed lost the right to be associated in any way with their care. Additionally, with reference to cases in the United States where former child offenders have had institutional contact with children, this is precisely and emphatically the type of protection that the publi requires.

Section 5.1(1) enables the director to gain access t the books and records of facilities. We support thi amendment because we see it as the only way to contr the abuse of staff/child ratios and other abuses. W do not see in it any spectre of Big Brother governmen Again, we note that under section 19(4) the right c appeal remains intact as a safeguard.

With regard to the rather thorny issue of subsidies private-oriented day cares. We see this as a secondar issue at this time. The political parties involved, n doubt, have a clear-cut issue to debate during the ne election.

In conclusion, we would ask that this committee tak heed of the only special interest group whose voice i critical in the matter before it; the children attendin day care centres. They need the protections afforde them in Bill 14. They are unconcerned about politica pressure from any quarter. They care not about th threats of a few marginal operators. They do, howeve need these amendments which are being proposed an we, as their parents, urge you to pass Bill 14 in it entirety.

Thank you.

MR. CHAIRMAN: Are there questions for Mr. Ritter

The Attorney-General.

HON. R. PENNER: Again, may I thank Mr. Ritter an the Citizens for Better Day Care. I think we're a indebted to the tough struggle that was conducted i adverse circumstances. I suppose we're all still a litt naive enough to think that at times right and truth wi conquer.

Thank you very much for your support.

MR. P. RITTER: Thank you.

MR. CHAIRMAN: Thank you, Mr. Ritter.

I can see that Mr. Abe Arnold is here and i representing the Manitoba Association of Rights an Liberties.

Mr. Arnold.

MR. A. ARNOLD: Thank you, Mr. Chairman.

I'm sorry I was delayed in the other room for awhile In any event, I was not supposed to be the offici presenter. The two official presenters are unable to b with us this evening.

This brief was prepared for the Manitoba Associatio for Rights and Liberties in consultation with Sybil Shack Pat Brodsky, Heather Leonoff, Lisa Fainstein an assisted by Theresa Clark. I'm speaking, of course, o behalf of the Manitoba Association for Rights an Liberties, which is a human rights and civil liberti organization in this province.

In today's world, the need for day care for childre is one that must be met on an organized and planne basis. Bill 14 introduces some positive and necessar changes to The Community Child Day Care Standard Act, otherwise known as Chapter C158 of the Continuin Consolidated Statutes.

A system of day care for young children has becom a necessity in today's world. A substantial number c

ingle parents are the sole supporters of their families nd more and more frequently both parents are working utside the home. The natural consequence of these nd other contributing factors is the need for consistent tandards for day care facilities as they exist and as ney are established in the province. Such standards hould be assessed according to four criteria:

1. The ratio of staff to children, the prior training of staff, the quality of staff in their relationship with the children are all important to the kind of care the children receive.
2. Closely related to No. 1 is the type of control exercised over the children. Parental expections vary, but the responsibility of government is to ensure that children are treated with respect as persons.
3. Supervision of the children, and more generally, of the facility itself is a necessary component.
4. A fourth consideration is the physical environment in which the children spend their time. Is the building safe? Are sanitary requirements adequately met? Is the environment pleasant? Does it have the equipment necessary to provide both rest and stimulation for children of the ages being cared for? If food is provided, is it prepared and offered under sanitary conditions, and is it of the kind and quantities suitable children?

Bill 14 attempts to set the terms for licensing day :are facilities, presumably in the light of what has been earned through the operation of The Community Child Day Care Standards Act. MARL agrees in principle with he proposed amendments which set forth requirements or licensing day care facilities. We hope that the result of the bill will be to provide better day care facilities n Manitoba.

We would like, however, to draw attention to a number of clauses in the bill which we believe could be and perhaps should be improved. In examining the bill, we have given consideration to human rights and civil iberties aspects as we do with all bills before the Legislature.

Dealing with subsection 2(2) - ''Regulation may exempt. The Lieutenant-Governor-in-Council may, by regulation, exempt any person or class of persons, in whole or in part, from the provisions of this act.''

This clause provides a power that might be subject to abuse. It could be used for reasons not in the best nterests of children in day care and leaves the door open to possible favouritism in treatment of day care operators.

On the other hand, if handled with care, it would also allow new operators an opportunity to upgrade, and operators working under the old rules time to make the necessary changes.

To avoid possible abuse and the continuing existence of what might be substandard facilities, we recommend that exemptions under subsection 2(2) be carefully reviewed at stated intervals, no longer than 12 months, and exemptions be withdrawn if facilities continue to be substandard.

Subsection 5.1(1) - ''Investigation by Director. The director may at all reasonable times and upon producing proper identification enter any licensed facility or any premises that the director on reasonable or probably grounds believes is being used as a day care centre or a day care home to inspect the facility or premises, the services provided and the books of accounts and other records.'' We believe that this section is too broad. Operators of day care facilities and others caring for children, but not licensed as operators of day care facilities, might consider themselves to be unduly harassed if visited on a director's interpretation of ''reasonable and probable grounds.'' Such a visit by the director might be construed to be an illegal search and seizure. On the other hand, the director must have the right of entry and inspection if he or she has reason to believe that children are at risk.

We suggest that reasonable and probable grounds be specifically defined and an alternative procedure established for investigating facilities. Only in cases of valid emergency should search and seizure be permitted without a warrant. Otherwise, a director of Child Day Care Services should obtain prior authorization in the form of a valid search warrant to enter a day care facility, examine evidence, take away for further examination or copy or take away to copy any documents that are seized.

For assistance in developing guidelines for ''reasonable and probable grounds'' we would suggest that reference be made to the judgments in the case of Hunter et al. vs. Southam Inc. in Dominion Law Reports, Vol. II, Fourth Series, 1985, on the definition of reasonable and probable grounds, illegal search and seizure and prior authorization.

Subsection 5.1(2) - Order granting director right to enter. Where the director is refused access to a licensed facility or premises under subsection (1), a judge of the Court of Queen's Bench or a justice, on application by the director, may grant an order authorizing the director to enter the facility or premises and to inspect the facility or premises and the services provided and requiring any person therein to produce to the director and to allow the director to make copies of the books of accounts and other records related to the facility or premises.

The intent of the legislation is to stop unlicensed facilities from operating and to protect children in such day care facilities, particularly if these day care facilities are unsafe. In emergency situations, the director should have the right of entry without a warrant.

MARL wishes to stress that there are separate and distinct procedures used by the director for entering, inspecting, copying documents, giving proper notice and issuing a summons to a day care facility operator.

MARL recommends that a procedure be implemented for separate orders for right to search and right to seize materials by the director.

Despite these considerations, MARL wishes to emphasize that the children's legal rights must be the first priority in these situations and that the best interest of children must always be protected.

Refusal to issue a licence. This is where the director (a) is satisfied that any facility described in the application would not be operated and maintained in compliance with the requirements or standards prescribed in the act or regulations for that type of facility.

I'll skip the rest of the quote from the act and just go on to what we're talking about here. This clause

opens the door to the possibility of discrimination in issuing licenses at the director's discretion on the basis of unsuitability. MARL recommends that "reasonable grounds" conform with the provisions of The Manitoba Human Rights Act and Clause 15 of the Charter of Rights. Applicants should be clearly informed in writing of the reasons for refusal to issue licences.

Section 35(1) - Regarding penalty. This section provides that any person who contravenes any provisions of the act be subject to a penalty of not more than $1,000 and, if the offence continues for more than one day, to a further fine of not more than $200 for each day during which the offence continues after the first day on which it occurred.

The monetary penalties seem unnecessarily high, although the rates might discourage fly-by-night operators. MARL suggests the maximum penalties be changed to a $500 fine and a $100 maximum further fine per day as long as the offence continues.

Proper notice should be given to persons being charged and such persons must be informed of their rights promptly.

MARL also recommends that the wording "after the first day on which it occurred" be changed because, if day care operators are unknowingly committing infractions for a time period of one year prior to their being brought to account, they could be fined an unreasonable sum for the entire time period when they did not meet the requirements of the act. Instead, we suggest the wording of this phrase be changed to "after the first day on which the person is found guilty."

In conclusion, these are the concerns that MARL has for Bill 14, An Act to amend The Community Child Day Care Standards Act. In making our recommendations, we have emphasized the best interests of children in day care facilities, the rights of operators of child care facilities and the responsibilities of the director and his or her designates.

The number of single parent families, low income families and families where both parents work points to the need for more quality day care spaces, about 5,000, if waiting lists are any indication.

We believe that an investment in good care for children now will bring rich returns through the prevention of problems in the future. We, therefore, urge the Government the provision should be made as rapidly as possible for more day care facilities to fill the growing need in this province.

Thank you.

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

The Attorney-General.

HON. R. PENNER: Mr. Arnold, just referring to one or two of the points in your . . .

MR. A. ARNOLD: Excuse me, Mr. Chairman. I'm not sure if I may be able to answer your questions because my experts are not here tonight, but we'll try.

HON. R. PENNER: I'm glad you prefaced your remarks in that way, Mr. Arnold, because I had the impression that you might not be able to.

That's not facetious, I'm just wondering if you're aware, with respect to the point made in 5.1(1) about investigation by the director, that that investigatio referred to in 5.1(1) is, in effect, a consensual entr That is, that the rights of the person in 5.1(1) to refus entry remains, because 5.1(2) deals with the situatio where the director is refused access. In other word: we've recognized the right of the person to say, nc you can't come in, and then the person must get, i effect, a judicial warrant. Are you aware of that?

MR. A. ARNOLD: I'm glad you advised me of that.

HON. R. PENNER: Okay. Would you agree that tha improves the situation?

MR. A. ARNOLD: That's a reasonable . . .

HON. R. PENNER: Okay. Again, I just wonder, whe you dealt with 18.1(1) which is, in effect merely a addition to section 18, whether you, in making thi presentation took into account the appeal procedure in sections 19-25 which, indeed, would put an onus o the body refusing a licence to justify that in a court c law, or at least in the body set up in the act. Are yo aware of those appeal procedures and did you tak them into account?

MR. A. ARNOLD: I'm glad you've drawn that to m attention.

HON. R. PENNER: Okay. In the circumstances, anc certainly not wishing to embarrass Mr. Arnold, I'll jus perhaps make one additional point.

If you'll refer to your brief, Mr. Arnold, when yo raised the question of section 35(1) penalty, are yo aware of the fact that Bill 14 has no amendment t that section, that it doesn't deal with this issue at all and that you're raising an issue that simply relates t the act as it already is and not to the propose amendment?

MR. A. ARNOLD: Yes.

HON. R. PENNER: Okay, I just wanted to make sur on what grounds you stood. Thank you.

MR. CHAIRMAN: Other questions? Hearing none thank you, Mr. Arnold.

These are all the presentations I have under Bill 14 unless there are some unnamed persons who want t make presentation under Bill 14.

BILL 16 - THE HERITAGE RESOURCES ACT; LOI SUR LE PATRIMOINE

MR. CHAIRMAN: We are now proceeding as scheduled Bill No. 16, The Heritage Resources Act. Any persor who wish to make presentation under Bill 16? I have here in my list Eric Robinson, Executive Co-ordinator Brotherhood of Indian Nations.

The next persons on the list are Gary Simonsen anc Harry DeLeeuw, both of them together, representing the Winnipeg Real Estate Board and the Manitoba Rea Estate Association.

R. H. DeLEEUW: Mr. Chairman, I'm Harry DeLeeuw ›m the Winnipeg Real Estate Board.

R. CHAIRMAN: Mr. DeLeeuw.

R. H. DeLEEUW: Representing the Winnipeg Real tate Board and the Manitoba Real Estate Association, find ourselves in a rather anomalous situation. On e hand, we support the government in promoting d preserving properties of anticipated or real historic lue; yet on the other hand, we strongly believe in the ility of individual property owners to freely enjoy, to ely own, and to freely dispose of their property.

Acknowledging our support for the former, we wish identify a number of concerns with Bill 16 that have rious ramifications to property owners, prospective operty purchasers, and real estate practitioners. The st concern is designation of heritage sites. Our written ef was previously submitted to Mr. Kostyra and Mr. stYra's office and I'd like to present that brief to this mmittee if that's allowable, agreeable?

R. CHAIRMAN: Yes.

R. H. DeLEEUW: Our brief suggested that the group body making recommendations to the Minister for signation of historical properties be composed of presentative interests, including those with propriate technical and historical expertise and those :h community and individual interests in mind. The rrent bill makes no provision or reference to this ggestion. Recommendations must be based on mmon sense, historical value and practicality, not eservation for the sake of preservation.

Once a designation procedure commences, without ch prior input, vested interests are bound to emerge d where they conflict, the long-term success of ritage preservation will suffer.

The criteria to be used in the designation of sites ve not been specified. At a recent meeting with vernment officials from Culture, Heritage and creation, it was indicated that such would be thcoming. We recommend that this information be ade available and incorporated in the bill to ensure at the designation process is grounded on some basis predictability and consistency.

Our second point is under impact assessment and tigation. Part II, section 12 of the act requires the st of impact assessment and mitigation studies to the responsibility of the developer or property owner. discussed in our brief, we submit that costs to be rne by a property owner, which will accrue to the blic's interest and use, should be the responsibility the ultimate user, namely, the public.

Point No. 3, under maintenance of sites, Part II, ction 15 of the act, states that it may require owners heritage sites to undertake repairs, maintenance, storation, etc., and that the government may - not all - provide financial assistance. We would urge that government make available appropriate funding for ch work. A property being preserved for the public erest should not be at the expense of the individual operty owners.

Point No. 4, under transfer or sale of heritage sites. rt II, section 20, indicates that prior to the sale or transfer of a heritage site, the owner or lessee is responsible to advise the purchaser of a property of such a designation or of a Notice of Intent to designate. Realistically, this information could be withheld intentionally or inadvertently from a purchaser and/or real estate agent, resulting in serious legal consequences.

During the Notice of Intent to designate and any subsequent appeals to that notice, a purchaser could be completely unaware of any possible or any pending restrictions on the use of the property. Indeed, if it is a lessee situation, there is a potential that the property owner himself may be ignorant of any designation procedures taking place, for example, a non-resident or a foreign investor.

Part II, section 23(1) and (2) and Part II, sections 37 and 39(1) and (2), refer to a listing of heritage properties that may be published by the Provincial Government. We think it is imperative that a master list shall be available from the province and all municipalities to ensure that owners and purchasers do not become entangled in needless civil litigation over undisclosed designations or pending designations on a property.

To assume that a property owner will, in all cases, either be aware of or willing to disclose an actual or potential designation on a property, is overly optimistic. We are confident that the government does not wish to generate costly, unnecessary legal action as a result of this present provision.

Part I, section 3, indicates that sites adjacent or nearby to an established heritage site may be designated. The general and open-ended nature of this power causes concern for its potential impediment upon present owners and future buyers of such a property. Noting that the bill provides for priority of any designation over all other filings on a title, we would suggest more specific guidelines to deter heritage designations by osmosis and to confirm the rights of mortgagees and others in the protection of their filings on a heritage property.

We wish again to emphasize our board and association's support to the continuation of heritage preservation, while advocating caution and respect for property owners' rights. Continued support for heritage preservation will be attained through co-operation, fairness and recognition of financial responsibility to remunerate where basic rights to the enjoyment and use of one's property have been infringed upon.

Thank you very much.

MR. CHAIRMAN: Are there questions from the members of the committee?

The Member for Pembina.

MR. D. ORCHARD: Thank you, Mr. Chairman.

Mr. DeLeeuw, you referred to section 23 of the bill on the registration of heritage sites. Section 24 provides that sites that are so declared a heritage site under existing legislation automatically become heritage sites with the passage of this bill. One of the concerns I've had, and I wonder if it has an impact on your association, and the activities of your association, in that there is a presumption of knowledge that under existing legislation designations have been made. Is that a legitimate presumption of knowledge, or should the act

provide for a notification of the owners of existing declared heritage sites with the passage of this act?

MR. H. DeLEEUW: That is a concern with us and I think that should be part of the act. One of the facilities that we have as real estate agents is a computerized service that we could publish these designations on. I think that would be another one of our recommendations to go along with what I think you're saying.

MR. D. ORCHARD: Mr. Chairman, I apologize to Mr. DeLeeuw. I missed your first point in your presentation, your initial concern.

MR. H. DeLEEUW: Under section 23?

MR. D. ORCHARD: No.

MR. H. DeLEEUW: I'm sorry. The first point then was designation of heritage sites.

MR. D. ORCHARD: Right.

MR. H. DeLEEUW: Maybe I should just read it over again rather than summarize it. I will read it over rather than summarizing.

"Suggested that the group or body making recommendations to the Minister for designation of historical properties be composed of representative interests including those with appropriate technical and historical expertise, and those with community and individual interests in mind."

Is that sufficient?

MR. D. ORCHARD: Thank you.

HON. E. KOSTYRA: Thank you, Mr. Chairman. I'd like to thank Mr. DeLeeuw for the presentation on behalf of the Real Estate Board.

In terms of the question that was asked by the Member for Pembina, the difficulty that Mr. DeLeeuw may have in answering that is that there is only seven buildings that are under private ownership that are presently designated, none of which are in the City of Winnipeg, except for one owned by the Winnipeg School Division, so no private property owners would be impacted by the fact that the legislation takes into account previously designated sites because there are none under private ownership in the City of Winnipeg, outside of the Winnipeg School Division.

I'd like to ask Mr. DeLeeuw. I presume the Winnipeg Real Estate Board works and collaborates with other such bodies across Canada. Are you a member of a national organization in terms of information sharing?

MR. H. DeLEEUW: Yes.

HON. E. KOSTYRA: I was wondering what kind of experience your colleagues have had in the Province of Alberta where there are similar provisions to the act that's before us today, specifically in the area of designation and the fact that there is no legislative provisions in Alberta for compensation, No. 1; and No. 2 they have pretty well the same provisions with respect to impact assessment. I was wondering if you had ar discussion with your colleagues in Alberta in terms c how that legislation has impacted your colleagues c your members in Alberta in those two specific area:

MR. H. DeLEEUW: I have to say that I personal haven't. Gary Simonsen who was to be with me tonigl has had contact with the Alberta group. I believe tha there was some mention made in our brief, on Pag 9, "to accept the argument based on Alberta' experience that the inclusion of compensation in th act leads to the assumption that historical designatio is detrimental is to bury one's head in the sand. Th operative principle on this notion appears to be tha if one avoids the issue, or at least does not mentio it, the problem will go away."

Mr. Simonsen probably could answer that a little b better than I could, but that's what our opinion is c what his discussions were with Alberta.

HON. E. KOSTYRA: Thank you for the reply. I'd jus like to again thank you for your presentation and th ongoing co-operation that your organization has give to us in developing this legislation regulations.

MR. H. DeLEEUW: Thank you.

MR. CHAIRMAN: Thank you.

The Member for Niakwa.

MR. A. KOVNATS: Mr. DeLeeuw.

MR. CHAIRMAN: Mr. DeLeeuw, there is anothe question from the Member for Niakwa.

MR. A. KOVNATS: It's not really a question. The nam Harry DeLeeuw is a very respected name in th community in which I was brought up. I just want yo to know that I have a great respect for your father an I'm sure that the family name will always be held i high esteem by myself.

MR. H. DeLEEUW: I appreciate that.

MR. CHAIRMAN: Thank you, Mr. DeLeeuw.

The next persons on our list are Rosemary Malaher Prof. W. P. Thompson and Moira Jones representin the Manitoba Historical Society.

Professor Thompson.

PROF. W. THOMPSON: Good evening, I'm Prof Thompson.

This is indeed an historic occasion, we believe it i a most important piece of legislation. It supersede legislation that has existed for a number of years. Ou interest in heritage goes back to our family in 187 and we feel this is a landmark in our history, as wel as the history of the province.

We commend the government in the revisions to The Historical Sites and Objects Act. We believe this wil be a piece of legislation that will be important for us and also important as a precedent for the rest o Canada.

We're very pleased that the Provincial Governmen has clarified the procedures for designating sites anc

bjects. Processes are clearly stated and are relatively ncomplicated. The legislation is readily understandable ɔ the layman, we believe.

The extension of power to designate to the ıunicipalities is a welcome step and will contribute ıuch to the understanding of local history. Local eritage groups will be able to perform their vital unction in their communities as leaders in the ıwareness within each community of the movement to ıreserve what is important to them and to the rest of he province. We, as the senior heritage organization ɔf the province, welcome the co-operation that we will ıave with these local groups toward preservation.

There are contributions from various levels of ɡovernment in this act - the province, the municipalities ınd, indeed, the local organizations and provincial ɔrganizations such as ourselves.

We believe the participation of the voluntary ɔrganizations could be strengthened perhaps a bit ;urther in the act. There are a number of things we would like to point out as ways of making the act even better than it already is. There is an additional role given to the Municipal Board under sections 7, 9 and 27, as well as section 28. This will allow for the participation of local heritage organizations, we hope, as well as the municipalities that govern their jurisdictions.

Under Part II, section 12(2), the situation might arise in which the presence of a heritage object is discovered in a non-designed site. There is no incentive for people who discover such an object to report the discovery. There may, in fact, be some difficulties for them, some disincentive; for example, in the development process, when construction is going on, when development of other sorts is happening.

Certainly we welcome the requirement to report discovery of artifacts as part of development of non-designated sites, but we do believe that the government should take a role to intervene on the behalf of developers to allow that there will be no penalty for their reporting of discovery of archaeological or historial artifacts, because in many development agreements, as you know, there are clauses which would penalize the developer. So we feel that it would be advisable for the government to perhaps take a role to attempt to alleviate the problems which might develop - but I say might - as part of the discovery and examination of archaeological or other artifacts.

Under section 13(2) there is not a qualifying statement regarding the powers of the Minister in issuing a heritage permit without an impact statement. We appreciate the need for latitude on the part of the Minister in such cases, but we suggest respectfully that this might be limited in some way, or at least reacted to by asking for the consultation with the chairman of the Municipal Heritage Committee, or the Heritage Board of Manitoba, as the case requires; that is, a process of consultation might assist both informationally and to bring the local group or the Heritage Board into the case of that discretion.

Under section 22(b), does the provision allow for financial assistance to the group or municipality as deemed appropriate? Presumably this is included implicitly, but it might be appropriate to strengthen this section with the inclusion of a more specific statement of the province offering some financial assistance in that circumstance.

We urge the strengthening of section 23 by the substitution of the word "shall" for the word "may." One of the problems cited by the Federal Minister of Revenue for not proceeding with tax incentives for preservation of heritage buildings was that there was not a sufficiently defined register of buildings. The need for such a registry, we believe, is paramount and therefore we believe it is incumbent on the province and on the municipalities to have such a register. We believe it shouldn't be discretionary, but it should be a requirement that such a registry is formed. Naturally it will take time to form such a registry in its fullness, but the requirement that there be a registry, it seems to us, rather important.

Under Part III, section 25, we believe the government could strengthen the act a bit by encouraging municipalities to designate sites of local significance, things which are of importance to them and perhaps not of media importance to the entire province.

We also believe, and perhaps it is not - certainly it is not part of this act - but we also believe that grants for assistance - and we understand that such a document will appear shortly, but we wish to encourage such a document - for heritage resources, both provincially and locally, should appear as part of the annual Estimates of the department. It should be clearly indicated as part of their Estimates that these grants be understood and appreciated in their significance.

Under section 39, again we would suggest, respectfully, the alteration of the "may" to a "shall." This is again with reference to our previous comments about the registry. The wording should be "shall" to strengthen the requirement.

Under section 40(2), we believe that funds received under the provisions of this section, which we laud wholely, should be set aside or held in trust for heritage projects. That is, we believe that they should not revert to the general revenue of the municipality, that they should be held in some sort of trust for heritage purposes, if indeed that is the matter and purpose for which they are given.

Under Part IV, section 44(2), this provision should be made for objects to continue to be held. This is a section which refers to the holding of artifacts by private citizens in their custody. We believe that provision should be made that, in the proper circumstances, these objects might indeed be held in trust by the family or the heirs of the person in question because, in many cases, they are not simply a personal semblage of objects, but they are respected and held by a family or perhaps even a group. So the continuance of this trusteeship we believe should be considered beyond the time of holding by an individual.

Under section 53, until fairly recently amateur archaeologists have provided the majority of knowledge about the pre-history of the province. However, it is also clear that an unskilled amateur may cause some damage to an archaeological site, so we do welcome the purview of the government in this section, purview over the sites and to see that they are not disrupted, so we strongly support this section. It's kind of a balancing that we favour, some accommodation to the abilities of the amateur to pursue his studies but, on the other hand, purview the government.

Under section 55, again we urge a strengthening of this section by the substitution of "shall" for the word

"may," and again, as we said in the section on registry, we believe the strengthening of this as a requirement, rather than discretionary is important.

Under section 56, that's Part V, under the present Historic Sites and Objects Act, the Manitoba Historical Society has been represented on the advisory board. This has been a worthwhile link for the society and we feel that we have contributed to this board signicantly. We urge the Minister to consider the inclusion of the society, as well as the Manitoba Archaeological Society, as members statutorily of this particular section of the act.

In conclusion, we urge the Minister to consider enshrining in statute annual grants for voluntary heritage organizations. The province has been most generous in supporting organizations, as other heritage organizations. We however would like to see a provision in the annual statements of the province that includes a section of grants to voluntary heritage organizations as part of their balanced approach providing for heritage within the provincial requirements, as well as through the voluntary organizations. We feel this balanced view is most important and in the interests of the province and the people who have contributed significantly to heritage through the volunteer organizations.

Again, the act, we believe, is excellently drafted, by and large; is a great step forward. We applaud you, Mr. Minister, and all those who have helped you in the arduous process of preparing this act. We urge most strongly, speedy passage of this act so that we can be in the forefront of Canadian provinces in heritage.

Thank you very much.

MR. CHAIRMAN: Any questions for Professor Thompson?

The Honourable Minister.

HON. E. KOSTYRA: Thank you, Mr. Chairman.

Thank you, Mr. Thompson, for your presentation on behalf of the Manitoba Historical Society. I would just like to comment before I ask you for some clarification of comments you put forward, I can't help but put on the record the fact that the reason this act is before this legislation, this committee today, is due in no small part to the efforts of the Manitoba Historical Society on behalf of heritage preservation and education in this province. I think your society and members deserve a great deal of credit for this bill.

I wanted to ask you, in terms of your comments on section 25, were you suggesting that this does not allow for the designation of sites that are of local heritage value, heritage significance?

PROF. W. THOMPSON: Perhaps I can answer briefly and then pass it over to our executive director, Moira Jones, for additional comment. We believe it does allow for that, but we feel that . . . it out more specifically might give the municipalities more encouragement to take some initiative on their own.

MR. CHAIRMAN: Moira Jones.

MS. M. JONES: Our feeling, Mr. Minister, on this section is that while the act is encouraging municipalities to undertake legislation which will permit designation at that level, we feel that they will not undertake this exc there is a strong grant program in place, which y have mentioned that would come along as compan legislation. But perhaps this could be included in act to say that there would be financial assistance those municipalities that undertake this legislation.

I think the fear of municipalities is that if th undertake the legislation they're going to be delug with requests for funding for upkeep of heritage sit

HON. E. KOSTYRA: Ms. Jones or Professor Thompsc I'll pose this by way of a question. Are you aware th during the course of second reading debate of this l that I did announce that there would be a grant progr available for sites that have been designated provincial historic sites and a companion program sites that are designated as municipal heritage site

MS. M. JONES: Yes, I am aware of that, Mr. Minist but we felt that if it was within the act, it might strength it further.

MR. CHAIRMAN: Other questions?

The Honourable Minister.

HON. E. KOSTYRA: Yes, I just wanted to commer Professor Thompson, with respect to your suggestio with respect to section 44 of the act, with respect the passing on of those artifacts to others within t family or indeed other persons, that that's not restrict in the legislation the way it's laid out, but thou prejudging what this committee may do, I would inter to further clarify that to cover specifically the suggesti that you've made.

PROF. W. THOMPSON: The question was about th passing on of artifacts to other members of the fami We understand that it's not restricted, but we als from our membership, receive a number of commen and worries about this. This is by manner of assuran to them, so whether in the act or whether by yo statement, it would assure them I think and make the aware that their contributions to heritage are respecte to show them that this will be given every considerati if they are judged capable of such custodianship.

HON. E. KOSTYRA: Thank you for those comment Professor Thompson. I would suggest that once th committee concludes its deliberations on the bill, tha may well be better clarified.

MR. D. ORCHARD: Professor Thompson, on sectic 44, in the comments from your membership, they hav expressed a concern that I've heard as well. Is ther a basic disagreement amongst the membership of you organization of the specific provision in the act her which vests ownership of archeological objects in th Crown after the passage of this act?

PROF. W. THOMPSON: Yes, certainly there is tha concern. We, within the executive and council of th society, feel that it is important that the province tak a role and be the ultimate guardian of the heritage c the province. The history of the matter is that indeec for a long time, including up till the previous act an

to date that a large part of the archeological heritage has been held privately.

This is a fact; people have cared for it, some better, others not quite as well, so that the need for looking at it on a case-by-case basis and seeing the capabilities of the person or persons and the situation in which it's held, we believe is very important to judge it on an individual basis. We do not quarrel with the basic notion that the province should have a role in this and should have the ultimate responsibility for things which are provincially significant. It's a balancing act between allowing those people who have the heritage already and are judged to be proper custodians of it to continue that effective custodianship.

MR. D. ORCHARD: Mr. Chairman, one other question to Professor Thompson stemming from section 12(2). This is one clause where there is considerable power granted to the Minister and you've identified, I think, the concern that I have and others have in that - I'll give you two scenarios - first of all, if the reason to believe that a heritage resource exists turns out to be true and the development project - whether it be residential, highway, whatever - is held up due to the desire to preserve it as a heritage site, that there is not a format in the legislation which would compensate for any losses, contractual or otherwise, for the developer.

Secondly, and possibly more important where the reason to believe turns out to be unfounded, once again there is no obligation on the government who has imposed a stop order, a cease-work order, etc., to provide for any damages to the contract or the individuals so affected.

I took it from your comments that you would prefer to see written into the legislation a method of compensation which would clarify the government, hence, the public's responsibility in section 12(2) for preservation of resources which are found and, indeed, if they're not found to make sure that we haven't unduly impacted financially on a person.

PROF. W. THOMPSON: I share a portion of your concern. The question is the methodology for doing this. We believe that when the public interest does cause some significant injury to the party in question that this, indeed, should be part of the responsibility of the government to, in the first instance, be able to deal with a problem at an earlier stage where perhaps the injury might be less by designating sites and registering things, notice to people. We believe that would help considerably in the early instance so that when something goes on and the person does know it's a registered site that they are aware of it.

However, in cases where this is not a registered site, then another situation applies. We believe the government should enter into negotiations with the parties in question to determine the best way to handle it so there is not significant injury.

I don't know whether that really construes, however, as compensation. There certainly is a responsibility we view of the government to, in the first instance, designate sites and make it aware that these are designated sites, and in the instance of non-designated sites, to enter into proper negotiations so that there is not an injury to the parties who are developing the site.

MR. D. ORCHARD: Mr. Chairman, just to follow up with one other point that you made, if I understood your comments to section 12(2).

Let's say the Minister is not involved in having reason to believe, and the developer himself notices, say, an Indian campsite. If he's a contractor and has 100 days to complete that work and reporting this archaeological site is going to delay it beyond his contract will trigger his penalty clause, would you recommend that in order to make sure that people report them rather than simply put the blade of the bulldozer a little deeper, to be crude, that there is an amendment so that there is an ability to negotiate damages or compensation or reimbursement of additional costs?

PROF. W. THOMPSON: We believe that in such an instance there should be negotiations between the province and the person involved and that some responsibility does obtain to the province in seeing that if there are delays in the progress of work that some method is found to prevent that from being injurious to the person developing, yes.

MR. CHAIRMAN: Are there other questions? Hearing none, thank you, Professor Thomson.

The next person on our list is Sid Kroker, President, Association of Manitoba Archaeologists.

MR. S. KROKER: Mr. Chairman, and members of the committee, I'm representing an association of career archaeologists and avocational archaeologists whose main aim is the preservation and protection of our prehistoric and early historic heritage.

We are very strongly in favour of this bill. It's some of the best heritage legislation that we have seen and we have looked at acts ranging from The Arkansas Act which is a very good one in the States; The Albert Act. This one is extremely good. It's well organized. It's well developed and it brings our legislation up-to-date with the practicalities of this present day.

We would like to speak strongly in favour of section 12. There are about 3,000 heritage sites recorded in the province. This is a bare minimum number of the ones of the evidence of our predecessors that walked over the lands of this province. In 10,000 to 12,000 years, most of the province has been occupied and evidence of the people and their activities remains behind.

There have been some negative comments about certain aspects of impact assessment and I think those comments are based on the aspect that the thought is the assessment is occurring after development is started. Proper assessment should be done on lead time in advance, so that scheduling of material that is found for the mitigation and/or any findings can be done as part of the schedule.

With the Alberta experience of the archaeologists and developers there, mitigation and assessment aspect on a large scale housing development adds about $8 to the cost of each house in that tract. It is not an expensive situation. It preserves heritage and usually in a developmental situation the budget for the heritage

assessment is on the order of one one-hundredth of to one-tenth of 1 percent of the total budget. It's very cheap money to get out heritage available to the public.

With regard to the aspect of the ownership of artifacts, section 44, we feel that Crown ownership is necessary for the government to be able to legally safeguard our heritage from wanton distribution. Most of the information over the last 20 to 50 to 70 years has come from the avocational archaeologist, the collector. The first career archaeologist was hired in this province 20 years ago only. We've had 50 to 100 years of catching up to do in the last decade. This act is helping that.

We would like to see this legislation come through as it is enabling legislation to encourage people and institutions to preserve the heritage, and it would allow the Minister to prevent wanton destruction of important heritage resources. We see the intent of this act, not to be heavy-handed or draconian in implementing the legislation. Firstly, there's neither the adequate resources of personnel to do so and other provinces which have Crown ownership of artifacts and heritage objects have never shown such an inclination to be heavy-handed.

We would propose an amendment under section 44(1), a new subclause, clause (c) which would state more or less that when a heritage object is found on private land or water abutting private land, that the owner of the land may transfer the custodial rights of that object to the finder.

There are a large number of collectors and avocational archaeologists who collect on private land. They have to have permission of the landowner to walk on that land, so it would be a matter of the landowner to say, yes, you can obtain my custodial rights.

Most collectors and avocational archaeologists are very law-abiding in the aspect that they do approach landowners. They usually share their information with the landowner and some of those landowners have no interest in accepting the custodial responsibility for objects that are on their land and are willing for those objects to go to avocational archaeologists who will preserve, protect, document and share the information obtained from them.

These collectors and avocational archaeologists need to have their custodial rights recognized and this is what we are suggesting with the new sub-clause amendment. Further to the ownership aspect, we would see, although the Minister said in the House that it was not prohibited and he responded to the Manitoba Historical Society point about bequeathment or inheritance rights of heritage objects.

We also would support a clarification in the act that such custodial rights can be inherited or given to any individual or an association or an institution. The reasons we have for suggesting this is that people who have collections often feel a sense of ownership. These people should be allowed to pass their custodial rights onto family or friends who have a concern and interest in the items, but these new custodians should know their responsibilities. With an aspect like this collectors are more likely to have a co-operative attitude to sharing their knowledge, rather than going underground and becoming secretive about their activities and collections. Further, this will also help to ensure continuity in the care and documentation of the collections.

One other aspect that there has been a moderate amount of reference to in the House has been the aspect of fines that may be imposed for breaches of the act The Association of Manitoba Archaeologists feels that these fines should be retained in the size that is mentioned in the act; the act needs teeth. As professional archaeologists we see the need to call bad apples from within the archaeological community. We have yet to have, in Canada, a case of an unscrupulous professional archaeologists, as has happened in Peru or other countries, where material from national heritage sites is sold on the black market for personal gain. We need something like this to prevent a similar instance occurring here.

Also, with regard to corporations, we feel the full penalty should be assessed when a corporation has knowingly and willfully destroyed a heritage resource, either before or after they have received an impact assessment.

In closing, we would like to commend the Minister and his staff for an excellent piece of legislation; one that our association has felt has been long overdue and we're very happy to see it, and we urge rapid and speedy passage.

Thank you.

HON. E. KOSTYRA: Mr. Chairman, I'd also like to thank Mr. Kroker for the presentation on behalf of the association and just like to comment and commend your association for the various proposals that you have put forward over the last three years with respect to this legislation. I'm sure you're pleased that most of those proposals have found their way into legislation. I'd like to thank you for your suggestions tonight that were contained in your brief.

MR. D. ORCHARD: Mr. Kroker, you made reference that you support section 12 of the act. Do you consider that there should be a compensatory clause as part of section 12?

MR. S. KROKER: In jurisdictions where there is none, it seems to have worked quite well. An impact assessment is part of the development cost of a project. In the case of a pipeline, it may be the aspect of hiring an archaeologist to traverse the route that the pipeline is going to cover. It may be one week's salary for the archaeologist, as opposed to several millions of dollars for the whole cost of the pipeline.

It is, in many cases, such a miniscule budgetary amount which is part of business expense that I do not see compensatory aspects written into the act as necessary. I believe people who feel aggrieved by certain aspects of the act do have other legal recourse that they can undertake.

MR. D. ORCHARD: What would those legal aspects, according to this act, be, Mr. Kroker?

MR. S. KROKER: Under this act it doesn't specify it, but I do believe there are things like The Expropriation Act, under which people who feel aggrieved may be able to pursue what they see as their rights.

MR. D. ORCHARD: Mr. Chairman, I'm not sure that that's applicable to this act. Section 12(2), I think you're quite familiar with the act, allows for the Minister, where

e has reason to believe, to put a cease order on any ind of a development. Now because he has reason o suspect the existence of a heritage site, if that uspicion doesn't materialize and the Minister's cease-/ork order has delayed the project, cost the contractor r the individual undertaking that work, penalty clause, elay, you don't feel there's any necessity under this ct to compensate that individual or that company who as been impinged upon by the exercise of section 2(2)?

MR. S. KROKER: Firstly, with regard to that, the Minister - and I have faith that the Minister and his taff - would have a very good reason to believe, in ther wordsm they would have an impact assessment n that area which states, yes there is material there, r the developer would have already had an impact ssessment which says, yes there is material there and would only be in contravention of further portions f the act, in which case a stop order would be issued.

From a professional archaeologist's point of view, I vould see the aspect of a Minister acting with ninformed knowledge would be basically impossible. le could not do that, as he is politically accountable, herefore, he would have experts and facts, so he would ot be acting on "a suspicion." He would have locumentation, as well as perhaps an assessment of is own, that would be applied.

MR. D. ORCHARD: Mr. Kroker that isn't the way section 2(2) reads. It doesn't read anything about the Minister as documentation to exist. It says, "where he has eason to believe," and that is wide open. I believe vhen we discussed this act you had some concerns bout this having too much club and not enough carrot, ut you don't seem to share that concern with the committee tonight.

MR. S. KROKER: The aspect of reason to believe - if have reason to believe something, that means I've ot some evidence, not just a suspicion. When I was alking to you earlier, when I was reading that I did see t as suspicion only. Rereading, I do see "reason to elieve" as the operative phrase and that, to me, means vidence.

MR. D. ORCHARD: Mr. Chairman, to summarize Mr. Kroker's last answer, he is satisfied that reason to elieve would not be exercised by anyone other than vith pretty solid evidence, so that there's no necessity o provide compensation where the reason to believe loes not turn out to be factual.

MR. S. KROKER: Yes, the reason to believe aspect, feel, is that there is evidence, there either has been n assessment done on that area prior to development r the data has been obtained from avocationists and here is evidence that a heritage site does exist in that rea which is slated for development, in which case here is why the Minister has the reason to believe. Because this evidence is there, a developer who would roceed in light of that knowledge, then would be ontravening another section of the act. He would be vantonly destroying and disturbing an archeological eritage site.

MR. D. ORCHARD: Thank you, Mr. Kroker.

MR. CHAIRMAN: Are there any other questions? Hearing none, thank you, Mr. Kroker.

The next presenter on our list is Gordon Breckman, also representing the Manitoba Archeological Society.

MR. G. BRECKMAN: My name is Gordon Breckman, and as a member of the Archeological Society, I suppose I speak for many enthusiastic amateur archeologists in the province, those whose activities will be governed by this act.

I must say, having read it, I'm enthusiastically in favour of it. I have a small problem and following a number of distinguished speakers I've heard all my minor points raised a number of times. I must say that I have great enthusiasm for the act in its present form. I think some of the problems that are addressed by this act are taken up in spelling out in somewhat more detail some of the things that were omissions in the act that is in place at the present time. I think that act gave rather unilateral and sweeping powers to the Minister and the present situation is greatly to be desired.

I note with interest, that the climate of co-operation and mutual work that's being done between the department of the Cultural, Heritage and Recreation and the amateur archeologists throughout the province, has resulted in quite a few books and pamphlets. These represent, to my mind, an ideal situation where we have the people who have these artifacts and who have collected them and treasured them, they've made them available to professionals. The result is a very well researched book where we have photographs, drawings and information about these artifacts and they're brought together in a cohesive whole which is of great interest, even to a casual reader, one who isn't professional.

I note with great interest that at the beginning of each of these books there's a long list of acknowledgments of the people whose collections have formed part of the basis for these books. I think this is really wonderful because under the proposed bill the people will continue to retain possession of these artifacts, and having copies of a book such as this is bound to arouse their interest. They have a strong feeling that their artifacts have contributed to, shall we say, a scholarly study. The result is that there's less likelihood of a loss of these artifacts when there is a book pointing out the importance of these to the individual and to the community.

I think this represents a very wonderful situation. I do not believe, as some have suggested, that having the ownership go to the Crown, of these articles, as long as individuals are allowed to retain them, will do any particular harm as far as the amateur is concerned. I do not feel this will dampen his enthusiasm. This ownership by the Crown is very common in other countries and other provinces in Canada and it's not causing any particular hardship. I think somebody suggested, through a casual reading of Hansard, not my favourite light reading - for some, it's a required part of the job, I understand - that anybody picking up an arrowhead might get into difficulty.

I can see where the Minister might have bushels of arrowheads, people who are terror stricken that they

might get into some difficulty having collected them. This is certainly not the intention of the act. However, many people are thinking in terms of physical things they can pick up and look at. They're thinking of something made out of gold and having an intrinsic value perhaps. What they don't think of very often is that a site which would be totally uninteresting to anyone that didn't have any knowledge, is of fantastic importance and interest to someone who can make sense out of it, do some carbon 14 dating on the remnants of a campfire, determine the use to which some of these, through microscopic inspection, determine the use that some of these artifacts were put to. This tells us a tremendous amount.

Sometimes flotation to get articles of cereals and vegetation from a certain layer can tell us a great deal about the climate and the foods that were available to people at that time. These are not of great value and when we're talking about compensation, is there some way that we could put a price on some of these things? In situ, and studied by someone who's going to take the time to make a detailed inspection, they're priceless. To someone who just looks at it as just a different coloured piece of dirt, they're almost nothing.

So I feel that the intent of this act, if I may speak from the amateur point of view rather than a more detailed, professional point of view of the people who have proceeded me, I think it has a very strong appeal to me as an individual. I like the suggestion I read in Hansard, that some companion legislation might make it possible to display and get interpretations perhaps of some these, shall we say, otherwise uninteresting artifacts that we have found.

In general, I wish to perhaps add my voice to those of the people preceding me, in strongly supporting this. I have never encountered anything in my reading, or in speaking to other people, I've never encountered anybody who spoke against the spirit of this act. What seems to be a problem is the mechanics and so far what I have read leads me to believe that it will encourage the present climate of co-operation. I think it will make the case for heritage in Manitoba much stronger than it has been at any time in the past.

I'd like to thank the Minister and the people who made it possible for me to address you, I think with perhaps a great deal of enthusiasm and with a minimum of technical detail.

Thank you.

HON. E. KOSTYRA: I'd also like to thank Mr. Breckman for his presentation on behalf of the Society. I note that you made reference to the publication "Journey through Time," which was something that was developed as a result of a lot of sharing of information from amateur archaeologists.

I also note you made reference to those that were recognized for their contribution on Pages 1 and 3 of that; and I also note that there's a number of those that are listed with the surname "Orchard" - and I have reason to believe that some of them may be related to the Member for Pembina - were very active in the Morden area.

I'd iike to thank you for your presentation.

MR. CHAIRMAN: Are there questions, comments? Hearing none, thank you, Mr. Breckman.

MR. G. BRECKMAN: Thank you.

MR. CHAIRMAN: Next presenter is Terry Wright, representing Pembina Mountain Clays Ltd.

MR. T. WRIGHT: Thank you, Mr. Chairman, ladies and gentlemen of the committee.

I must take a different point of view than many of your previous speakers, in that I operate, not a pipeline owner or a major real estate developer, but a small open pit bentonite clay mining operation called Pembina Mountain Clays; it operates in southwestern Manitoba.

They have certainly supported the spirit of this act and, over the years, have acted in high co-operation with the local heritage interests around southwestern Manitoba, and I think told me today that they've probably supplied two-thirds of the contents of the Morden Museum. However, they are very concerned with many of what they see as the "draconian" provisions of this act, and some of them have been articulated by Mr. Orchard, in particular, section 12 of the act, which allows a work stoppage.

Let me first explain the operation of Pembina Mountain to you. Through lands that they own, and other proprietary interests they gain through lease rights from private owners and Crown lands, they enter into a proprietary right and then they have to off to the Mines Branch to get a licence in order to conduct their operations.

Having done that and having only a mining season from May to October, they must stockpile for 12 months of operation in their plant in Winnipeg. They employ approximately 30 employees on a full-time basis. If they were hit with an order under section 12(2), after having taken those steps, it could seriously impact on their production schedules.

As has been pointed out earlier, there is no means of compensation. There are no time limits on such a work stoppage, and no compensation for it. Who is going to compensate them for the lost production time, not only during the summer months in the mining season, but perhaps not having the inventory to process during the winter months. Who is going to compensate those employees that would have to be laid off as a result of good planning gone astray on this kind of an order? So it is draconian; it is very wide.

As Mr. DeLeeuw pointed out earlier, there are no specific criteria upon which an order might be made. One of the previous speakers indicated the Minister would not act unreasonably, but I would suggest to you there's an absolute waiver provision in section 63 of the act, it gives him a right to act arbitrarily and not be accountable for it.

The other draconian aspect, as I see it, is the extent of the fines that are imposed under this act for what I see as omission that can occur, not willful commissions of over-zealous archaeologists trying to spirit off valuable artifacts, but perhaps a failure to report under section 46, of something you don't even know is of value, you could be penalized under section 69 in a very significant way.

So these are the draconian aspects of this act that has my client upset, which feels that it's acted in a very public spirited way over the years and, in fact, enjoyed a very close relationship with the heritage people in

southwestern Manitoba; in fact, told me they have three students there at this point in time viewing their operations for summer employment.

So I would ask, Mr. Minister, that you reconsider those particular sections. It's not the spirit of the bill that we are being contrary to, but some of those provisions, it certainly would impact on the size of the operation of my client, and I'm sure many others in similar ways. We talk about measuring the cost of an impact assessment in small dollars for houses, but the cost of such an impact assessment on my client would be significant in its overall operation.

I suggest, as Mr. DeLeeuw did to you earlier, that that cost should be born by the public who is going to benefit from such an assessment. Those are my points and I'm open to any questions, Mr. Minister.

HON. E. KOSTYRA: Thank you, Mr. Wright, and I'd like to thank you for your presentation on behalf of Pembina Mountain Clays. I would ask you to pass on to your clients that we fully recognize the co-operation that's existed between Pembina Mountain Clays and the local community in the area in which they operate, in terms of their attitude with respect to the artifacts that have been unearthed in their operations. I can assure you that nothing in this act will allow that co-operative situation between them and the local community to be altered.

With respect to your comments with respect to the fines, are you aware that the fines that are contained in this act are the same that are contained in The Clean Environment Commission Act?

MR. T. WRIGHT: I haven't made that comparison, but I accept your comment on it.

HON. E. KOSTYRA: Thank you, no other questions.

MR. CHAIRMAN: Other questions? Hearing none, thank you, Mr. Wright.

MR. T. WRIGHT: Thank you.

MR. CHAIRMAN: Is Eric Robinson, Executive Co-ordinator, Brotherhood of Indian Nations here? Anybody else, unnamed person who may wish to make presentations under Bill No. 16, The Heritage Resources Act? Hearing none, we proceed to the next bill.

BILL 36 - THE MORTGAGE DEALERS ACT; LOI SUR LES COURTIERS D'HYPOTHÉQUES

MR. CHAIRMAN: Bill No. 36, The Mortage Dealers Act. Available are some copies of written presentations made from MARL, but will not be personally presented I understand.

The first person on the list is Mr. Frank Cvitkovitch, Legal Counsel, Mortgage Loan Association of Manitoba.

MR. F. CVITKOVITCH: Good evening, Mr. Chairman. I have with me also Mr. Greg Anderson who is the president of the Mortgage Loans Association and is currently with Credit Union Central in executive position and also manages the Buffalo Credit Union.

I see many familar faces around the table and probably those who are familar are aware of the Mortage Loan Association, but there are some new faces. I might just mention that the Mortgage Loan Association is made up of approximately 35 members, and those members encompass all of the banks, trust companies, life insurance mortgage departments that are in Winnipeg and some of the credit unions, including the Credit Union Central and the Society - I'm going to have trouble with that one - I'll say the French, Credit Union Central.

In addition to those members, we have as associate members and observers who participate in our deliberations Canada Mortgage and Housing Corporation, your own Manitoba Housing and Renewal Corporation, the Winnipeg Real Estate Board, the Mortgage Insurance Company of Canada and the New Home Warranty Program.

Our association has been in existence for approximately 70 years. One of its main objectives has been to deal with government legislation and comment on it from an industrial point of view.

Mr. Chairman, I had submitted a written brief which I had dictated yesterday being aware of The Mortgage Dealers Act, but not being aware at that time of Bill No. 58, The Mortgage Act. I'm not sure whether this is the appropriate time, but I would like very much, Mr. Chairman, if it were possible, after I finish my comment on The Mortage Dealers Act, if we could go to Bill No. 58. I believe I'm the only other person indicated as having a submission for that bill, so we could deal with it at the same time.

MR. CHAIRMAN: Is that agreeable to the committee? (Agreed)

Leave is granted.

MR. F. CVITKOVITCH: Thank you, Mr. Chairman.

As you are aware, Bill No. 36, The Mortgage Dealers Act has taken more than two years to arrive at the Legislature. Ordinarily, that might be an unusual and an unnecessary delay. However, in this case, these efforts have resulted in the formation of laws which well reflect the experience and concerns of government, public and business. Usually our association, as spokesmen for the mortgage industry in Manitoba, presents a brief to committees of the Legislature, pointing out technical concerns and requesting revisions to the bill.

Today, we are pleased to say that we are satisfied with the act. I'm referring here, of course, to The Mortgage Dealers Act. The procedure which your government has followed, Mr. Chairman, of a draft proposed act being circulated for comment and review is an excellent approach. We commend the government and, in particular, the government staff in the Securities Commission office and the Department of the Attorney-General. We have had several open and useful discussions, and these have resulted in many changes from the first and second drafts, which we believe make the act more appropriate while, at the same time, providing for the principles which the government is concerned about.

We appreciate the opportunity afforded to business and public to participate in the details of legislation.

We encourage government to use this procedure of draft legislation more frequently, particularly where there are technical concerns which industry should have a reasonable time to react to and discuss with those responsible for drawing legislation.

I would add, Mr. Chairman, that is respectfully submitted. It may sound, in relation to the next bill that I wish to speak on, a little tongue in cheek. But I want to say very sincerely, it was intended sincerely that the procedure of draft legislation, particularly in an area of technical concerns to the industry with concerns for the consumer and the investor, we have been able to have meaningful meetings. Without getting involved into the principles of the thing with the legislators, we have been able to deal directly with the people involved with enforcing.

That, Mr. Chairman, is our submission with regard to Bill No. 36.

MR. CHAIRMAN: Mr. Cvitkovitch, you may wish to proceed with Bill No. 58, or just Bill 36.

The Honourable Attorney-General.

HON. R. PENNER: I think now would be an opportune time, I'm sure, to thank Mr. Cvitkovitch for his remarks. I may not be quite as enthusiastic after his remarks on The Mortgage Act. However, I think that we'll be able to find some common ground there as well. But certainly it has been a pleasure working with the association and a whole number of other institutions in the, I think, over two years that have gone into the development of this piece of legislation. I think he's right about the strengths of the consultative process.

BILL 58 - THE MORTGAGE ACT; LOI SUR LES HYPOTHÈQUES

MR. CHAIRMAN: Mr. Cvitkovitch.

MR. F. CVITKOVITCH: Mr. Chairman, may I now speak to Bill No. 58 then?

MR. CHAIRMAN: Leave has been granted.

MR. F. CVITKOVITCH: Thank you.

Bill No. 58, Mr. Chairman, is just the opposite to what I have said with regard to Bill No. 36. Bill No. 58, I give you right here. I've got 35 copies, courtesy of the department. I am very appreciative of that. I got them by courier at about 3:30 this afternoon. I was aware of the bill this morning, as I sat and waited for my opportunity to make my presentation. I considered disposing of the presentation on Bill 36, but I thought better of it because, as I say, usually we are concerned with criticizing the legislation and I thought when we had something positive to say, like about Bill 36, we should say it.

But I suggest to you that Bill No. 58, Mr. Chairman and members, is a far-reaching bill with regard to mortgages. The Mortgage Dealers Act, which has taken two years to pass and to hone down into the proper form, deals with relatively few mortgages in this community. By that I refer you to the fact that, under The Mortgage Dealers Act, the banks, the trust companies, the credit unions, the life companies are all exempted. They are exempted, because they a already regulated. So we have spent a great deal time in working out an act in which I think the orgi intent was to protect the investor in mortgages unc The Mortgage Dealers Act and to deal with the sm private mortgage lender.

Here we are with Bill No. 58 and, in section 26(1) the bill or the amendment I should say, to the act says "every mortgagee." "Every mortgagee" is talki just exactly in those terms. We are talking about eve mortgage loan will now be subject to these requiremer some of which, I can tell from just looking at them ov the last hour or two, are requirements that were Schedule A of The Mortgage Dealers Act or T Mortgage Brokers and Mortgage Dealers Act. But ve few lenders were involved in providing that type statement, as required under The Mortgage Deale Act. Now that is not to say that mortgage lenders d not disclose these terms.

I had prepared and I had started working on th about three weeks ago with one of the Deputy Ministe of the department to obtain copies from the vario members of the association of the kind of material th they use to disclose their mortgage terms to th borrower. I understood that what we would be hopir to do would be to dialogue on what the consumer receiving now, what he needs, and how best to g about doing that without confusing him with anoth form.

As a lawyer in private practice I now spend, it seen to me, a half-an-hour longer with a borrower describir to him the terms of the mortgage, because I've got statement of disclosure in some cases, not all case but, under those banks that refer to The Bank Ac they have a statement of disclosure. They have commitment letter, and then we have our mortgag document. I think the consumer is baffled by the tim he gets finished, and I am tired.

I suggested to the department that if you were goir to come out with something that was effective for th public and the consumer, one should go so far a perhaps could look at either the mortgage documen or at least what they are getting now in terms of th commitment letters that most of the major lender provide, and determine if that is satisfactory.

Now I'm sure that the Attorney-General and his sta will indicate that, if you are already doing these things why not continue to do them in the format that w have here? Frankly, because of the time constraints we're not sure we are already doing all of these things or whether the way that we do them would comply wit this new requirement. It says that this information wi be given before the mortgage is signed, and it will b furnished either to the mortgagor or to the agent o the solicitor.

Now I'm informed today by communication from Mr Graeme Haig, the legal counsel for the Winnipeg Rea Estate Board, that this bill was news to them. He ha been informed of it at 2 o'clock this afternoon. He i concerned and asked me to express that concern witl regard to the responsibility and the liability of agent under this act. They have not considered it previously because they were not aware that they would be required, in some fashion, to have a liability with regard to mortgage lending.

I'm also informed by Mr. Graeme Garson who is here to make a submission later, the Executive Chief of the

aw Society, that the Law Society was not aware of ıe act. There is a section, actually two sections, that elate to the solicitors involved, and could create abilities and perhaps even create a conflict.

Again, I refer to 26(1) which says "the solicitor of ıe mortgagor." The solicitor of the mortgagor, in many ıstances, is also the solicitor of the mortgagee, robably in most instances is the same solicitor. There ıay be a problem and there may not be, but the ifficulty is, as Mr. Garson said to me, give me some me to think about it.

We have not, Mr. Chairman, I submit, received that me. I am not sure what the rationale is in regard to ur not receiving time, although I do realize that the ct is to come in force on proclamation and, therefore, could be timed after discussion. I am afraid that once ıe act is inscribed in stone, when we try to talk about exible regulations, we'll find, as draftsperons will, that ıey'll go back to the act and keep referring to sections ı the act that will perhaps limit the discussion in terms f the regulations.

If you do not proceed - and our recommendation ould be to allow the bill to simply stay and not proceed ırough third reading - what would be the negative ffect to the consumer or the community at large? As ır as we can determine as an association we have, I elieve, two members out of 35 who are what you might ategorize as mortgage brokers and who presently use Schedule A. Those people, in terms of their format f business, will I think undoubtedly continue to follow ɔme form of disclosure of those terms.

We have two of the five banks which presently use ıe form of Statement of Disclosure prescribed by The ank Act. They're not going to change. We have, we elieve, all of our other members providing the detail f the terms of their mortgage loan, either through a ɔmmitment letter to the borrower or through structions to the solicitor. We believe most of those ırms are what would be required in the act.

In addition to the fact that we cannot see any hardship efalling the community if The Mortgage Dealers Act ets passed and The Mortgage Dealers and Brokers ct is repealed and Schedule A dies, we cannot see ıy problem because we can't see anyone out there ally relying on Schedule A. We do think that, if the gislation comes in now, it would likely be the first ne that somebody tried to draw on new legislation ı a new item and was absolutely correct, and had ɔt had the benefit of some feedback from the industry ıd the community that deal with it. It's not only the ortgage loan industry but the legal profession and e Real Estate Board which should be reacting to this aterial, because they are the people who deal with e consumers on it.

Mr. Chairman, we would submit therefore that, if this ere allowed not to proceed, it would not endanger e consumer and at the same time it would allow us continue the dialogue that we had started with your epartment to come up with a format or an outline ıat could be followed that would permit for a ɔmprehensive information package to go to a borrower at would be useful and wouldn't simply be a copy the federal legislation or a copy of our old provincial gislation, which actually was designed to protect the vestor and not to protect the borrower many years ɟo.

Mr. Chairman, that concludes our submission.

MR. CHAIRMAN: Are there any questions from the members of the committee or comments?

The Attorney-General.

HON. R. PENNER: Thank you, Mr. Chairperson.

Just a word of explanation, the criticism is well placed, and I accept it. The reason why circumstances worked out the way they did is that, as we move towards the final stages on The Mortgage Dealers Act, we realized that it would be inappropriate of course, or at least it appeared to us, to have the disclosure provisions from the old act replicated in the new Mortgage Dealers Act. Mr. Cvitkovitch has adverted to that, and is aware of it. So then we began looking at the companion piece of legislation, amendments to The Mortgage Act to provide disclosure.

It seemed appropriate, because disclosure is a very important piece of consumer protection, to have disclosure provisions in The Mortgage Act. It's true that, as these were developed, there was insufficient time to consult, and the points that have been made with respect to the position of agents and solicitors are well taken. Indeed if we proceed - note I say, if we proceed - it would be my intention to bring in amendments - I have discussed this with Mr. Birt, and these are some of Mr. Birt's suggestions as well - that would remove the potential liability of agents, including real estate agents and solicitors.

But that still might not meet fully the objections raised by Mr. Cvitkovitch, and I will simply say at this stage that I'm open to considering the point that he's made of some delay in proceeding with this. I just want to reflect a bit on the impact of losing, on the one hand, any legal liability with respect to disclosure and not replacing it with some, at least, interim provision.

Mr. Cvitkovitch, I take it - now I'll ask the one question - you're suggesting that we rely on the good will, as it were, or at least the continuation of a practice which has developed in the main throughout the industry. But you're not saying that everyone in the industry, in fact, does provide disclosure of true cost of borrowing?

MR. F. CVITKOVITCH: Mr. Chairman, first of all, if I can go back to the remark about replacing one and meeting the amendment to the other, we have made several detailed submissions on The Mortgage Dealers Act. In every one of those submissions, we have highlighted the fact that we are concerned about what are you going to do to The Mortgage Act.

We have, frankly, had some difficulty with that, because the Securities Commission was responsible for The Mortgage Dealers Act but they weren't responsible for The Mortgage Act. There has been some problem in terms of finding someone to dialogue with on that until The Mortgage Dealers Act actually was introduced in a final form at this Session. So we have been aware of it, and we have been endeavouring to make the government officials aware that is a concern.

In the same vein, those officials, I believe, have been concerned with the legislation, thinking that every lender was using this Schedule A or that every bank was dealing with this Statement of Disclosure under The Bank Act. That's a relatively new animal. It's only come

about in the last two or three years as an amendment to The Bank Act that's been required.

Now every bank is not doing that in that precise form but, as the members no doubt have noted right now, the mortgage industry is highly competitive. There are all kinds of deals to be made in terms of varieties of interest rates and terms and even things like legal costs are up there in terms of where you should get your mortgage. In that aspect, I think that the consumer of today is much more knowledgeable in terms of what he is looking for and what he should get.

As far as I am aware, again in talking to your officials, there was not a problem of complaints with regard to consumers right now in the information that they were getting. It was more a matter of, well we are going to, as a matter of housekeeping, move Schedule A into The Mortgage Act. Then when we confronted them with the fact that most people don't use Schedule A, that it isn't an all-encompassing thing and be careful as to how you're going to bring it in, we were in that situation where there really wasn't anybody to talk to about bringing it in.

I have suggested, in terms of disclosure, one of the important considerations that your government might want to take into consideration is renewals of mortgage, because most mortgages now are for a short term. Then they are renewed, and the terms are changed again, but your legislation is providing basically for that original mortgage.

You may want - and I may get in problems with my client on this - to consider something farther reaching on that in terms of the kind of information a consumer is entitled to get. It was that kind of discussion that I anticipated. Myself and also the members of our association who deal directly with the public would be afforded that chance to deal with your officials before there would be anything like a detailed amendment of the nature of this amendment.

HON. R. PENNER: Thank you very much.

MR. CHAIRMAN: Other questions?
Thank you, Mr. Cvitkovitch.

MR. F. CVITKOVITCH: Thank you, Mr. Chairman.

BILL 37 - THE PUBLIC SCHOOLS ACT; LA LOI SUR LES ÉCOLES PUBLIQUES

MR. CHAIRMAN: The next bill will be Bill No. 37, An Act to amend The Public Schools Act, and the presenter will be Murray Smith, President, Manitoba Teachers' Society. There are some written presentations to be distributed.

Mr. Smith.

MR. M. SMITH: Thank you, Chairperson.

Perhaps before I start. I should clarify that I am now the past president of the Manitoba Teachers' Society. Normally, this presentation would be made by our president, but Vaughn Wadelius is in Montreal for the annual general meeting of the Canadian Teachers' Federation, together with all of the table officers except myself. So being the most expendable of the table officers, I am here.

I'm accompanied by Mr. Glen McRuer, who is the research analyst with the Manitoba Teachers' Society, one who has done a great deal of work on education finance.

The Teachers' Society welcomes the opportunity to appear before this Committee of the Legislative Assembly to comment on Bill 37. Key alterations are being proposed for Manitoba public school finance in the four pages of Bill 37, and the Manitoba Teachers' Society will respond to each of these initiatives.

The Repeal of Operative Factors Associated with the Education Support Program to accommodate the Government Support for Education Program

The primary purpose of Bill 37 is to enact provisions accommodating the introduction of the new public school finance model, the Government Support for Education Program (GSEP). This new model is being implemented during the 1985 fiscal year of Manitoba public schools which commenced in January, 1985.

The Manitoba Teachers' Society endorses several of the features of the GSEP, most notably the funding component which equalizes the revenue capacity of the special levy for education, and thereby strengthens the model of public school finance utilized in Manitoba.

Most of the references in The Public Schools Act being repealed or amended by Bill 37 were adopted as legislation in the form of Bill 56 of 1981 which provided authority for the introduction of the Education Support Program. The ESP served as the provincial system of public school finance from the 1981 fiscal year to the 1984 fiscal year.

A positive feature of the ESP was the elimination of most of the sporadic, year-by-year application of education finance policy by the Government of Manitoba which had weakened the Foundation Program during the 1970s. While certain of its approaches toward the distribution of educational funding were imperfect, and certainly the society commented on them, the financial model of the ESP did serve to define a continuing method for public school finance.

Three tangible factors on which the ESP was based can be cited. The ESP specified two formulae within The Public Schools Act for purposes of determining provincial support levels in subsequent fiscal years. The total value of financial support from the Government of Manitoba in any future fiscal year could be calculated using the formula set out in the existing section 180. Similarly, the total value of financial support from the Provincial Government for which each school division and district would be eligible in any given fiscal year could be calculated using the formula set out in the existing section 172 of the act. A third determining factor in the existing section 181(1) of The Public Schools Act requires at least 85 percent of the cumulative amount of recognized or eligible expenditures of Manitoba public schools in each fiscal year to be met by the annual value of the direct Provincial Treasury contribution from the consolidated revenues combined with the value of revenue derived from the provincial education levy.

An objective of the ESP, therefore, was to extend the system of public school finance beyond an annual decision-making process, often applied retroactively, to a longer time frame consisting of several fiscal years. Such a longer perspective enhanced familiarity with a complex part of Provincial Government finance involving

many millions of dollars. The education community of Manitoba could study the known features of the funding model, come to understand its provisions and commitments, and plan the development of necessary education programs and related services over a series of years.

The Manitoba Teachers' Society recognizes that the advent of the GSEP both introduces new funding devices and accentuates existing measures of provincial financial support which will benefit the operation of Manitoba public schools. However, the proposed amendments as presented in Bill 37 seek to withdraw the tangible features of a model of public school finance, utilizing formula calculations to designate the revenue entitlements of school divisions and districts for a series of fiscal years. These amendments will return Manitoba public school finance to the approach existing prior to the ESP, a more immediate or spontaneous approach of year by year decision-making regarding the value of financial support. For example, Bill 37 proposes to repeal the existing references and calculation factors in the act pertaining to "eligible expenditure," an important determining factor in the application of the ESP. There are no definitions or calculations proposed by Bill 37 for "supportable expenditure," the parallel key feature in the application of the GSEP. In addition, section 172 and section 180 are being removed from the act without being replaced by new modular factors pertinent to the GSEP. Section 181(1) is being modified to remove any reference to a required proportional contribution by the Government of Manitoba toward the annual cost of operating public schools. In that clause, the mechanism will be the same, but there is no longer any stated guideline of 85 percent or any other figure.

Bill 37 proposes to repeal the descriptive statutory provisions which determined the former provincial system of public school finance without introducing new statutory provisions to define the operation of the incoming provincial system. Such an approach could act to foster uncertainty within the educational community about the education finance policy intentions of the Government of Manitoba in each subsequent fiscal year. It is not possible for school divisions and districts to plan the development and the implementation of quality educational services within the time lines of a single budget year. A longer time frame is essential. Yet there is no evidence of such operative parameters for the GSEP contained in Bill 37. It is for this reason that the Manitoba Teachers' Society has serious reservations about the approach taken in the bill to amend The Public Schools Act to accommodate the GSEP. Perhaps I should emphasize that those reservations are not so much with the GSEP itself, as with the legislative provisions introduced to accommodate it.

The Annual Date for the Submission of School Board Preliminary Budgets to the Public Schools Finance Board

The annual date for the submission of preliminary budgets by school divisions and districts has been February 1st. The amendment proposed in Bill 37 seeks to permit the Public Schools Finance Board the latitude of setting a date each year for the submission of these preliminary budgets. The amendment introduces the potential for ad hoc determination and for varying dates to be set each year. The budget submission date will become less well-known and familiar if it is subject to periodic alteration. In addition, there is equal potential for the budget submission date to be extended further into each fiscal year.

The intent of the alteration proposed for section 178 by Bill 37 is unclear.

If the purpose of the amendment is to alter the conventional January to March time frame of school board budget preparation so these budgetary estimates are determined earlier, by the month of December, the society endorses this aspect of the proposal. However, the society recommends that section 178 of the act should continue to designate a precise date for the submission of preliminary budgets, for example, January 1st.

If the purpose of the amendment is to delay the school board budget preparation process even further into the applicable fiscal year, the society cannot endorse such an implication. The present approach to budget preparation by Manitoba school boards is already late in that it encroaches upon the opening months of each fiscal year. Estimates are prepared and adopted between January and March during the first quarter of the actual fiscal year of application. The submission of preliminary estimates to the PSFB should not be permitted even later during the fiscal year than February 1st. The budgets of school division administrations detailing categories of revenue and expenditure for the fiscal year should not continue to be in a preliminary or preparatory stage at a point which is well advanced into the actual current fiscal year of operation. The continued effects of retroactive budgeting inhibits sound and meaningful, financial planning which, of course, means educational planning.

In the opinion of the Teachers' Society, if the fiscal year for Manitoba public schools is to continue to parallel the calendar year, then the preliminary budgets for each approaching fiscal year should be set during the month of December, and submitted to the PSFB by no later than January 31st.

The Repeal of Section 190, Provisions for School Divisions within the Unicity of Winnipeg

Section 190 of The Public schools Act provided for transitional financial support from the Government of Manitoba to those school divisions located within the Unicity of Winnipeg on the occasion of the elimination of the Greater Winnipeg Education Levy in 1981. This provision of The Public School Act has served its purpose and is therefore no longer required.

The society endorsed the elimination of the Greater Winnipeg Education Levy in favour of the enhanced revenue equalization capacity of the provincial education levy implemented in 1981. Similarly, the repeal of this transitional measure is endorsed.

Thank you for your attention and consideration of these points.

MR. CHAIRMAN: Questions, comments?

The Honourable Minister.

HON. M. HEMPHILL: Thank you.

I want to thank Mr. Smith for the presentation. The Manitoba Teachers' Society has given a great deal of time and a great deal of attention, I think, to

participating in the decisions that were made in going from one major financial program for funding education into another. We've greatly appreciated both the time that they've put into it and a number of the suggestions that they have made, which I believe many have been incorporated as the decisions that came from other educational institutions have made it a much better program.

A couple of comments and then perhaps a question or two. In terms of the date for the final budgets being in, the reason for removing the February 1st date certainly is not to allow further delays for school boards getting their budgets in; in fact, it is the exact opposite. We feel that the February 1st date is late, as I believe you do, and doesn't give us really very much time in two weeks to get information back to boards that they need prior to finalizing their budgets on the 15th of March.

So the removal was for that purpose, and we found this year that one of the keys was our giving them adequate information about what money they were getting in advance to their ever having received that information before, which then made it possible for them to get their budgets into us sooner. Almost all the boards had their budgets in by January 15th.

So that what we are trying to do is speed up the process, although we don't have the date in. I suppose we could consider that in regulation and may do so. The expectation is that it's going to speed up, and boards are going to have their budgets in much sooner and allow us more time to provide information back to them.

I think the other major point - there were a couple of major points - one was the lack of definition in the legislation. I believe you said your concerns are not really related to the program itself but to some of the provisions in legislation. I was wondering if you were aware that some of the definitions that were previously in legislation, such as eligible expenditures, are now going to be defined in regulation.

Now, we don't have eligible expenditures. As you suggested in your brief, we now have supportable expenditures which are based on the previous year's eligible expenditures. Those will now be defined in regulation instead of being defined in legislation.

We're doing this in a number of cases where the definitions were previously in legislation and will now be in regulation. I think there was a reason for that. One is that we have more flexibility when we define in regulation. I think that we've got a brand-new program that's in place, and we have indicated we're quite open to receiving feedback and information from the educational community about disadvantages and advantages, and quite prepared to make reasonable changes where they are appropriate. We know that it's easier to make those when it's defined in regulation. So I think it's important to know that we haven't ruled out the definitions completely. They are just contained in another area.

The other, I think, really important point that you made that i want to clear up is the question of the size of the program. You were concerned that previously the old program was guaranteed that at least 85 percent of the eligible expenditures would be covered in each fiscal year. Mind you, that's 85 percent of the eligible expenditures in 1980. We have made a major change that I'm sure you're aware of, that it is now based on the previous year's expenditure, which I think is a much better position for boards to be in, instead of the expenditures of four years previous.

But what we certainly do not want people to feel is that, because the 85 percent has been removed, there is any intention to downgrade the size of the program. That guarantees the size of the program at 85 percent of the eligible expenditures in 1980. We have no intention of altering or reducing the size of the program.

I think we have a situation where we have made a commitment to move towards the principle of 90 percent of supportable expenditures which now take the place of eligible expenditures. Because we have indicated this year that it is difficult at this time for us in terms of availability of resources to know what will be available and when . . .

MR. A. KOVNATS: Mr. Chairman, on a point of order, not that I want to stop the Honourable Minister, but I think this is a time for questions for clarification, not for lectures. I think that . . .

HON. M. HEMPHILL: I'm answering questions that he asked.

MR. A. KOVNATS: You're answering questions? I don't think the Minister's duty is to answer questions at this hearing.

MR. CHAIRMAN: The purpose of the committee is to hear presentations from members of the public.

MR. A. KOVNATS: The Attorney-General just sits there. When it's somebody else, he says something. Why wouldn't he say something now?

HON. R. PENNER: We rely on you. You're good at it.

MR. A. KOVNATS: I know.

HON. R. PENNER: You know? And why would I deny you your role as an opposition . . .

MR. CHAIRMAN: This is not a forum for debate or anything; it's a forum for questions and answers.

HON. M. HEMPHILL: I can make a very quick question. Is he aware that the Provincial Government has made a commitment to move towards 90 percent of supportable expenditures? They will be moving towards that principle as quickly as possible when resources are available.

MR. M. SMITH: We're aware of that and we certainly applaud it, and hope you can move faster in future years.

MR. CHAIRMAN: Other questions?

The Member for Morris.

MR. C. MANNESS: Mr. Chairman, I don't certainly fault very much of this brief. Without sounding too self-congratulatory, it sounds an awful lot like something that I said in this House with respect to Bill 37.

But I would ask Mr. Smith if his main concern isn't he fact that because the new formula isn't placed within he act, that the concern is that the Government of the Day may bring in ad hoc practices and change support of education funding at their own whim and desire?

MR. M. SMITH: That remains a possibility when it isn't n the statute. I think from the standpoint of division ınd district administrators and boards who are planning heir programs for the coming year that there is merit n being able to foresee what the legislation provides ınd knowing over a span of three years or five years hat they can predict in broad terms, at least, what will ›e coming from the province and thereon plan their ›wn programming and expenditure patterns. We keep ;aying - that is, we in the Teachers' Society - that ›lanning is a very important part of educational ıdministration. Anything that facilitates planning is, we hink, an improvement.

MR. C. MANNESS: I won't belabour that point, Mr. Chairman, but I will ask Mr. Smith, as a representative of the Manitoba Teachers' Society, how he envisages he government dealing with those school divisions who ıre now enjoying support in 1985 under the variable ›lock system? Does the society have any idea how they will be funded in 1986, given that it's not known at this ›oint in time what formula will apply in support of their unction?

MR. M. SMITH: We remember the Minister's response when that question was put to her by division epresentatives, which was that it was at least possible hat another transitional feature would need to be ıcorporated. It seems to us that may well be necessary.

MR. CHAIRMAN: Other questions?
The Member for Niakwa.

MR. A. KOVNATS: A matter of clarification, I have two ›ages No. 8. Can you tell me who didn't get one?

MR. M. SMITH: You're not missing a page, though?

MR. A. KOVNATS: No, I have two.

MR. M. SMITH: In that case, I exempt you from the ›bligation to read Page 8 twice.

MR. A. KOVNATS: Okay.

MR. M. SMITH: Oddly enough, this copy also has two.

MR. CHAIRMAN: Other questions? Hearing none, ıank you, Mr. Smith.

MR. M. SMITH: Thank you, Mr. Chairperson.

MR. CHAIRMAN: The next bill under consideration is ;ill No. 40, The Workplace Innovation Centre Act; Loi ur le Centre d'innovation des lieux de travail. The resenter is Mr. Ben Hanuschak, representing the Manitoba Progressive Party.

BILL 55 - THE LIQUOR CONTROL ACT; LA LOI SUR LA RÉGLEMENTATION DES ALCOOLS

MR. CHAIRMAN: The next bill is Bill No. 55, An Act ›amend The Liquor Control Act; Loi modifiant la loi sur la reglementation des alcools. The person on our list is Bob Sparrow, Vice-President of the Manitoba Hotel Association.

MR. B. SPARROW: Mr. Chairman, committee members, we appear before this committee this evening in support of the proposed amendments to The Liquor Control Act contained in Bill 55. Although the changes are of a technical nature, they are nonetheless realistic, and we believe prove to be beneficial to both the public of Manitoba and to the industry.

However, we are surprised and somewhat disappointed that in introducing these changes no consideration seems to have been given to amending section 131(4)(b) of the act. This section prohibits the sale of lottery products on commercial, licensed premises, while it does not impose the same restrictions on private clubs.

I am sure you are aware that Manitoba Hotel Association member hotels are extensively involved with the sale of break-open tickets supporting medical research in Manitoba. To date, the participating hotels have raised close to $7 million for this most worthwhile cause. We are given to understand that without this support the construction of the St. Boniface Hospital Research Building would not be a reality today.

During the last year, we have noticed a serious decline in sales, which is affecting all participants' revenues, that is to say, medical research, government and hotels. Officials and staff of the Lotteries Foundation share our concern. One factor we all agree will improve sales is the actual sale of the product in licensed areas of the hotel. This has already been proven in the neighbouring Province of Saskatchewan, where break-open tickets are sold in hotel-licensed areas.

Furthermore, there are those who advance the theory that the availability of break-open tickets in these areas would lead to a cutback on the consumption of alcoholic beverages. Apart from the obvious limitations placed on the consumer dollar available for entertainment purposes, the theory has merit as it is a proven fact that patrons do tend to consume less given the opportunity to engage in other activities.

In keeping with today's public concerns about alcohol abuse, particularly when it concerns drinking and driving, we would suggest that this be given more than just an off-hand consideration. Unfortunately, as we stated at the outset, The Liquor Control Act prohibits this type of activity in commercial, licensed premises due to the wording of section 131(4)(b) of the act. Again, it is interesting to note that this restriction does not apply to Legions, veterans and private clubs, etc. We would suggest that by deleting the words "or game of chance therein" from the said section it would give the Commission authority by regulation or policy to disapprove any games which would be considered detrimental or offensive while still allowing the discretion to authorizing the sale of approved Lotteries Foundation products.

The Commission's control over the operation of licensed premises over the years has proven to be a most effective method of protecting both the public and the industry against unscrupulous and questionable

methods of operation. We see absolutely no reason why the same would not apply in this case.

We would, therefore, respectfully submit that the necessary amendment be introduced at this time to allow for the sale of all Manitoba Lotteries Foundation products on licensed premises.

HON. R. PENNER: What citation did you give in the act, Mr. Sparrow? 131 . . .

MR. B. SPARROW: 131(4)(b).

HON. R. PENNER: I just want to make sure I understand the situation. At the moment, the break-opens can be sold, but only in the lobby of the hotel not in the licensed premises. The purport of the intent of this proposed amendment would be to allow them to be sold inside the . . .

MR. B. SPARROW: Licenced areas, yes.

HON. R. PENNER: Could you just give me the wording that you're proposing again, 131 . . .

MR. B. SPARROW: 131(4)(b) presently reads: "Except in the case of a military canteen or club, allow any other person to play any game or sport, other than a game or sport authorized by the Commission or a game of chance therein." We were requesting that we delete "or a game of chance therein."

HON. R. PENNER: First of all, I would like to thank Mr. Sparrow very much for his submission, and to recognize that I did receive a brief from the association on this, and didn't have up until recently sufficient time to consult with some of my colleagues who are more directly involved. I may say that I am prepared to look at this. I'm not making a promise now. I can't, but we'll see what we can do. I'll have another look at it.

MR. CHAIRMAN: Thank you. Other questions? Thank you, Mr. Sparrow.

The next presenters are Dr. Lyonel Israels and Terry Wright, Medical Research.

MR. T. WRIGHT: Mr. Chairman. Dr. Israels couldn't be with you at such a late hour, but I am appearing on behalf of the Manitoba Teaching Hospitals Research Association and also authorized on behalf of Dr. Israels, who is President of the Manitoba Research Council, I believe, is the body.

We're really appearing on behalf and in support of the Hotel Association's proposal to the amendment to section 131(4)(b), and suggest that we would certainly welcome and thank the Attorney-General for his comment, and would press him into action in that particular vein. This money is sorely needed for medical research in this province, and this government had the wisdom of allowing the sale of Nevada tickets and the proceeds thereof to be funnelled into medical research. We are still a very poor province in relation to the others in the amount of money we spend on medical research, and this would enhance that resource which again is sorely needed. We would urge you to respond to the request.

Thank you.

MR. CHAIRMAN: Questions?

The Member for River Heights.

MR. W. STEEN: Mr. Wright, I heard Mr. Sparrow's reading of how the amendment should be read, and he mentioned "clubs" and then he went on to mention the games of chance, and said that the games of chance would have to be eliminated from the existing act. What about clubs? Wouldn't you have to eliminate clubs in order to get . . .

MR. T. WRIGHT: No, there may be a slight modification to what Mr. Sparrow's proposal is. I haven't looked at the definitions of game of sport, and game of chance. Perhaps rather than simply delete the reference to game of chance, if it was brought up into the second line, Mr. Attorney-General, to "game, game of chance or sport authorized by the Commission," it would leave the purview of that authority within the ambit of the Commission which is really charged to look after licensed premises. I don't believe you have to do anything to "club," as it says except in the case of a club which already is allowed that permission. But I'm sure the legislative draftsmen can give us the appropriate wording to express the intent we're trying to state.

MR. W. STEEN: That was the point of asking you, Mr. Wright, was that currently clubs have the privilege of games of chance. A private hotel wouldn't be classified as a club, so you would have to eliminate the word "clubs," - right? - and have "licensed establishment," or something to that effect.

MR. T. WRIGHT: I wouldn't agree with that. I think that you could . . .

MR. W. STEEN: I don't have it in front of me.

HON. R. PENNER: I doesn't read that way. It reads in the negative, but rather than get into the draft now, if Mr. Wright, for example, would like to just write something out, no pun intended, rather than discuss it now, we'll have a look at it.

MR. T. WRIGHT: Thank you very much.

MR. CHAIRMAN: Thank you, Mr. Wright.

BILL 57 - THE LAW SOCIETY ACT; LA LOI SUR LA SOCIÉTÉ DU BARREAU

MR. CHAIRMAN: The next bill is Bill No. 57, An Act to amend The Law Society Act; Loi modifiant la loi sur la Société du Barreau. Presenters, William Olson, Graeme Garson and Don Baizley, representing the Manitoba Law Society.

MR. W. OLSON: Mr. Chairman, my name is Bill Olson, and I am the current president of the Law Society of Manitoba. Mr. Attorney, members of the committee, with me is Mr. Baizley, the vice-president of the Law

ciety of Manitoba and Mr. Graeme Garson, the chief ecutive officer of the Law Society of Manitoba.

We're here, Mr. Chairman and members, to speak opposition to this bill. We have presented and I believe ery member should have a typewritten brief, and I ın't intend at this hour to go through it in any detail. ıt I urge you to read it for some more detailed history ıd commentary.

I would like to deal with you in a minute briefly with e highlights of the background to the current situation, e reason for the change that was made by the Law ɔciety and the insurance coverage for lawyers. I would .e to deal briefly with arguments for the exemption at this act purports to create, in fact, will create; that , exempting government-employed lawyers from the ɔmpulsory, universal insurance scheme and plan in ace at present. Those two arguments for exemption and these are the basic ones, as I understand them are a saving of an expenditure of public funds initially. econdly, at present, the Government of Manitoba erives no benefit from that expenditure.

I will deal briefly as well with arguments against the xemption of government-employed lawyers from the lan. There are two basic ones. Once again, firstly - nd these are fundamental precepts in the Law Society's iew - the argument against exemption is that it 'actures the concept of universality that I understood nd the Law Society understood was dear to this overnment and most governments in western ivilizations. Secondly, it is in fact a very drastic and erious breach of the fundamental concept of the ıdependence of the bar. By that, of course, I speak ıf the legal bar.

Very quickly, Mr. Chairman, in 1973, the Law Society ɔf Manitoba implemented a compulsory insurance :cheme for the benefit of lawyers and the public in Manitoba, but it did not cover at that point in time ɜmployed lawyers. In 1982, a review was commenced ɔf that scheme for two reasons. Firstly, there was a growing concern over the plan and whether it adequately protected the public. Secondly, there had ɔeen a series of requests of the Law Society by government and other employed lawyers for an ncreasing concern they had that their employer would stand behind them at all or adequately to protect themselves against third-party claims against them, that ıs, people suing them. So it was at the request of employed lawyers, including government-employed lawyers; and secondly, an increasing concern over adequate protection of the public.

In 1983, the policy was amended to include specific coverage under that policy for the employer of employed lawyers, that is, to provide indemnification for that employer and to remove the exemptions, including government-employed lawyers. Since 1983, there have been discussions between the Attorney-General and his department and the Law Society, ultimately resulting in a request for the Society to reconsider its position.

That was done at a benchers meeting, which is elected representatives of the profession across Manitoba. The Attorney-General and the Deputy Attorney-General were invited to attend and the Deputy Attorney-General, in fact, did attend and expressed the Attorney-General's concerns and the government's concerns. The benchers, in January of this year, voted 22 to two to not alter that position, to not fracture the concept of universality, to not breach the concept of the independence of the bar, to maintain its present position. That is the backdrop then to the bill that is before you at present and which purports to do so.

We are talking in terms of coverage of defence costs and errors and omissions claims against professional persons. We aren't talking about general liability claims, but we are talking about professional persons. We are also talking about coverage under this plan for lawyers after retirement and after leaving employment. Those lawyers, under a specific provision of the plan as it exists, are covered against claims made against them as a result of things they did whilst they were still actively practising law in the employment of the government or any other employer.

One of the concerns, which I'll come to in a minute, is whether or not those retired lawyers, those people who have left the service of the government and other employers, will be covered if a year or more later a claim surfaces against them under the existing liability or other indemnity provided by the employer, the Government of Manitoba or any other employer.

There is one and only one basic reason for the change made by the Law Society of Manitoba in 1982, as implemented in 1983. That reason for change was the current plan, the plan then implemented, that is universal, covering all lawyers whether employed by government, employed by other employers or in private practice. That plan was the best benefit for the public in Manitoba. It best protected the employer, and it best protected the lawyer - the public, employer and lawyer.

The public was better protected under that plan, because it guaranteed universal, compulsory benefits; that is, ensured that every lawyer practising was insured, was insurable and was insured to certain limits, and that insurance protection was available to a member of the public who might be harmed by that lawyer's conduct.

It also ensured from the employer's point of view that the employer had coverage under that plan for the conduct of one of its employees who happened to be a professional person, a lawyer, and ensured that the employer had a source of recovery for one of its professional employee's misconduct. It benefited the lawyer better than the previous plan in that it insured, once again, their insurability, either whilst an employed lawyer or if they then left that status and became a private practitioner. It also ensured certainty of coverage for all, whether employed or in private practice. So the only reason for change was to better benefit the public, the employer and the lawyers themselves.

As I understand, the two basic arguments in support of the bill, that is, arguments for exemption of employed lawyers from the universal, compulsory insurance plan that exists, are firstly and in no order, that by so exempting there would be saving in expenditure of public funds. Two points if I may on that, firstly, the Law Society of Manitoba deals not with the Government of Manitoba in its insurance plan or in its levying of insurance costs or fees. It deals with its members, the professional lawyer who has to be licensed to practise law in the province. It doesn't deal with the government.

The government's obligation, if any exists, rises from the collective bargaining process, and a provision in a collective agreement it, the government, has entered into with its employed lawyers, whereby it, the

government, has undertaken to pay any fees or licensing costs. That, I submit, is open for the government or any other employer to go back to the bargaining table and to bargain away that obligation. That's how it got there in the first place, and that is how it could be eliminated.

The second argument for the exemption and in support of the bill, as I understand it, is that it does not provide any benefit to the Government of Manitoba or any Crown agency that employs lawyers. That isn't correct in the Society's view. There is coverage to the government and to Crown agencies through the coverage specifically provided to the employer of the lawyer. There is a right of recovery from that employer against the insurer for the acts of its employed lawyer, if it was a vicarious liability that was imposed on the employer.

It is also, we believe, no answer to say that the government or other Crown agency through a general liability policy has coverage for such misconduct of its employees, whether professional or otherwise. First of all, it is our information that there is no errors and omission coverage under any liability policy that the Government of Manitoba or Crown agency has at present. We don't have access to the policy. We have asked for access and have been denied access to that policy, but it is our information that there is no professional liability coverage for existing professionals, whether lawyers or otherwise.

It is also our information that there has been a recent instance in the courts of Manitoba where a professional person employed by the Province of Manitoba was sued individually as well as the department. The liability insurer of the Government of Manitoba denied coverage to that professional person, because the act was one done as a professional and there was no coverage therefor. We're drawing the inference, because we don't have access to the policy, that means also that there is no coverage for the acts of lawyers whilst in the employ of the Government of Manitoba.

Dealing then with the arguments against the bill, against the exemption for employed lawyers, firstly and again two points in no order of priority; the bill in fact fractures the concept of universality. It may result in differences in coverage, that is, insurance coverage or limits of coverage available to lawyers in the province to the potentially severe detriment of the public. It may force the uninsurability of some lawyers in the province. Once the universality concept is fractured, we get into a rating concept. Who are the low-risk lawyers? Who are the higher-risk lawyers? Who are not insurable at all?

Once you fracture the universality concept, it may result in the uninsurability of some lawyers, thereby reducing the availability of legal services to the public. It may be that the small firms and the rural firms will be the hardest hit by that potential difficulty. It becomes a situation where it might be propagating the concept of the strong getting stronger and the weak getting weaker.

One can readily envisage a member of the public in a rural town or rural city, such as Selkirk, wanting to obtain legal services by a local practitioner, and that local practitioner either not being there anymore because he is uninsurable or, if insurable at all, paying much substantially greater premiums for the same coverage of somebody who is located in a larger firm in the City of Winnipeg. That cost, I assume, would be passed on to the consumer, again to the detriment of that person.

The third possibility is if that lawyer is still able to exist in Selkirk and get some insurance, the amount of insurance available to him because of the risk element may result in much lower insurance coverage available to him, again to the potential detriment of a member of the public who is obtaining legal advice and services from that person if that lawyer ultimately commits a mistake to the detriment of that person, and they have to bring proceedings against the lawyer to recover, only to then find that there wasn't adequate insurance to cover the loss - fracturing the concept of universality.

The second major argument against exemption is the breach of the fundamental concept of the independence of the bar. It's extremely rare and almost unheard of that any government in Canada or elsewhere that we're aware of proposes and then passes legislation to amend an act governing a Law Society over the opposition of the Law Society. We are not talking here of the Law Society of Manitoba doing something underhandedly, surreptitiously, illegally, irresponsibly. We have here a statutorily created body, the Law Society of Manitoba, created to be self-governing by statute, carrying out its legislative mandate to self-govern, making a decision which it believes to be in the best interests of the public on full and ample notice to all lawyers and the government and other employers. After representations are made by the Government of Manitoba and other employers in a democratic process where a vote is taken, reconsidering that once again at the express request of the Government of Manitoba and, when that decision is ultimately made, that decision found in disfavour to the Government of Manitoba, then the Law Society being faced with a bill that reverses that decision reached at through a democratic process.

We are not talking of whether the decision was right or wrong. The benchers of the Law Society believe it to be right, but the Law Society of Manitoba by statute has the right to make the decision. We are here talking then of, through this bill, a direct participation in the democratic process that has been established under a statute.

We are dealing then with the self-governing body, the Law Society of Manitoba, determining that it is the professional responsibility of every lawyer to contribute to a universal and compulsory insurance plan for the benefit of the public and employers and themselves and, through this bill, the Government of the Day saying we don't think that ought to be the professional responsibility of every lawyer in the province. That, Mr. Chairman, is dangerously close to fracturing the fundamental precept of the independence of the bar. That is what this bill speaks to.

In summary then, Mr. Chairman, we have a situation where there is a benefit in a universal plan to the public in Manitoba and to the Government of Manitoba as employers and to other employers, as well as to lawyers. We have a situation where the cost of that is something that has not been imposed by the Law Society, but rather contracted for by the Government of Manitoba.

We have a situation where there are two fundamental precepts, at least in the Law Society's view, that will be breached. That is the concept of universality and

ne independence of the bar. For those reasons, the aw Society of Manitoba urges this committee to econsider the proposed legislation in light of those oncerns and comments.

Thank you, Mr. Chairman.

ION. R. PENNER: I'll come to your last point last about he independence of the bar and the democratic rocess, and ask you first to clarify for me, if you will, vhat was it that changed after 10 years where there vere no problems of the employed lawyers in jovernment and municipal and indeed some corporate awyers as well being excluded or exempted? All of a sudden, after 10 years of something that worked without all of these horrendous things that you're now telling us about, what changed in 1982 so qualitatively that nade what was previous to that fine and workable no onger fine and no longer workable?

I still don't really grasp that. Perhaps you can enlighten me. Was the plan, other than the exemptions that were changed in 1982, not universal? Was that one component that was lacking, the 40 or 50 or 60 lawyers, somehow destructive of the universality of the plan? What changed?

MR. W. OLSON: Mr. Attorney, three points, I dealt with two of them in my initial submission and I will repeat them. Firstly, direct requests by government and other employed lawyers to the Law Society of Manitoba to be allowed into the plan to have the assurance of coverage for them in the event they somehow misconducted themselves in the practice of law and without they having the assurance that their employer, whether it be government or Crown agency, stood behind them if that occurred. That's the first point.

Second, a growing concern of some of the benchers of that time that there was an increasing awareness of members and of the legal community having more accountability to all members of the public and not just to their own employer or the client that particular lawyer is serving. That really is the third point as well. The law developed in the early'80s and is continuing to develop, Mr. Attorney, whereby lawyers are now being found accountable to clients of other lawyers and other parties who are not being directly represented by the lawyer who is the subject matter of the misconduct.

HON. R. PENNER: You referred to three points I recall - well, three: the direct request by certain government lawyers; the benchers thought it would be a good thing; and some matters had changed at law. Was it not possible, as it is now certainly possible, for a government lawyer who was exempted but who wanted to be better protected because maybe he or she was doing real estate deals at home or whatever to pay the premium and opt into the Law Society plan? What prevented them from doing so between 1973 and 1982?

MR. W. OLSON: Nothing at all. They could opt in.

HON. R. PENNER: Okay, they could opt in.

Secondly, with respect to - and this is perhaps the thing I have the greatest difficulty with. We're only talking about government lawyers whose only client is their employer, the government. Do you know of a case in Manitoba or indeed anywhere in Canada where, in those circumstances, the lawyer acting only for his or her employer, the government, has incurred professional liability to a third party?

MR. W. OLSON: Not that we're aware of.

HON. R. PENNER: So there isn't a single case, although you talk about a trend in this direction?

MR. W. OLSON: Yes.

HON. R. PENNER: Finally, the independence of the bar - and, of course, that concerns me a deal, and I think Mr. Olson and Mr. Garson, previous presidents of the Law Society, would recognize and admit that the relationship between the Society and the Department of the Attorney-General has been a very healthy one, not just in my regime but preceding that as well.

Do you say that the independence of the bar goes so far - because you did talk about the government imposing by legislation, and that is part of the democratic process, its will on the Law Society, a professional, privately incorporated body or at least governed by statute. Do you say that the independence of the bar goes so far that, while the government is acting undemocratically if by statute it imposes something on the Law Society, the Law Society simply by changing its rules can force the government to buy a commodity it doesn't need?

MR. W. OLSON: I'm sorry, I don't understand the analogy. What commodity are we talking about?

HON. R. PENNER: I'll put it more simply. Do you say that the independence of the bar goes so far as that, by a simple change in its rules, it can force the Government of the Day to buy a commodity it doesn't need?

MR. W. OLSON: Again, I don't know what we're talking about when we're talking about buying a commodity that it doesn't need.

HON. R. PENNER: The commodity it doesn't need is professional liability insurance for its lawyers.

MR. W. OLSON: Not at all but, if it is the determination of the governing body of the Law Society as set up by statute that it ought to be the professional responsibility of every lawyer to have minimum coverage as every other lawyer does in the province to ensure the adequate protection of the public and to ensure the concept of universality, then that is a decision made in a democratic process which ought to not be reversed in our submission through legislative activity by the government.

HON. R. PENNER: Which, I'm sure you will agree, is equally democratic.

My final question then in response to that is that this commodity, this liability insurance with respect to which there's been no case that shows that a lawyer employed by the government and acting only for the government requires because of some liabilities on the part of the

third party, the government ought to pay that in any event.

MR. W. OLSON: It is the position of the Law Society, much as this province ought to be commended for being the leader in Canada in the implementation of the universality principle through its Autopac plan, so it ought to also abide by the universality concept in respect to its employees practising law.

HON. R. PENNER: Would you say that the universality concept with respect to family allowances should go so far that benefits ought to be paid to those people who don't have children?

MR. W. OLSON: I wasn't aware that the Province of Manitoba was in that business, Mr. Attorney-General.

HON. R. PENNER: No, and we don't want to be in this one.

Are you aware of any other provincial Law Societies which exempt their government lawyers from paying the professional liability insurance?

MR. W. OLSON: I'm sorry, which exempt them?

HON. R. PENNER: Yes.

MR. W. OLSON: Yes, there are some plans that do not include employed lawyers. Much as Manitoba was the forerunner in the universality concept in Autopac, so the Law Society of Manitoba and the Law Society of Nova Scotia are the forerunners in the universality concept in this field. But we have not done a province-by-province study of the history of the legislation in the other provinces.

HON. R. PENNER: So there are only two provinces or there would only be two provinces, if you count Manitoba in, which would have this complete coverage?

MR. W. OLSON: I believe that's so, Mr. Attorney. I think there are some differences in the other provinces, but I'm not aware of the details of those differences.

HON. R. PENNER: That's all.

MR. CHAIRMAN: The Member for River Heights.

MR. W. STEEN: Mr. Olson, you made reference to the possibility that there might be a difference of insurance coverages for small firms or independent lawyers operating if government lawyers were exempt from the plan, and then you talked about a non-insurability factor. I guess by that you meant, if a lawyer working for the government is exempt and then goes back into private practice, that person may or may not receive coverage from your carrier of the insurance program.

My question to you is: how many lawyers are we talking about with government that might be exempt? Is it a small number of your total membership or is it a fairly sizable number? The reason for that question is: is it going to make a difference in the insurance rates and coverages?

The second part of my question is: have you talked to the insurance carrier, the person that covers you, about the possibility of these lawyers being exempt? Does that carrier foresee a difference in the program that you currently have because of these people being exempt?

MR. W. OLSON: The numbers we are talking about are a little difficult to estimate, because we don't yet know how wide the net is of the definition section of the bill. For instance, we don't know whether the Federal Government-employed lawyers fall within that network or not. Assuming they do not and we're only talking about provincially-employed lawyers, Crown agencies, etc., and city, we're talking of slightly over 100 lawyers which is about 7 percent or so, there being roughly 1,400 lawyers practising or entitled to practise law in the province. If the federally-employed lawyers fall under that net as well, that would be another roughly 25, and it would be up to something like 12 percent.

In terms of the actual dollars, the shortfall that will arise in the insurance plan by reason of this exemption, if it does not include federally-employed lawyers, is some $54,000.00. That $54,000 would have to be spread amongst all other remaining members in the plan. There is only one insurance carrier in Canada who appears to now be writing into the future. There is only a second carrier in B.C., who is getting out of the business, and a third one, I guess, in Nova Scotia that's getting out of the business. There will only be one carrier that is even prepared to write at all in any of the provinces, and that is the one that we have in Manitoba at present.

At some point, if the group gets small enough, we don't know what their position will be as to whether they will maintain a universality principle at all. If they will and if the membership in the Law Society can hold together, then that would result in an increase to each remaining member of the group. If it doesn't, then it will fracture, as I have indicated. Those in low-risk areas will get coverage at lower premiums, and those who are in higher-risk areas may be uninsurable. It's happened in other jurisdictions that that has occurred.

MR. W. STEEN: Mr. Olson, I recall a few years back when a structural engineer who was on the lecturing staff at the University of Manitoba took on a part-time assignment one summer of a provincial public building for a private, practising architect. The architect, at the time, asssumed that engineer had liability insurance, and just didn't question him. As it turned out, there was a large error made, and the architectural firm had to compensate the Province of Manitoba millions of dollars for an error of a part-time engineer who, he always assumed, had been covered by liability insurance. Could you foresee a Crown agency lawyer practising or assisting a neighbour over the fence with a house deal or something in the future, not being covered, an error being made, and some problems arising for your association?

MR. W. OLSON: That is always a possibility, but that is not necessarily what we're speaking to in opposition to the bill. The concern we have is that, if the person is practising law at all, whether employed or otherwise, no member of the public or indeed no other corporate

or other entity dealing with that lawyer knows whether or not they had coverage and knows what the limits of that coverage are. As I earlier indicated, it was at the concern of the employed lawyers that this change was made, because they themselves didn't know whether their employers were going to stand behind them if, in dealing with some of the things that they had to do in their professional capacity, they might otherwise be indemnified or have insurance coverage.

MR. W. STEEN: Mr. Olson, the purpose of raising that is that today the public is aware that anybody who has a membership in the Law Society is covered under the insurance program. So therefore, a government lawyer in the future, moonlighting, perhaps may not be covered, and therefore the public may be misled.

MR. W. OLSON: Yes.

MR. W. STEEN: That's where your universality aspect comes into play.

MR. CHAIRMAN: Other questions? Hearing none, thank you, Mr. Olson.

BILL 72 - THE TEACHERS' PENSIONS ACT; LOI SUR LA PENSION DE RETRAITE DES ENSEIGNANTS

MR. CHAIRMAN: The next bill on our list is Bill No. 72, An Act to amend The Teachers' Pension Act. The first presenter is Murray Smith, ex-President, Manitoba Teachers' Society.

MR. M. SMITH: I do have a printed brief, Mr. Chairperson. I am indeed still the past president of the Manitoba Teachers' Society, and the president and other table officers are still in Montreal.

Mr. Chairperson, would you like the brief circulated before I present it?

MR. CHAIRMAN: The brief is now being circulated.

Mr. Smith.

MR. M. SMITH: It's a pleasure, Chairperson and members, to appear before this committee to convey the views on this bill of The Manitoba Teachers' Society, representing the 12,500 public school teachers of the province.

Our views are very positive. The Society was also very supportive of the last major changes to our pension plan, which were passed in 1980 under the previous administration. They provided, most notably, for an improvement in salary averaging from the best seven years to the best five years, and for inclusion of periods of disability as pensionable service.

Those amendments were well-received by our membership, and the current Bill 72 is equally welcome. Indeed, Bill 72 continues a long-standing and most valuable process of updating and improving the teachers' pension plan after extensive joint consultation on what changes are appropriate and possible. Teachers have a good pension plan, and contribute heavily to support it. They are fully prepared to pay their share of the cost of improvements.

Teachers believe all Canadians should have sound and equitable pension plans. This is reflected in policies of both the Canadian Teachers' Federation and our provincial organization. When amendments to The Pension Benefits Act were under discussion in July, 1983, the Society supported virtually all aspects of that legislation, noting that some were already matters of Society policy and most others consistent with it. Writing these standards of The Pension Benefits Act into our own act at this time only recognizes what has already been put into effect. The Society supports all such compliance provisions in Bill 72, giving emphasis to measures for automatic survivor benefits, earlier vesting and the elimination of sex discrimination.

Other features of Bill 72 reflect lengthy discussions and indeed bargaining on improvements sought by the Society on the basis of policy decisions by our membership. Being able to count educational leave as pensionable service upon payment of the full cost may not sound impressive, but it may be paid for in pre-tax dollars, and it will permit a few teachers to qualify for pensions by raising their service to the required 10 years.

Important to 1,300 part-time teachers is correction of a salary-averaging procedure which has unfairly reduced their earned pensions. This is an equity issue, one particularly important to women teachers, and the Society fully supports the solution proposed. It has the added virtue of making it reasonable to reduce workload as retirement approaches, something which may often make sense to both teachers and employing boards.

By far the most attractive component of Bill 72 to the average teacher is removal of the current penalty of 1.5 percent of pension for each year retirement precedes age 60. Reducing to 55 the age at which teachers can claim a pension based on only service and salary average will have a dramatic impact upon the way teachers think about retirement. Response to the bill in staffrooms and teacher meetings has already been clear and unequivocal.

Our members consider this change very beneficial, and are prepared to pay the extra $3 million agreed upon for the first five years, in addition to 70 percent of the additional cost from 1990 on. In terms of increased liability to their fund, removing the age penalty will cost teachers $26 million. They have also accepted, though with understandable regret, the loss of the revenue guarantee. They believe this deal is fair to both teachers and taxpayers.

Teachers will feel freer to choose between retirement or continued service, and will experience less stress either way. They value mobility within the profession and the creation of jobs for new teachers. In these aspects, more flexible retirement fits with part-time employment, job sharing, educational and other leave, and deferred salary leave plans as another means of sharing available paid employment in the profession.

Comparing the provision in Bill 72 for retirement without penalty with the corresponding provisions in other provinces may be helpful. Teachers may retire without penalty in British Columbia from age 55 with 35 years of service; in Alberta, from age 55 if age and service total 85; and in Ontario, at any age if age and service total 90. In Saskatchewan, they may retire at any age with 30 years of service. This provision is referred to as "30 and out". The Saskatchewan plan

clearly permits retirement before age 55, but only by those with 30 years.

Our plan places the emphasis upon age 55, rather than upon long service, and for good reason. Age 55 with a minimum service requirement of 10 years provides access to more teachers than does a requirement for 30 or 35 years of service. Such requirements are based on the male model of lifelong, full-time employment, and seriously discriminate against women who are far more likely to have broken or part-time service.

It is noteworthy that the proposals with respect to part-time salary averaging and early retirement attracted support from the Manitoba Association of School Superintendents, from the Manitoba Association of School Trustees and a great number of individual school boards, from faculty and students at teacher education institutions, and from a wide variety of other interested individuals. Most supporters refer to staffing flexibility and job creation as major benefits. Most anticipate substantial savings to school boards as retiring teachers are replaced by new staff at lower salaries.

Because some rather large and sometimes confusing numbers have been mentioned in the Assembly, a few comments about costs may be appropriate. Each triennial evaluation of the fund by Turnbull and Turnbull requires over a year to prepare. It is based upon a mass of material supplied by the staff of the Teachers' Retirement Allowances Fund Board. The most recent actuarial valuation comprises 42 pages of text and tables.

The cost of any proposed plan change is determined with equal care, the assumptions and arguments being clearly detailed. To provide a double check, the Society retains an actuary to review these reports and participate in the discussions. As circumstances change over the years, assumptions and projections are of course adjusted but, for now, the actuary's figures are not only the best but the only reliable figures available.

Reference has been made to the increasing cost to government of its half of the actual pensions as they are paid. It is worth remembering that this is how the province pays its share of teacher pensions. When the current structure was developed under the Roblin administration, government decided against matching teachers' contributions as they were made. This means that, although the teachers' half of pensions is fully funded, the province pays its half from current revenue, and has the use of that money until it is actually required for pension cheques.

During 1984, the province contributed $16.5 million. This is a large sum but, in constant dollars adjusted for the effect of inflation, it is minimally less than what government paid in 1976. Because government contributes its half only as pensions are paid, this $16.5 million is far less than either the $29.6 million the teachers contributed in 1984 or the $28.5 million earned from the investment of teachers' previous contributions. When you note that pensions and refunds paid out that year totalled $30.5 million, it is understandable that the total revenue greatly exceeded total expenditures, and so the teachers' fund, built up by teachers' contributions and the earnings on them grew during 1984 by about $44 million.

Our members find this reassuring. They are also pleased that, during the calendar years 1981-83, the teachers' fund moved from an actuarial deficit of $19.5 million to an actuarial surplus of $37.7 million. This large surplus makes it possible to improve the plan significantly without increasing the teachers' 7.3 percent contribution rate at the present time.

While removing the early retirement penalty is highly desired and will have substantial impact upon teachers' thinking and decisions, it may be useful to put its dollar effect in proportion. As an example, one of our members retires this June - that could be past tense now - at the age of 55 after 31 years of teaching. Removing the early retirement penalty increases this teacher's pension from 45.3 percent of final salary to 48.9 percent. That is an increase of 3.6 percent of final salary. Were this teacher single, the figures would be 47 percent and 50.9 percent, very similar. These increases are the maximum possible consequence. Those retiring at age 56 or 58 are less affected by removal of the penalty. It should also be noted this teacher has quite a long career, and that retiring with fewer years of service would provide proportionately less.

Upon reviewing the bill, two minor changes suggest themselves. First, in section 23 on Page 15, subsection 27.1(4) should not include in line 8 the number "7", because this section will have been repealed by Bill 72.

Second, in section 24 on Page 18, subsection 30.2(2)(a) should not include, starting in line 10, the words "which was not subject to any penalty for early retirement" because, in future, there will be no such penalties.

Thank you for the opportunity to appear before you in support of this most excellent legislation.

Chairperson, I would like to introduce to you and members of the committee, Mr. David Lerner, who has for several years been a member of our provincial executive and for the last three has chaired the Employee Benefits Committee, the committee which deals with pension policy. It might interest you to know that he succeeded me in that position so, between us, we represent five years of work on that committee.

MR. CHAIRMAN: Thank you. Questions?

The Member for Morris.

MR. C. MANNESS: Thank you very much, Mr. Chairman.

I only have two very short questions. I thank Mr. Smith for the brief, particularly his review of legislation in other provinces. It was one of the questions that I was planning to ask, but he reviewed it within his brief.

I would ask Mr. Smith two questions, however. If and when this legislation comes into effect, will teachers be eligible to retire at age 50 with a 7.5 percent penalty?

MR. M. SMITH: No, there is no provision for retirement before age 55.

MR. C. MANNESS: Mr. Chairman, Mr. Smith is saying that the old 7.5 percent penalty that applied, or let's say it was in the act as .125 percent per month, the 1.5 percent per year that applied for each year that one retired before age 60, that provision will now be changed. Is he saying that? Or will it still be in place for those individuals who retire before age 55?

MR. M. SMITH: Well the intent of the bill is to remove that age reduction completely, so that it will no longer apply to anyone. The minimum age at which a teacher may claim pension will remain at 55, the difference being that a teacher who does so will no longer experience a reduction of 7.5 percent because of age.

The other feature which will stay the same is that the minimum service to be eligible for a pension is 10 years.

MR. C. MANNESS: Mr. Chairman, if you just allow me one second, please, to go to 19(1) of the act, Page 23, my understanding is that 19(1), the last figure on the very last line of that section that ". . . the word "sixty" in the last line thereof and substituting therefor the figures "55." Therefore, I believe that in effect the number, .125 percent, is not being removed from the act, so now it will apply to ages before 55.

MR. M. SMITH: That's certainly not my understanding. If I could be shown the part of Bill 72, rather than the act itself, it would facilitate. But if I remember correctly, there is a section on Page 7 of Bill 72 which repeals section 7 of the act, and that is the operative clause. In fact, during some discussions of this, teachers joked that it was really not necessary to prepare a lengthy bill. We would be quite happy if there were just one sentence.

MR. C. MANNESS: Well, I'll take this up with the Minister then another day. I would wonder then why the reference to .125 percent would be left in the act under 19(1). I guess that's the question. Taking your word and the Attorney-General's word that section 7 is now being repealed, I then will take that up with the Minister another day.

Mr. Chairman, I would ask Mr. Smith whether, in effect, those teachers who elect to retire at age 55, whether they are being subsidized to any degree by those teachers who do not retire at that age, actuarially of course. The actuary has led me to believe, or at least one actuary, that there is some subsidization that takes place. Indeed those individuals who retire early are not paying their true and total costs associated with retiring at age 55.

MR. M. SMITH: That has always been true. People who retired in June of 1984 at the age of 60 were being subsidized by those who continued to teach longer; those who retired at 58 were being subsidized by those who continued to teach longer. In fact, if you compare the situation as it has been for several years with the situation as it will be if this bill is adopted, the great bulk of the subsidy was already in place. The 1.5 percent per year represented the last vestige of what will now be a neutrality with respect to age, which means that those who retire at later ages and consequently receive pensions, on average, for a shorter length of time will be subsidizing those who retire at younger ages and, on average, receive more pension cheques. That is true on any final earnings plan. Ours is not at all unusual.

MR. C. MANNESS: Mr. Smith, I was led to believe that part of the reason for the former 1.5 percent penalty was an attempt to actuarially diminish the amount by which the individual who retired later was subsidizing the individual who chose to retire early. Now the question I pose: with the removal of that penalty to zero, is not the level of subsidization from the individual retiring later to the individual who is retiring sooner, given basically the same years of service to the teaching profession, is it now not being increased?

MR. M. SMITH: Yes, that's certainly correct, and that is the wish of the teachers of Manitoba, expressed many years ago by policy resolution at their annual general meeting. It has been our policy for many years to remove that age reduction with a clear understanding that those who retire early are favoured by the system in comparison with those who retire late. That is because teachers see advantages to the profession and to the public school system in having flexibility in retirement.

MR. C. MANNESS: Mr. Chairman, I certainly have no difficulty with the democratic process within the Teachers' Society deciding to do that. Certainly within the area of greater support to part-time teachers, I think we're all in a single accord in viewing that change. I know, in discussions with Mr. Smith and the Teachers' Society, he has indicated that the membership as a whole has certainly been prepared to accept the greater costs associated in support of those individuals who are part-time teachers.

I have never ever though seen it printed or spoken to. Maybe it has been within the councils of the Teachers' Society, but not within the debate anywhere that, in effect, there is a high level of subsidization between the individual wishing to go further, work for a further period of time, relative to the individual that wishes to retire early.

There is no question.

MR. M. SMITH: I would like to comment on that point, if I may. The Teachers' Society takes extraordinary efforts to acquaint its members with the provisions of various benefit plans, including the pension plan. I would hesitate to suggest the number of meetings held over, say, a 10-year period with teachers in various divisions and districts.

One of the questions which traditionally comes up is: what about this 1.5 percent per year penalty? Our traditional stance has been that it is not best identified as a penalty, although that is the way the retiring person naturally perceives it, but as a portion of the actuarial cost of early retirement. We explain very carefully to our members that, if the person retiring at, say, age 60 instead of 65 had the pension reduced on an actuarial basis, the reduction would be very much higher than 1.5 percent per year or, as it formerly was, 3 percent, because it came down first to 3 and then to 1.5 and now, hopefully, to 0. But even at 3 percent, it covered only part of the cost of the extra period of retirement which, on average, the early retirer would enjoy.

I think that many of our members will understand that, and were conscious of it when they voted for early retirement option as something that they wanted teachers to have.

MR. CHAIRMAN: The Member for River Heights.

MR. W. STEEN: I don't have a copy of the bill in front of me, and I can't recall a couple of weeks ago when

it was introduced. Does the retiring teacher's final payout, retirement income, is that based on the average earnings of their best five years?

MR. M. SMITH: The best five years of the last 12.

MR. W. STEEN: Of the last 12.

Therefore, if we had a teacher aged 55 with 12 years service and, let's say, an average salary of $30,000 and another teacher 55 with 35 years service with the same average of 30,000 per year, they will both retire with the same retirement income; one with 35 years service and one with 12 years service, both of them with the same average earnings?

MR. M. SMITH: I don't think that our pension fund could stand that kind of arrangement. Teachers' pensions are based primarily on two factors. The average salary is one of them; the years of service is the other. In the example that was quoted, the teacher with 35 years of service would receive approximately triple the pension received by the teacher with 12 years of service.

The formula says, years of service (x) 2 percent a year (x) the final salary average (-) the CPP offset. So the pension is directly proportional to the years of service. The person who retires at 55 with 10 years of service receives a quite modest pension, in comparison with the person who has 30 or 35 years of service.

MR. W. STEEN: As I said to Mr. Smith, I didn't have the bill in front of me, and I haven't looked at it for some weeks. I was wondering if you had the normal 2 percent clause in there. I have been in the pension business most of my life, so I was wondering if you had the normal formula which is years of services (x) averaging of income.

MR. M. SMITH: (x) 2 percent.

But if I may add, in our case because the Canada Pension Plan has been integrated with the Teachers' Pension Plan, the result of the calculation that you've just described has to be reduced by an estimate of the CPP benefit which, at the moment, is about $2,200 a year. So if you did the calculation, you would have to subtract that 2,200 to get the amount that the retiring teacher would actually receive.

MR. CHAIRMAN: Other questions? Hearing none, thank you, Mr. Smith.

Linda McIntosh, President, Manitoba Association of School Trustees.

MR. M. SMITH: Chairperson, if it is permissible by the committee, I would be happy on this unusual occasion to present the brief from the Trustee's Association. The representative was here all morning, but was unable to be here this evening. She left the one-page brief with me and, perhaps in recognition of the fact that this is one issue on which the trustees and teachers are united, the committee would permit me to read it.

MR. CHAIRMAN: What is the pleasure of the committee?

HON. R. PENNER: Circulate it.

MR. A. KOVNATS: I think if it was just circulated, Mr. Chairman, it would be satisfactory.

MR. CHAIRMAN: We'll circulate it as submitted.

MR. M. SMITH: I don't have copies of it, but I will give you this one copy.

I might indicate to the committee that it indicates clear support for the bill, as MAST had previously indicated to the Minister and others.

MR. CHAIRMAN: The committee thanks Mr. Smith.

Walter Melnyk, President of the Manitoba Association of School Superintendents.

MR. W. MELNYK: Thank you, Mr. Chairman, members of the committee.

The hour is late, and my message and presentation is brief. You have standing before you a representative of another educational organization that is in support of this legislation. I appear before you on behalf of the Manitoba Association of School Superintendents to confirm our support for this proposed legislation encompassed in Bill 72 amending The Teachers' Pension Act. Our association has written to the Minister on two occasions in the fall of 1984, indicating the support of our association for the amendments to The Teachers' Pension Act as proposed by the Manitoba Teachers' Society.

In particular, we are supportive of two features of that legislation. One is the annualizing rate to determine final salary average for part-time teachers. We see that that will remove what we feel is a discriminatory clause or feature, and that the part-time teachers will be treated on the same basis as full-time teachers. This is particularly, I think, valuable at this point in time, because a good number of our teachers are working in part-time jobs or job-sharing situations.

The other feature, of course, is the elimination of the 1.5 percent annual "penalty" for retirement between ages 55 and 60.

We believe that passage of this legislation and, particularly, those two sections is very desirable for a number of reasons. One is we see this as a partial solution to the staff reductions that are necessitated by declining enrolments. We see that, instead of having to let our beginning teachers go, the ones with the least seniority, we will have spaces available, employment opportunities available for graduating teachers, because teachers who have provided long and faithful service will have the flexibility and the opportunity to retire. We see that indeed these features will increase staff turnover and that flexibility.

We see that teachers who have put in long and faithful years of service will not feel that they are locked in for another two or three years beyond age 55, so that they will not be penalized in terms of receiving an adequate pension.

We also see that there will be increased employment opportunities for our new graduates. We, as superintendents, have been concerned for a number of years as to the amount of money that goes into training beginning teachers or new teachers, and the number of really good qualified people that are lost to the profession because they cannot find employment

and seek other avenues of vocation, and are lost to the teaching profession. We have been blessed with a good teaching staff in this province, and we think that this legislation will go a long way to continuing that.

I want to indicate to you, in closing, that the Manitoba Association of School Superintendents supports this legislation, and urges its speedy passage.

Thank you.

MR. CHAIRMAN: Are there any questions?

Hearing none, thank you, Mr. Melnyk.

BILL 74 - THE EQUAL RIGHTS STATUTE AMENDMENT ACT; LOI MODIFIANT LE DROIT STATUTAIRE AFIN DE FAVORISER LÉGALITÉ DES DROITS

MR. CHAIRMAN: The next bill on our list is Bill 74, The Equal Rights Statute Amendment Act, and the first presenter on the list is Sidney Green, Q.C., Leader of the Manitoba Progressive Party. The next person on the list is Walter Kucharczyk, private citizen. The next person on our list is Donna Lucas, Charter of Rights Coalition.

Donna Lucas.

MS. D. LUCAS: Thank you.

Copies of the brief brief are being distributed to the members of the committee.

The Charter of Rights Coalition (Manitoba) is pleased, although I have to say somewhat harried, to present its comments and recommendations on Bill 74, The Equal Rights Statute Amendment. CORC has been organized to educate women on their rights and potential rights under the Charter of Rights and Freedoms, and to advocate for legislative changes which will reflect the principles of equality, as enunciated in Section 15 of the Charter.

As part of our work, we have received funding from both Federal and Provincial Governments to undertake an independent audit of selected provincial statutes to see if they conform to the provisions of Section 15, and to make recommendations for legislative changes where such conformity does not exist. Our audit is basically complete and will be printed over the summer, ready for early fall distribution.

Bill 74 is welcomed by CORC as a positive first step on the part of the government to bring provincial laws into line with the principles of the Charter. We say first step, although we recognize that the government has made changes to statutes over the past few years which are also in conformity with the Charter, because we feel, as Mr. Penner himself has expressed, that there is yet a long way to go.

We must state emphatically that we believe there are many more changes needed to a number of the statutes being amended by Bill 74, and we sincerely hope that the government recognizes that a significant number of changes are needed beyond what is contained in this bill. CORC is committed to lobbying for legislative changes as the most effective way to move toward equality for women in our society. We hope that the government's actions in this and subsequent Sessions of the Legislature will show us that they are committed to this process as well.

We do not wish the government to expend large amounts of time and money on protecting the status quo in litigation, when these energies and monies could be better expended elsewhere. However, women in Manitoba are not prepared to wait forever for actions which are promised, but not delivered, no matter who is the government.

We have reviewed Bill 74, in conjunction with the findings of our auditors and the principles of the Charter. The comments that I'll make this evening will be, for the most part, directed specifically to the contents of Bill 74, although references will be made to recommendations that our group will be making in its audit report. We anticipate that we'll have further opportunity to dialogue with members of the Legislature on our issues.

Unfortunately, the substance of our presentation tonight will be oral, but a summary of our comments and recommendations will be forwarded to the Chair of the committee tomorrow morning for distribution, prior to clause-by-clause. I ask you to regard this, not as an indication of our lack of commitment, but strictly as a reflection of the lack of time and my typing skills in having the adequate preparation time from 4 o'clock this evening to get it done.

I propose to go through Bill 74, not commenting on every part of the proposed legislation. I will make a general comment at the start that the changes that are being made and amendments to statutes which reflect changes in language - that is removal of sexist language to gender neutral - are welcomed by our organization. We, however, recommend that the government take a serious look at the whole issue of having gender neutral language, not only in all of its statutes, but also in all of its communications as well as a commitment to being inclusionary and not exclusionary in its communications.

The first sections of the act, the Apprenticeship and Tradesmen's Qualifications, etc., deal with that gender neutral language. I would like to make reference specifically to - and quite frankly, I'm not quite sure how to refer to these - so I'll say, Page 2, clause 2(1)(a), Change of Name Act. The addition of the words "or has been married, or is a parent with legal custody of his or her child", is a good amendment in our opinion, as it facilitates access that wasn't there prior for either married minors or minors who become parents.

The change on that page under "Child of previous marriage", in subsection (b) provides that ". . . the applicant has notified the previous spouse of the application". We would prefer - and I believe the intent of the word "spouse" is that of the infant's non-custodial parent. It may not necessarily be that the previous spouse was a parent of the child and, if the intent is the parent be provided notice, we believe it should be specifically stated so that the appropriate person is notified.

On Page 4, amendments to The Condominium Act, subsection 5(3) near the bottom, are very welcome by our group. The limitations which add sex, marital status, source of income, etc., as prohibited grounds are, as I indicated, welcome. However, we would request that the grounds be increased to include sexual orientation as a prohibited ground.

The exception on Page 5 with regard to elderly persons, we believe is reasonable and feel that the provisions of the Charter would uphold such provisions for the elderly.

Subsection 33(2) of The Corrections Act, also on Page 5, is a positive amendment as we see it. It's a recommendation which we will be making and have made in our findings for changes to repeal the provision allowing female inmates to do housework, and makes this section gender neutral.

The Devolution of Estates Act amendment on Page 6 addresses or redresses an omission which we have also found in our audit by adding in the section 14. However, at this time, we would like to state that we have studied The Devolution of Estates Act, and feel that there are substantive changes that we are recommending, and anticipate that the government will be dealing with those in future legislation.

The Domicile and Habitual Residence Act amendments in subsection 12(1), perhaps for clarification, the definition of "child" that's stated there in three steps left us unclear as to whether or not those three criteria were cumulative. If they are meant to be, perhaps they are somewhat restrictive, but it's an area in which we weren't clear of the intent of the legislation.

The changes in 12(2) and subsequent 9(1) with regard to the domicile and the child, we find it to be excellent in its intent and its process. It removes preference for the father's residence. But one question which we weren't able to define: what is the "state and subdivision"? The definition thereof is not one which was in the preamble to the bill. What is the "state and subdivision thereof" in subsection (c)?

The Dower Act amendment at the bottom of Page 6 provides now that both spouses need to sign dower consent separate and apart with a notary, which removes any discrimination. But we are also recommending that each party have independent legal advice, separate and apart, as well as simply having a witness to the signature.

The amendments to The Employment Standards Act, on Pages 8, 9, etc., which deal with paternity and adoptive leave are ones that we consider quite significant. I think the government is to be commended for recognizing the principle of paternity leave and of the concept of parenting, but we have some serious concerns with regard to the substance of the clauses proposed.

To make access for a man who becomes a natural parent different than that of a woman is a concern to us. Having six weeks available versus 17 weeks does not in our minds, perhaps on the surface, equal equality. We have some concerns that this may not be in keeping with the principles of the Charter. While perhaps it may be recognized that the actual birthing process may require special gender-specific consideration, our concern is that what it appears to be is that there is an 11-week difference which, if that is the reason for a difference, the gender-specific situation surrounding the person actually giving birth, it is excessive in our minds.

The length and commencement of leave for paternity leave, we feel ought to be made more flexible. The earliest date at which a father can begin leave is with the day the child is born. We feel that ought to be amended to allow more flexibility. There may be the need prior to the birth of the child surrounding either the health or the care of the spouse or other family needs which the father may need to attend to, and we believe there ought to be flexibility built in there.

On adoption leave, again some of the same comments apply with regard to the length of leave; I won't repeat them. The application process for adoption leave is the same as that for maternity leave or paternity leave. However, the circumstances surrounding acquiring a child by adoption are often different in terms of how much time you get to know when it is or approximately when it is that the baby will decide to arrive. We feel that there need to be some amendments made there to take into consideration and not have the adoptive parents waiting a minimum of four weeks from the time that they receive notice that they actually perhaps have a child before they can access leave to be with that child.

A possible suggestion would be perhaps for some notification having to be given, when accepted as adoptive parents or prospective adoptive parents through the process, and a shorter length of time, given that the employer has notice that this is a likely event, a shorter length of time, perhaps two weeks being given for notice of actually taking a leave.

Again, the length and commencement of leave perhaps should be looked at with regard to flexibility. There may be provisions or needs that have to be taken care of prior to the arrival of the child as well that should be taken into consideration.

While we're on this subject of the length of parenting leave, I think in terms of philosophy, we believe that there ought to be perhaps, rather than totally separate situations or types of parenting leave, set out specifically the concept of parenting leave being recognized in total. As well, we are going to be recommending that the 17 weeks for maternity leave and, in effect, for any kinds of parenting leave be extended to 24 weeks.

On Page 12, in The Interpretations Act near the bottom, the amendment is made that corporations and words importing female persons include male persons in corporations, etc. It's one way of dealing with the whole issue of gender-neutral language. However, we see this only as the second-best solution, looking at the optimum which is, of course, all laws being written in gender-neutral language.

On Page 13, The Reciprocal Enforcement of Judgments Act adds maintenance as a type of judgment enforced under this act, which we think is a positive step. However, I understand that the words "filiation order" are not the words in Manitoba, but it's a declaration of parentage. We feel that ought to be added, not that "filiation order" ought to be struck, as I believe those are still words used in other provinces.

HON. R. PENNER: I'm sorry, what page is that again?

MS. D. LUCAS: Page 13, The Reciprocal Enforcement of Judgments Act, clause 2(1)(a).

The amendments made on Page 14 to The Landlord and Tenant Act place the parts or the sections in gender-neutral language, but as well the "Inability to pay rent" section removes discrimination on the basis of marital status. We commend the government for doing that. Now the residence just needs to be occupied by two or more tenants.

In The Law of Property Act, section 7 at the bottom of Page 14, the revisions made there and on Page 15 on the "Prohibition on covenants", again with the

increase in the prohibited grounds adding sex and marital status, etc., we find it a very positive move, again the question about sexual orientation as being a prohibited ground.

The "Written consent of spouse" section, 32(3), makes equal provisions for both spouses to give written consent to the making of an assignment, which was not the case before.

The "Unmarried cohabitants" section is an addition and welcome addition with regard to the cohabiting spouses, except again deal only with heterosexual couples.

On Page 21, The Marriage Act amendments are what we would consider to be only a housekeeping amendment, and we feel that there are other amendments needed to this act as well.

On Page 22, dealing with The Parents' Maintenance Act when a parent is deemed dependent, changing the gender-neutral language removes the prior definition which discriminated against fathers who could not be considered to become dependent.

On Page 24, the amendment to The Trustee Act heading which will now read, "Power of Surviving Spouse to Carry on Operations," is a positive amendment, as it allows both spouses to carry on the family business for the children, not simply the father. There is no more the assumption in the act that the farmer was male, and his widow was given the power to carry on.

Page 25, The Vital Statistics Act amendments, the addition of the words, "unless the father and the woman make a joint request in writing . . . respecting the particulars of registration." is positive, as it provides access to a father which wasn't there before. However again, The Vital Statistics Act is an act which we feel requires substantial amendments in the future.

The amendments in The Workers Compensation Act, 41(3), which puts in after the words "workman" the word "worker," again is probably a second-best way of doing it. It ought to be "worker" all the way throughout the legislation.

On Page 26, the provisions that provide for "Suspension for common-law relationships" are ones that we have very strong objections to. We feel that there should be no authority to terminate or divert payment due to a common-law relationship, as outlined in section 21(4) and (4.1). We feel that these are not positive amendments that the government is making at this time.

HON. R. PENNER: What section are you referring to?

MS. D. LUCAS: 21(4).

HON. R. PENNER: On page?

MS. D. LUCAS: It's 26 of the bill.

On Page 28, still with The Workers Compensation Act, the "Duration of certain payments . . . shall continue only so long as, in the opinion of the board, it might reasonably have been expected," we feel that ought not to be in the jurisdiction of the board but up to a court to determine.

On Page 29, the concept of "Compensation to common-law spouse" is positive, except that we feel the criteria that they have, "during the entire period of 3 years immediately prior to the death . . . cohabited", ought to be amended, and that common-law relationship should qualify if spouses have cohabited for one year and have a child. This would conform with the definition under The Family Maintenance Act and other legislation currently in effect. As well, the reference to "cohabited with a person of the opposite sex" ought to be removed to allow for homosexual couples.

Again in "Termination of compensation," section 25.5(3), the same arguments can be made that we find that common-law spouses ought not to be cut off upon remarriage or a new common-law relationship, consistent with what we had indicated earlier, the same with 27(1) at the top of Page 30. This should not happen, in our opinion, that a person is liable for losing benefits because of remarriage.

That basically ends the substance of our major comments. Some of the acts which I did not refer to, we have not covered in our audit of selected statutes and did not have time to examine them and make comment on.

Thank you.

MR. CHAIRMAN: Questions?

The Attorney-General.

HON. R. PENNER: Just one brief comment and then a question, "state and subdivision" means Canada and Manitoba. Canada is the state; subdivision is Manitoba. That's what it means in that context.

Just dealing solely with The Workers Compensation Act, is it your position that persons in a common-law relationship should be treated differently than persons in a married relationship?

MS. D. LUCAS: No.

HON. R. PENNER: So that if we have, as we do, a provision in The Workers Compensation Act which is discretionary and allows, under certain circumstances, the board to terminate payments to a surviving spouse who has remarried, would it not on the principle of equality follow that the same should happen, since benefits are now being conferred for the first time in a common-law relationship, that where the surviving spouse enters into a common-law relationship but doesn't marry, under certain circumstances - the same circumstance as would apply to somebody who remarries - the benefit should terminate. Wouldn't that be equality?

MS. D. LUCAS: Maybe I didn't make myself clear. We think that remarriage or establishment of common-law relationship ought not to be a basis for cutting off anyone whether they happen to be the surviving spouse or surviving common-law spouse, so that treatment ought to be consistent.

HON. R. PENNER: The Workers' Compensation operates on the basis of compensating for loss so long as that loss exists, whether it's, for example, temporary disability or whatever. Where either, in terms of a common-law relationship or a marriage relationship that follows the decease of the spouse receiving benefits,

the person is no longer dependent on the state. The state should go on paying in your view?

MS. D. LUCAS: I guess, yes, we would have a difference of opinion there.

HON. R. PENNER: Okay.

MR. CHAIRMAN: Other questions? Hearing none, thank you, Ms. Lucas.

BILL 78 - THE AMUSEMENTS ACT; LA LOI SUR LES DIVERTISSEMENTS

MR. CHAIRMAN: Bill No. 78, An Act to amend The Amusements Act.

The first person on our list is Edward Lipsett representing the Manitoba Association for Rights and Liberties. A written brief is being distributed to members of the committee.

Mr. Lipsett.

MR. E. LIPSETT: Yes, I'm Edward Lipsett and I'm representing the Manitoba Association for Rights and Liberties. I've prepared this brief in conjunction with Dr. Sybil Shack who is a co-convenor of our committee.

The Manitoba Association for Rights and Liberties, MARL, is a public interest, human rights advocacy organization dealing with human rights and civil liberties and it is from this point of view that we have examined Bill 78 dealing with amendments to The Amusements Act.

While strongly opposing censorship, MARL accepts the principle of film classification and the restriction of access by minors to certain kinds of films. These methods are preferable to censorship or Criminal Code provisions in dealing with film material considered to be pornographic or excessively violent.

MARL also agrees that it is appropriate to extend the "classification" system to include the sale and rental of video cassettes. However, there are several aspects of Bill 78 which cause us some concern. We appreciate the opportunity to elaborate on these problems. I trust you all have copies of the bill with you because we didn't quote verbatim the bill in our brief. Is that all right?

Concerning proposed new section 33(g). It may be inappropriate to allow the board, even subject to "guidelines," to delegate or abdicate its vital "classification" function to other persons. It seems more appropriate that it exercise this function itself, in a judicial or quasi-judicial manner, with its decisions being subject to a complete appeal. More about the appeal later on.

Section 33(i). Perhaps this is too important a function to delegate to an administrative body. It should be remembered that commercial advertising or "commercial speech" is likely entitled to at least some degree of "free expression" protection. Though some control or regulation in this area is undoubtedly necessary, it may be better that it be contained in the statute itself. If delegation is deemed necessary, the statute should perhaps set criteria and limits.

Section 33(j). The criteria for film classification and the grounds for suspension and revocation of licences should perhaps be stated in the legislation itself. If the Legislature deems it necessary to delegate in this area, it should at least set out the principles and limitations.

Any criteria for film classification, whether in the statute itself or in regulations, should be reasonably specific and comprehensive. Note the words of the Ontario High Court of Justice, Divisional Court, in Re Ontario Film and Video Appreciation Society and Ontario Board of Censors: "The Charter requires reasonable limits that are prescribed by law; it is not enough to authorize a board to censor or prohibit the exhibition of any film of which it disapproves. That kind of authority is not legal for it depends on the discretion of an administrative tribunal. However dedicated, competent and well-meaning the board may be, that kind of regulation cannot be considered as law. It is accepted that law cannot be vague, undefined and totally discretionary; it must be ascertainable and understandable. Any limits placed on the freedom of expression cannot be left to the whim of an official. Such limits must be articulated with some precision or they cannnot be considered to be law."

It is true that the Ontario Film and Video case dealt with censorship. Here, only classification, which is a lesser restriction of free expression, is involved. MARL supports the concept of film classification, and acknowledges the need to impose limitations on minors that would be inappropriate for adults. However, one must remember that this scheme involves limiting the audience that a communicator has access to, and restricting the right of a category of people of receiving communication. These may be necessary but are certainly not trivial limitations on freedom of expression. Furthermore, the category involves age, one of the grounds of discrimination expressly prohibited by section 15, the "equality" section of the Charter.

Specific and comprehensible standards may well prove to be as necessary to justify a "classification" scheme under section 1 of the Charter as they are to justify a "censorship" scheme. Such standards seem to be lacking in this bill.

Greater particularity is also needed concerning licence revocation. Not only are "free expression" values implicated, but a person ought to have some idea as to the nature of the conduct that could cause him to lose his occupational or business licence.

Proposed new section 34. The problems of granting too wide a discretion are also relevant here.

Proposed new section 41. If this section is intended to apply to licence revocation and suspension hearings, section 41(1) should expressly provide that a person whose licence may be revoked or suspended, or who is the subject of a complaint, is a "party." The remaining subsections refer to the procedural rights, including "notice," of "parties."

Subsection 41(2) imposes a duty on the board to give notice to a "party," but subsection 41(1), by definition, seems to exclude someone from the status of "party," unless he already has knowledge of the proposed action of the board. Undoubtedly, this peril to natural justice was inadvertent, and can be corrected without difficulty.

Proposed section 42:

It seems that privileged material should be inadmissible in any hearing, not only those relative to licences, as proposed section 42 seems to imply.

Proposed section 46:

Perhaps it should be made clear that, on such review, all parties would have the same procedural rights as those concerning an original hearing. Perhaps in a licence suspension or revocation hearing, a decision in a licensee's favour should be deemed res judicata, and he should not again be put in jeopardy for the same alleged offence.

Proposed section 49:

Section 49(1), it seems that a person affected, at least where his licence is revoked or suspended, should have a complete appeal including on questions of fact and mixed fact and law. A full appeal seems appropriate in any case where loss of business or occupational licence is involved. As free expression values may also be implicated, the need for a full appeal seems especially compelling.

I may add just as an interjection that some other business or occupational licences do provide complete appeals including on fact, like The Law Society Act. Why is somebody like a video operator or a movie operator entitled to less protection? He may well think that violates his equality of rights, and who could blame him? A full appeal should be available.

Section 49(4):

It seems that there may be cases where an appeal to the Court of Appeal should be allowed as well as the Queen's Bench, especially if free expression or other constitutional issues are involved.

Proposed section 5I:

There should be a full appeal from an adverse classification to the courts, in lieu of or in addition to the appeal board. As mentioned earlier, though it is less severe than censorship, classification implicates Charter values, freedom of expression and equality. When a person feels that his or her Charter or other constitutional rights are implicated, it is especially important that he or she have access to the courts. Indeed, denying access to the courts in such cases may violate the Charter, and perhaps section 96 of The Constitution Act of 1867 as well

Proposed section 52:

It seems that the expanded scope the proposed section 52 would give the act is too far-reaching. In terms, it would include any organization that would ever show a film, even if only on a one-time or occasional basis and even if there was no form of admission fee whatever. This could include bona fide religious, cultural, fraternal, educational, political, public interest or special interest organizations and films genuinely produced for such purposes. Perhaps this act should apply only to persons commercially involved with films or organizations, whose sole or main purpose is the exhibition of films to members or others.

The exception in proposed section 66, though of course needed, is inadequate in that it only refers to "natural persons." Of course, it was probably intended that the power of the board in section 34 or the Lieutenant-Governor-in-Council in section 63(c) to grant exemptions would include such cases. However, these provisions seem to grant almost open-ended discretion in this regard. If discretionary power is to be relied on, the scope and limits of this power should be more clearly defined. However, it would probably be best to amend proposed section 52 to narrow its scope, and to articulate clearly where the section does or does not apply.

Proposed section 58:

This section could perhaps be needlessly wide, and might cause injustices in certain cases.

Proposed section 62:

In particular, clauses (a), (e) and (f) perhaps give too great discretion to the board.

Proposed new section 63:

This section delegates too much power to the Lieutenant-Governor-in-Council. Much of it should be dealt with in the legislation itself, or at least the legislation should define and limit the scope of the Lieutenant-Governor-in-Council's powers. Indeed, an argument could be made that this bill leaves some of its most important aspects to regulation, leaving an act which in itself contains only a skeleton or outline.

Again, notwithstanding these important points of detail and sometimes principle which we have trouble with, we do accept a well-drafted, carefully defined and not overbroad scheme of classification and restriction of a certain type of film to minors.

Thank you for your attention, and I'll try to answer any questions that you may have.

MR. CHAIRMAN: Questions?

Hearing none, thank you, Mr. Lipsett.

The next presenter on the list is Ray Boehler, representing Manitoba Video Retailers' Association.

Mr. Boehler.

MR. R. BOEHLER: Good evening. Mr. Chairman, I apologize for not having a written brief for presentation.

I am Ray Boehler, representing the Manitoba Video Retailers' Association, which is a non-profit organization representing retailers in the province. I am speaking in regard to Bill No. 78, An Act to amend The Amusements Act.

I understand this act to amend has been translated into both official languages. However, I would wonder if it may be premature to proceed with an amendment to a statute which, itself, has not as yet been translated, since references in the amendment refer to the original statute.

Notwithstanding the aforementioned, I would like to proceed with a brief review of the act, including its introduction for second reading.

Part III, Purposes, Purposes of the Act, section 1: "The purposes of this Part and the following Parts of this Act are

(a) to provide a comprehensive procedure for the classification and regulation of films; and

(b) to provide for the dissemination of information to residents of the province concerning the nature and content of films."

The words "nature and content" were also used in the introduction for second reading. The public, along with the Manitoba Video Retailers, support and have requested a comprehensive and consistent classification system, which will provide information as to the nature and content of films, in order that consumers may make informed choices about their movies and avoid material which they personally find offensive.

The act does not specify the method of dissemination of this information. The draft proposal for a classification, retailer's responsibility, indicates that, upon payment of various fees and licences, a

classification colour sticker will be provided for cassettes, movie boxes, and point-of-purchase advertising. While this sticker may indicate a general guideline for a movie type, it will in no way provide information as to the nature or content of a movie.

Indeed we have received indications from the Classification Board that there is no intention of providing information as to the nature and content of films, since the board members believe such information would constitute advertising. This is in direct contradiction to the stated purpose of the act. Of course, as our association has stated, a red sticker won't tell you if it's a blue movie.

In the introduction for second reading, the Minister stated: "The industry has voiced concerns about the distribution of unclassified videos, which required them to make subjective judgment on suitability. They have asked for guidance and direction to help them ascertain the relationship between individual video products and community standards.

"As a guide for members of the industry and the consumer, the Manitoba Film Classification Board will be taking all the necessary steps to ensure that the public and the industry are well aware and informed. The law prohibiting the display and distribution of obscene material is governed by the Criminal Code which is federal legislation. Our government will continue to support initiatives to strengthen this aspect of the Criminal Code."

The Supreme Court of Canada has indicated, in a recent judgment, that classification boards may be deemed to be tribunals of expertise, at least as to local community standards. Since the Minister has indicated a desire to support initiatives to strengthen the Criminal Code vis-a-vis obscene films and since the classification boards are to be considered tribunals of expertise, then they should be in a position to make recommendations as to whether or not titles might be found to contravene local community standards. Retailers could then choose to avoid such film, or have a chance to challenge the interpretation in the courts.

Part VII, Appeals, Appeals to a Court of Queen's Bench, section 49(1): "Any person affected by a decision or order of the board, other than a decision or order with respect to the classification of a film, may appeal such decision or order to the Court of Queen's Bench upon the ground that the board

(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction."

A principle of natural justice dictates that businesspersons should not suffer undue hardship through the application of a law on a retroactive basis. Video retailers presently have in their inventories thousands of movies which may remain unclassified after a proposed implementation period. It has been proposed that the rights owner pay for the classification. Since the rights owner may be difficult to ascertain and since they have already made their profits on those titles, they would have little interest in paying for a classification.

It would not be possible for a small retailer to bear this cost since, in all probability, the original cost has not as yet been recovered. We do not believe that retailers should be asked to shoulder the costs of classification of existing library stock, since this cost could force some operators out of business or force them to destroy unclassified stock. Such inventories should not be made obsolete by this legislation.

Natural justice dictates that a reasonable citizen be given the opportunity to operate their business within a reasonable degree of certainty that they are in compliance with the law. A citizen may be required to defend his innocence in a court of law. However, such a defence should only be required after the determination and definition of an illegal act.

We have before us the opportunity to rectify just such a situation. A duly-appointed body with some degree of expertise could give implicit approval of a film, in order to provide assurance to a retailer with no expertise that the film complies with the requirements of the law. In other words, the film would not be determined at a later point to be obscene. If it were, retailers should be given the opportunity to remove non-complying materials, just as they are in any other industry.

Part VIII, Enforcement, Possession, section 58: "A person shall be deemed to be in possession of a film where the film or documents of title thereto are in the actual custody of that person or are held by another person subject to the control of that person or for or on behalf of that person."

On a regular basis, most operators would find themselves in possession of unclassified films since, of necessity, we must possess a film to see if it contains the required sticker. Movies are shipped trans-border on a regular basis, and they must be checked. How can a retailer comply with this provision?

Further, are retailers and their employees not also natural persons as identified in Part X, section 66, which states: "Nothing in this Act prevents a natural person from producing or possessing film for the personal, private and non-commercial use of that person"?

Part X, section 67, "Nothing in this Act applies to contracts for or possession of film solely for delivery through, or beyond the boundaries of, the province." The act appears to ignore the issue of film supplied out-of-province to natural persons within the province. This provides out-of-province, mail-order retailers with an unfair advantage over local businesspersons who must submit their films for classification. These out-of-town, mail-order operators also appear to be exempt from provincially enforced obscenity laws.

The video industry in Manitoba is composed of approximately 400 retailers, the majority of which may truly be considered to be small businesses. These are owner-operators in a fledgling business, struggling to survive through their first few years of operation. Most open their businesses in the morning, and generally close around 10:00 p.m. Many pay themselves little or no salaries. All work done within the store must be done by these persons. To impose additional burden through adding stickers to all their cassettes, movie boxes, and constantly changing point-of-purchase material can only constitute undue hardship. For what purpose? To let the public know that a particular title is a green classification. Some of these owners transfer hundreds of titles per week across provincial boundaries. All of these titles must be manually checked to see if they conform to local colours. If not, they must be restickered.

Approximately 200 new titles are released each month, and in excess of 6,000 library titles exist. In

our industry, time is of the essence. The release date is consistent across the continent. Any delay, due to classification stickering, would adversely affect us. I suggest that the board, as it is proposed, would only be able to classify new releases without even considering the backlog material.

In summary, I would like to state that this legislation will place undue hardship on many fledgling small businesses, while providing no information of value to the public. On a positive note, I would like to state that our industry supports a national classification system and, as such, recommends the following:

1. that an interprovincial Classification Board be established with representatives from interested provinces.

2. that this board classify all films for participating provinces, thereby avoiding overlap and conflicting classification.

It would, therefore, be possible for the classification information to be applied at the source on all materials. Such classification could be provided for the use of all Canadians. Such an information sticker would advise interested parties of the nature and content of the films. We would have no objection if additionally the information were provided in separate colours. However, the sticker should provide information such as adult, profane language, scenes of nudity. I repeat that this will only work to avoid excess cost, duplicated effort and unreasonable work to the retailer, if one interprovincial board be established.

3. The classification system should be extended beyond adult to include classifications such as explicit sex, as well as a class which would indicate possible contravention of obscenity laws. Retailers would thereby conclude that films not falling within the latter classification could be presented to the public without fear of subsequent obscenity charges.

In conclusion, I reiterate that the public should have information regarding the nature and content of films, and that owners be given reasonable opportunity to comply with the laws of our land without excess cost and duplicated effort.

Thank you.

MR. CHAIRMAN: The Member for Sturgeon Creek.

MR. F. JOHNSTON: You mentioned the inventory you presently have now, and you mentioned the rights. The person who owns the rights has to make application for the classification. Can you just elaborate on that a bit? You mentioned 20,000 films or videos.

MR. R. BOEHLER: No, there are approximately 6,000 videos. The rights owner would presumably be the person that would be required to pay for the classification. But the rights owners are very difficult to ascertain, particularly for retailers, and the rights owner would have no interest in gaining classification since he has already sold the product. He would no longer care.

MR. F. JOHNSTON: In other words, you're saying if the rights of the stock you have now - and there have been some sold and it's no longer a popular item, the rights owner would not necessarily apply for classification because the cost of classification, I believe, on the films is - what? - a dollar something . . .

MR. R. BOEHLER: $1.65 a minute, I believe.

MR. F. JOHNSTON: $1.65 a minute. So he would then feel that the cost to do this, because it's no longer a popular film, would be such that he wouldn't do it, and you are left with inventory?

MR. R. BOEHLER: That's correct.

MR. F. JOHNSTON: That hasn't been classified?

MR. R. BOEHLER: That is correct. My understanding is that the rights owner would not even make application. It would be up to interested parties to try and determine who the rights owner is. At that point, the rights owner would have the right to choose to have it classified or not, but he would have no monetary interest in having it classified and therefore would decline, leaving that decision up to, I presume, the retailer.

MR. F. JOHNSTON: You also mentioned that the films, the videos that are being supplied to you from your wholesaler or the films supplied to your wholesaler have to be moved into circulation quickly for the market because they're released across the country. Is that what you meant, that the Film Classification Board or Video Classification Board could take a lot of time because of the 200 that come in every week? Do I follow you correctly there?

MR. R. BOEHLER: The new releases, as well as the backlog material, would have to be done within a very fast time frame. There is a simultaneous release date on all videos across North America. In other words, Quebec would receive their videos the same day for release as we receive them in Manitoba. If they are delayed, it would place hardship on Manitoba operators.

MR. F. JOHNSTON: You also mentioned that you welcome classification. You make a presentation on some suggestions that you feel would make it better. I repeat myself, you also mentioned that this legislation does not necessarily stop the undesirable videos from coming into the province from other areas.

MR. R. BOEHLER: My understanding of the legislation is that it in no way affects the interprovincial mail-order videos from out-of-province. Therefore, any type of material can come, provided it is purchased through the mail.

MR. F. JOHNSTON: Which, I might say, is advertised in our Winnipeg telephone book.

To just sum up with a question, you're not opposed to regulations as retailers to classification so the people would know what they're purchasing, but the structure of this particular act doesn't really stop the undesirable movies and can cause financial harm to your businesses?

MR. R. BOEHLER: It can certainly cause financial harm. It does nothing to indicate to the public that, in fact,

the nature contained with any particular stickered movie other than general, any adult material will not be indicated as to the nature of content of that movie. Certainly, films coming in from outside the province would require no stickers whatsoever.

MR. F. JOHNSTON: I made the statement while speaking on second reading that the general or family videos are not the biggest seller, and the largest sellers are westerns and horror type of videos. The fact that the generals are not the largest sellers, do you think there would be a situation arise where the people that own the rights of the generals, not having a big market, would not send those wholesome family films in for classification?

MR. R. BOEHLER: That is certainly indicated. We have received some indication from studios that they would be reluctant to submit titles to Canada if it requires more than one classification, which may mean that Manitoban citizens may be deprived of nationally released films.

MR. F. JOHNSTON: You mentioned that 200 films come in a week. How long do you think it would take the Classification Board if the people that had rights all asked to have them classified? How long would it take them to classify and get caught up right now, in your estimation, if they started that now?

MR. R. BOEHLER: I believe they could probably reasonably classify three titles days with a written explanation as to classification. So if they had to view them all and reclassify them, 3 into 6,000, is 2,000 days with one committee.

MR. F. JOHNSTON: Thank you very much.

MR. A. KOVNATS: You mentioned that the owners of the film should pay the classifications - or the people who have the rights on the film should pay the classification of the film? What happened to the distributor, the old movie way of the distributor paying for the classification? Why would you not, as a distributor, think that would be your responsibility to pay for the classification?

MR. R. BOEHLER: I believe the legislation calls for the payment to be made by the rights owner. Ultimately I believe the consumer is the one that will be paying, providing there's an opportunity to collect that payment from the consumer.

MR. A. KOVNATS: I see, that's fine. I just wanted to get something straightened around because now we can talk to them about it.

HON. E. KOSTYRA: I thank Mr. Boehler for the brief on behalf of the Manitoba Video Retailers' Association.

I wonder if you could tell me. in terms of the amount of stock that you have in place at the present time, what the turnover rate of that stock is when it's finally taken out of the stores.

MR. R. BOEHLER: I'm sorry, a turnover on what basis? Are you talking about total inventory turnover?

HON. E. KOSTYRA: When you take it off the market, what period of time, and how much of the stock?

MR. R. BOEHLER: Retailers vary in their treatment of inventory. Many of the established retailers will refuse to sell any of their inventory and will maintain it in stock for the purposes of building their libraries; and therefore the business has been roughly four to five years, they still have their four to five years inventory.

HON. E. KOSTYRA: How long would one videotape last?

MR. R. BOEHLER: The estimated life of a video without any serious deterioriation of quality, assuming equipment is satisfactory, would be 500 plays and the average title would probably be under 100 plays per year.

MR. CHAIRMAN: Other questions? Hearing none, thank you, Mr. Boehler.

The next presenter is again Murray Smith, Past President, Manitoba Teachers' Society.

MR. M. SMITH: Mr. Chairperson, you'll be pleased to hear that my box is now empty.

The Manitoba Teachers' Society, which represents the 12,000 public school teachers in this province, is pleased to have this opportunity to comment on Bill 78.

The Society has specific policy regarding the issue being addressed by the proposed legislation. The first statement outlines the Society's position on pornography and presents a definition of it.

"The manufacture, distribution, sale and public display of all pornographic material should be prohibited.

"Pornography should be defined as material which represents or describes sexual behaviour that is degrading or abusive to one or more of the participants in such a way as to endorse the degradation or abuse.

"Pursuant to this policy, the Society urges the Federal and Provincial Governments to develop and enforce laws that prohibit the manufacture, distribution, sale and public display of pornographic material."

The second statement relates specifically to the uncontrolled access of students to pornographic videos.

"That the Society urge both the Department of Cultural Affairs and the Department of the Attorney-General to protect juveniles from the potential dangers of viewing video cassettes advocating the sexual and/or violent degradation of human beings."

The Manitoba Teachers' Society views Bill 78 as responsible legislation, indicating an awareness of how society is educating children outside of school. Many of our teachers daily face the task of dealing with students who are able to, and do, purchase, rent or borrow pornographic materials, or who have access to such materials through their homes or those of friends. The presence in schools of pictures and articles from both books and magazines, and whispered tales of scenes from videos which depict both violent and degrading sexual behaviour, are frequent occurrences in many of our junior high schools. Such continued exposure to material, which presents such a narrow

d untrue picture of sexuality and human relationships, have far-reaching negative effects not only on these ividuals but on society as a whole.

Since adopting the aforementioned policies in March 34, the Society has sponsored numerous workshops d seminars for teachers on this topic. Invariably, chers express their concern for the violence and ism they see in their communities, and discussion ses about the easy access children have to rnographic and violent material. This is as true in nli and MacGregor as it is in Winnipeg. One teacher Gimli summed up the situation accurately: "Children der 16 can't buy cigarettes; it's illegal to sell liquor those under 18, but 8 year-olds have access to rnography." The Society is pleased that the problem easy access to violent or pornographic videotapes being addressed.

The Manitoba Teachers' Society, as well as mmending the government for this legislation, is ased also to see an educational component planned this issue. It is important that the public understand e far-reaching effects pornographic and violent ntertainment" has on society, and essential that izens be aware of their rights and responsibilities to ject to public displays that are offensive.

Finally, a word about enforcement. Once this gislation is in place and distributors have had time comply, it must be enforced and breaches punished. cause of the numerous outlets for this kind of aterial, citizens will have to be involved in laying mplaints of breach of the law. In the educational mponent of this plan, it is essential that people be ld how and with whom to lay complaints.

Thank you for this opportunity to speak to Bill 78 d thanks to the government for addressing a problem achers have recognized for some time.

R. CHAIRMAN: Any questions? Hearing none, thank ou, Mr. Smith.

R. M. SMITH: Thank you, Chairperson and members.

R. CHAIRMAN: The next presenter on our list is enny Marshall, representing the Manitoba Action ommittee on the Status of Women.

S. L. KAUFMAN: First of all, I am not Penny Marshall, am Liz Kaufman.

R. CHAIRMAN: Oh.

S. L. KAUFMAN: But I am representing the Manitoba ction Committee on the Status of Women.

R. CHAIRMAN: I didn't get the name.

S. L. KAUFMAN: Liz Kaufman.

R. CHAIRMAN: Liz Kaufman.

S. L. KAUFMAN: We don't really want to address ne specific areas of the bill, of Bill 78. We'd rather like o focus your attention on some of the things that don't xist in this bill.

One of our major concerns in this area is the fact nat the word "pornography" and the whole issue of pornography is not addressed in this bill and this of course is one of our major concerns, that by simply classifying videotapes to be rented for private use and including no mechanism to deal with the increasing abundance of hard core pornography, this bill really ignores the very real problem of pornography distribution in the Province of Manitoba.

Simply putting stickers on it is only going to identify the material that much easier for the general public and it's not going to look at the whole issue of hard core porn at all. You may be aware of the fact that the Manitoba Action Committee favours a co-operative approach to curtailing the distribution of pornography, whereby the Film Classification Board, if it is of the opinion that a videotape could potentially violate the Criminal Code provisions on obscenity, has the authority then to forward that videotape to the Attorney-General's office for legal advice on whether prosecution should begin.

In our opinion, this addresses the dangerous and illegal pornography by including a mechanism to decide what is and isn't pornographic before it hits the store shelves and I think the Retailers Association would certainly agree with us on this matter. The problem that they have of second guessing a judge's decision on whether or not a particular tape is obscene is a major issue with the retailers.

Thirdly, we feel that this kind of relationship between the Film Classification Board and the Attorney-General's office would be a better option because it respects the arm's length nature of the film board itself, in that the film board is not a censorship board; it's not a censor board at all. Other added benefits to this procedure would be that those who are responsible for distributing pornography in the province would be held more directly accountable for their material. In theory at least there would be less need for police raids on video owners, a concern which has been, as I mentioned, raised from time to time by them.

Making information available to consumers is only a first step to the control of increasing violent pornography. We feel that the Department of Culture, Heritage and Recreation should take action to limit the distribution of pornography, which contravenes the Criminal Code since many of these videotapes will be passing through the Classification Board before they are put on the shelves. I think this is something we're very concerned with, that the stuff that is not for family viewing be controlled in this manner.

It is not the Action Committee's position that defining suitable family viewing is at the crux of this problem; that's not what we're talking about. Canadian children are forced to watch or participate in pornography every day, often before being raped themselves; and there are many instances which this stated. I think the Federation of Women's Teachers of Ontario reported recently that a Grade 5 boy, on being asked to write an essay entitled "What I did last Night" wrote about a video he saw with his parents on TV, and he said then a man raped her and another man and then they cut her up. A month later the boy was caught grinding a cigarette into the neck of a little girl. There are stories throughout the country and throughout the province of this kind of relationship between pornography and easy access that children have to pornography in the video area and actions are something to be concerned about.

With regard to the compliance procedures outlined in the discussion paper, we have no major objections with regard to the time frame for backlog materials or new materials. As a general comment, however, we encourage the Government of Manitoba to consider working with other provincial governments on some level to control the distribution of pornography, since the distribution and availability of pornography are not confined within Manitoba borders.

I believe that the Fraser Commission also has an excellent recommendation to this effect, among other excellent recommendations that we would encourage you to examine with relationship to this issue.

With regard to the current classification system for films as well as videotapes, we encourage the Film Classification Board to be as explicit as possible in its disclaimers on the lower categories, in other words, the mature and general, since parents need to be aware of very specific information when choosing children's movies. I believe that the Video Retailers Association mentioned this as well.

Just one further recommendation regarding the control of pornography and the involvement of the Film Board and the Attorney-General's office, such involvement would indeed necessitate written guidelines on pornography which could be used by the Crown and referred to by the Film Board so as to establish a common reference point for the purposes of referral and classification. I think this is one of the issues that comes up time and time again with pornography is that there are not adequate definitions and guidelines for the various people involved in this kind of thing.

Are there any questions?

MR. CHAIRMAN: Questions or comments?

The Honourable Minister.

HON. E. KOSTYRA: I'm trying to understand what you're suggesting in your second paragraph of your presentation. Are you suggesting that you want the government to make a determination which videos would be suitable for distribution and which ones would not be?

MS. L. KAUFMAN: In the second paragraph?

HON. E. KOSTYRA: Your last statement in the second paragraph says, "This bill ignores the very real problem of pornography distribution in the Province of Manitoba."

So I am asking you, what are you suggesting? Are you suggesting that you would like the government to make a determination in terms of which videos ought to be available for distribution and which videos should not be distributed in the Province of Manitoba?

MS. L. KAUFMAN: I think that this relates to the whole labelling system, and we are trying to point out to you that the labelling system does not go far enough. All it is doing at the present time, under the present circumstances, is identify the so-called X-rated material that much more easily for the general public. We are suggesting that we would like that in with our paragraph later on that these kinds of disclaimers need to be more explicit.

We are also saying, in the next paragraph then, that there needs to a mechanism in place for looking at the kind of hard-core pornography that comes into our country through the relationship between the Attorney-General's office and the Film Classification Board.

So those are the kinds of controls that we would see putting on this kind of thing.

MR. CHAIRMAN: Thank you, Miss Kaufman.

BILL 85 - THE HEALTH SERVICES INSURANCE ACT; LOI SUR L'ASSURANCE-MALADIE

MR. CHAIRMAN: The next bill on our list is Bill No. 85, An Act to amend The Health Services Insurance Act (2). The presenters, the first on the list is Dr. Ian Sutherland, President-Elect, Manitoba Medical Association, with John LaPlume.

DR. I. SUTHERLAND: Thank you, Mr. Chairman. My name is Ian Sutherland. I am President-Elect of the Manitoba Medical Association. I am assisted in making this presentation this morning by Mr. John LaPlume who is the Executive Director of the Association, and Mr. David Shrom who is Legal Counsel. A copy of our brief is being circulated.

The Manitoba Medical Association, whose voluntary membership includes almost two-thirds of practising physicians in the province, welcomes the opportunity to comment and make recommendations regarding Bill 85.

In preparing this brief, we have taken into consideration the informed opinions of our sections of Radiology, Laboratory Medicine and Nuclear Medicine, whose individual members and patients would be profoundly affected by this proposed legislation, we believe, in a most negative manner.

We will not attempt to comment on those sections of the bill which relate to the operation of personal care homes as this is outside our field of expertise. Suffice to say, however, that our members hold serious misgivings about the guiding principle which is the root problem with this bill.

This approach seeks to subjectively control and manipulate the delivery of diagnostic medical services currently available to Manitobans. Bluntly put, this legislation would give the Manitoba Health Services Commission and the Minister of Health unlimited power to ration the provision of existing and future diagnostic services. Yet there is no evidence to suggest that artificial controls are required beyond those which are already in place. We refer specifically to provisions of The Medical Act under which the College of Physicians and Surgeons of Manitoba has the responsibility to establish and maintain standards of medical care, including diagnostic services. As well, the Department of Health's own Standing Committee on Diagnostic Services has representation from the Commission, from the College, from the MMA, from the Faculty of Medicine, as well as the general public.

The bill raises at least three fundamental issues. The most alarming is whether or not the state can infringe on an individual physician's right to establish or broaden the scope of an independent medical practice which

conforms to College of Physicans and Surgeons' standards and by-laws. Our members are most distressed about this critical point and may have no other option but to test this legislation in the courts if and when it is proclaimed in its present form. We do not make this statement lightly and we do not seek to influence this committee's decision in so doing. But we do put on the record our first and foremost concern so as to underscore our basic disagreement and opposition to this bill.

The MMA does not presume to speak on behalf of the College of Physicians and Surgeons, but our members, as registrants of the college, are legitimately interested in standards of medical care. We are deeply concerned that the bill's wording would permit the Commission to compete with College of Physicians and Surgeons' responsibilities under The Medical Act. Let us cite one example.

Section 140.4(b) states that the Commission may make regulations ''prescribing requirements for diagnostic laboratories and the operation thereof.'' In contrast, section 40(2) of The Medical Act states that ''the College Council may make by-laws as to all matters pertaining to the establishment and operations of such diagnostic and treatment facilities.'' While it may not be the Commission's intention to interfere with the College's statutory rights and responsibilities, this bill would give the Commission conflicting powers. This cannot be in the interests of physicians, their patients or orderly and good government.

The Commission's sweeping powers under this proposed legislation would be ominous. The MHSC could grant or revoke approval to operate a diagnostic laboratory at any time and not be truly accountable for its actions except to the Minister of Health. This power, we fear, would also be used to block the introduction and normalization of new medically required diagnostic tests purely on fiscal grounds. In short, the bureaucratic and political whip could be cracked at any time, for whatever reason, with no real consequence to the decision-takers. We believe this would lead to severe rationing of essential diagnostic services, and we can give evidence before this committee that rationing already is occurring in Manitoba due to existing government controls.

Should this bill become law, a fair and equitable appeal mechanism must be included to safeguard the rights not only of doctors, but of the consumers of health services who will not have any effective recourse when essential existing diagnostic tests are curtailed by the Commission, or when new state-of-the-art services become available and are withheld from the public.

The association has several suggestions regarding an appeal mechanism, not least of which is the binding arbitration format already adopted by the government in respect to fee disputes between the MMA and the Commission. Alternatively, the Minister's decisions pursuant to this act should be subject to the impartiality of the courts. This is critically important to consumers who could be deprived of medically required services as a result of a political decision.

We respectfully urge this committee to painstakingly study all aspects of this oppressive bill before sending it for third reading. Ideally, it should be deleted from the Order Paper, and extensive consultations would be undertaken with those who would be most adversely affected, especially consumer groups. There is no rush to establish a law which we fervently believe will create far more problems than those it seeks to overcome.

Mr. Chairman, I and my colleagues thank you for your attention and would welcome any questions.

MR. CHAIRMAN: Questions?

The Member for Pembina.

MR. D. ORCHARD: Thank you, Mr. Chairman.

Dr. Sutherland, the last paragraph, Page 3, suggests extensive consultations be undertaken. Can I infer from that that the MMA was not consulted about Bill 85 and made aware of its contents?

DR. I. SUTHERLAND: That's correct, Mr. Chairman. We have not been consulted about it. We received copies of it when it was available to the general public.

MR. D. ORCHARD: Now, Mr. Chairman, I'm going from back to front on the bill. The second-last paragraph, Page 3, the last statement, ''This is critically important to consumers'' - you're discussing the appeal mechanism and the statement being - ''who could be deprived of medically required services as a result of a political decision.''

Does that indicate that the rationing that you referred to in earlier paragraphs could lead to the patient taking the government to court because it is a rationing of service which has exacerbated a medical problem and the rationing of services because the paymaster, the government, has not provided sufficient funding to assure adequate health care? Is that the upshot of that statement?

DR. I. SUTHERLAND: Mr. Chairman, I think that is a possible consequence, that a consumer might feel constrained and obliged to charge the government for that sort of dereliction of its responsibility.

MR. D. ORCHARD: At the bottom of the first paragraph, Page 3, in that paragraph you indicate the rationing aspect and indicate that you could give evidence that rationing already is occurring in Manitoba due to existing government controls. Could you provide the committee with an example or a couple of examples of that, Dr. Sutherland?

DR. I. SUTHERLAND: Yes, Mr. Chairman, I believe I can. The two areas, at least in diagnostic imaging where the waiting lists are the longest and they are measured in weeks, are ultra-sound and computed tomography. Those are the two areas where the government has most constrained the development and the expansion of the services. It is no question but that those services are severely rationed.

MR. D. ORCHARD: Now, the point you make in the paragraph of Page 3 about the new powers that are conferred to the Commission and that the Commission as paymaster now establishes standards, what laboratory facility will be granted a new licence even as the ability to revoke a licence, one of the flaws I identified to the Minister this afternoon in addressing

the bill is that the MHSC is the regulator, the paymaster, the court, the jury and the collector of the fine. Without any appeal mechanism, other than the Minister of Health, and presumably MHSC would not undertake any of the implied or the designated powers in this act without the Minister of Health being in full compliance with them. That is objectionable to myself and I take from your comments that you find that is a severe shortcoming of the legislation.

DR. I. SUTHERLAND: That is correct, Mr. Chairman. We feel that the appeal mechanism is totally unsatisfactory and we could not tolerate that.

MR. D. ORCHARD: Mr. Chairman, on Page 2, reference has been made to the physician's right to establish or broaden the scope of an independent medical practice, etc., etc., and about the possibility of not having new diagnostic procedures becoming part of our health care service in Manitoba. Under the current system where the College of Physicians and Surgeons, or at least my understanding is that they review and recommend to the MHSC that certain new diagnostic procedures eventually become part of the insured services, you see with this legislation once again the scenario of the Commission being the paymaster, the licencer, the standard setter, the decision-maker as to new procedures as being restrictive and following budget priorities, not health care priorities.

DR. I. SUTHERLAND: That is correct, Mr. Chairman. That is the scenario which we see and fear.

MR. D. ORCHARD: Now, the act, Bill 85, does not, at least I'm quite sure, delete any currently existing statutory provisions for the approval and operations of diagnostic labs, such as you have referred to in The Medical Act, so that with the passage of this legislation we would be placing this under two legislative masters, with indeed the kind of conflict that you are pointing out here. If this legislation was not passed, would there be any adverse public effect? In other words, the system is operating now. If this bill was pulled, as you suggest, the system would still operate?

DR. I. SUTHERLAND: We believe it would, Mr. Chairman. We cannot really determine what is the need for the bill and the contents of the bill. We think it addresses problems that don't exist. I don't think that there'll be any harm at all in withdrawing the bill, at least getting involved in extensive discussions.

MR. D. ORCHARD: Now in debate this afternoon, there was an allegation made as to the standards being deficient, that an act like this in empowering the Health Services Commission to set standards to do the regulation, to become the judge and jury in assessing fines and the revoking of licenses was necessary because the allegation was made that diagnostic procedures are not well-monitored or not well-supervised and patient health in Manitoba is thereby jeopardized.

It has been my understanding that Manitoba enjoys, at least if not the best, certainly one of the best standards and performance levels in our diagnostic laboratories and in the services provided by them whether they be private or hospital or in physicians offices. Which is the correct story? Are the standards deficient or are they reasonably well-maintained in comparison to other provinces in the Canadian standard?

DR. I. SUTHERLAND: Mr. Chairman, we believe that the standards are very well-maintained. We'll hear more about this in subsequent submissions, but the College of Physicians and Surgeons of Manitoba has been a trend setter and a pioneer in establishing high standards of the operation of both in hospital and out of hospital diagnostic facilities. We don't take a back seat to anybody when it comes to the standards. I'm astounded that that sort of suggestion could be made.

MR. D. ORCHARD: Thank you, Mr. Chairman.

MR. CHAIRMAN: Other questions?
The Leader of the Opposition.

MR. G. FILMON: Mr. Chairman, just one brief question to Dr. Sutherland. In his brief, he indicates that he fervently believes that this legislation will create far more problems than those it seeks to overcome. Has the government or the Minister of Health indicated to you or to the MMA what problems it seeks to overcome by this legislation?

DR. I. SUTHERLAND: Mr. Chairman, I have not been aware of any statement that would help to clarify that. I would, however, like to ask my colleagues if they have had any information transmitted to them?

MR. CHAIRMAN: Identify yourself, please.

MR. J. LaPLUME: Executive Director. To my knowledge, we have received no definitive reason as to why this legislation is actually being proposed in the first place. We're still as a loss as to know exactly why, specifically why it's being introduced.

MR. G. FILMON: Mr. Chairman, then I could ask either Mr. LaPlume or Dr. Sutherland what their perception would be as to why or what problems the government is seeking to overcome?

MR. J. LaPLUME: Mr. Chairman, my pure guess and speculation would be that the bill is aimed at controlling costs that are now paid for out of the Health Services Commission budget. That's my pure speculation based on reading Hansard and my pure guess at the matter. But as to a specific, particular reason that I have obtained from the Commission or the Department of Health, I haven't got one and I haven't heard one. I can state categorically on behalf of the Manitoba Medical Association that we have not received such information.

MR. G. FILMON: And it would flow from that, that it's really an attempt at cost control, that it bears no relationship to patient need for any of these services whatsoever?

MR. CHAIRMAN: That's not a question.

MR. G. FILMON: Of course, it's a question, Mr. Chairman, would you like to read Hansard tomorrow and check it? It was said with a question mark at the end of — (Interjection) — it. Yes, I'm tired as everyone else is.

Mr. Chairman, then to either Mr. LaPlume or Dr. Sutherland, does it flow then from that, that this attempt to control costs is being made regardless of patient need, in terms of diagnostic testing or other laboratory analyses?

MR. J. LaPLUME: Again, Mr. Chairman, I think all I can say on behalf of the Manitoba Medical Association is that we don't really know why this bill is being proposed. We really cannot fathom why it is coming up at this present time. If there was some specific example of abuse, specific example of inappropriate services being delivered, a low standard of care, something like that that you could point to, then there could be some understanding as to why this legislation's required. We can only see one purpose for the legislation and that's to severely cut back on the level of services currently available or the level of services that might become available in the future.

MR. G. FILMON: Probably just an example of caring, compassionate government, Mr. LaPlume.

MR. D. ORCHARD: Mr. Chairman, I have one more question. Either Mr. LaPlume or Dr. Sutherland may wish to comment on my question.

Section 140.3(2) empowers the Commission to grant approval for the operation of a diagnostic laboratory or a proposed diagnostic laboratory where the Commission is satisfied upon the receipt of an application therefor, in a form prescribed by the Commission and supported by such documents and information as the Commission may require and there are (a), (b), and (c) requirements. I'd just like to see whether you could conceive of a circumstance where a diagnostic lab would not meet (c) that granting the approval would not be contrary to the public interest. Are there diagnostic labs used in the medical field that are not in the public interest? I'm troubled to know what diagnostic lab . . .

DR. I. SUTHERLAND: I'm not sure what that clause means either. I've tried to answer that same question myself. I can only assume it was put in there as a catch-all . . . of any facility which met the standards set by the College of Physicians and Surgeons for both the appropriateness of the test and the way the test was conducted would meet the public interest. I'm not really sure what that catch-all clause is there for.

MR. D. ORCHARD: Thank you, Dr. Sutherland.

MR. CHAIRMAN: No further questions? Thank you, Dr. Sutherland.

The next presenter on our list is Dr. James Briggs, President, College of Physicians and Surgeons.

DR. J. BRIGGS: Ladies and gentlemen, I want to address the Chair as the President of the College of Physicians and Surgeons and Dr. Morison, the Registrar, is here also.

We have concern with respect to one clause in this act, that is clause 140.4(b) which enables the Commission to make regulations for striving requirements for diagnostic laboratories and the operation thereof.

Since the inception of Medicare, the College of Physicians and Surgeons has operated a program of quality assurance covering all laboratories and X-ray facilities in this province, including those within hospitals. Although the College has always had and still has under the act the responsibility to monitor the standards of practice of all doctors, this program for the labs was extended to the hospital-operated facilities at the request of the Government of the Day. The entire program has been financed on a reimbursement basis by the Manitoba Health Services Commission.

The College believes that it has carried out these responsibilities effectively and to the full satisfaction of the government in the maintenance of standards within laboratories. However, we do have concern about the wording of the above clause 140.4(b). The wording appears to us to be very open-ended, and could provide for regulations with respect to standards which could duplicate the role of the College of Physicians and Surgeons, or even cause confusion.

We would, therefore, urge that the proposed legislation be amended to recognize the College's role in the maintenance of standards so that your intent would be clear to future governments.

Mr. Chairman, that is all I have to say.

MR. CHAIRMAN: Questions?

The Attorney-General.

HON. R. PENNER: I have just one question. Reference was made in a previous brief by the MMA to section 40(2) of The Medical Act, stating that the College may make by-laws as to all matters pertaining to the establishment and operation of such diagnostic and treatment facilities. Has, in fact, the College made such by-laws?

DR. J. BRIGGS: Mr. Chairman, I have to refer that to Dr. Morrison. I believe that is quite correct.

HON. R. PENNER: The answer is yes?

DR. J. BRIGGS: The answer is yes.

HON. R. PENNER: Thank you.

MR. CHAIRMAN: Other questions?

The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, I would like to ask whether the College of Surgeons and Physicians who currently, as I understand it, have the ability to set the standards and make sure the standards are adhered to in our diagnostic laboratories, public or private throughout the province, whether with this legislation they were consulted as to the intent of the legislation, the need for the legislation, and had any input into the drafting of this legislation.

DR. J. BRIGGS: Mr. Chairman, we were not consulted officially. We have had one unofficial discussion - and

the bill came before us last week I think, Mr. Chairman, to see for the first time - but only unofficial discussion.

MR. D. ORCHARD: Dr. Briggs, legislation such as this which has the intent presumably to remove from the College of Surgeons and Physicians a series of responsibilities that they have undertaken, and presumably with skill and with good ability and with competence that has led to good health care standards through our diagnostic labs, what does the College see as the purpose of this legislation? What perceived problem does the College believe this legislation is addressing?

DR. J. BRIGGS: Mr. Chairman, speaking as the president of the College, we unofficially do not believe it is the intent of the government to take away the College's standards. We merely wish to have it clear whether this is so.

With regard to the second part of your question, I cannot speak to that except as a private practitioner. If you wish me to speak to that as a private practitioner, I would be prepared to do so, but not as the president of the College.

MR. D. ORCHARD: Fine.

MR. CHAIRMAN: Other questions?

MR. D. ORCHARD: That will be fine.

I would like Dr. Briggs' private opinion on this.

MR. CHAIRMAN: Dr. Briggs will speak as a private citizen.

DR. J. BRIGGS: As a private doctor and as a citizen, I would like to state that I support the premise that Dr. Sutherland and Mr. LaPlume hold in this matter. As a president of the College, I have stated my position or the College's position already, if that is correct.

MR. CHAIRMAN: Thank you.

MR. D. ORCHARD: Thank you, Dr. Briggs.

MR. CHAIRMAN: Other questions?

Hearing none, thank you, Dr. Briggs.

MR. G. FILMON: Mr. Chairman, on a point of order just prior to the next presentation, I want to state that I find it unusual and regrettable that not only is the Minister not present to hear the presentations on this bill - and I will grant him some consideration in terms of his own personal health to be at this committee hearing - but I think that at least some senior members of staff in the Department of Health should have been here to hear these presentations.

MR. CHAIRMAN: The point is noted

The next presenter will be Dr. W.B. Ewart, private physician.

DR. W. EWART: I am a physician practising in Winnipeg, and would like to speak against the diagnostic laboratory sections under Bill 85 which, when I first got this, was Bill 54. That was a week ago. I must say, it is very difficult to keep up with the changes and to keep ahead and even to get the information across.

Quite frankly, I must confess, I have some questions to the Minister. I rather regret that he or his deputy or somebody could not have been here, particularly when you have representation from not only the College of Physicians and Surgeons, which is a professional body, but also the Manitoba Medical Association. In other words, all the physicians of Manitoba are being represented.

I gather from the introductory remarks by the Minister at second reading that the bill was introduced to save costs for the Manitoba Health Services Commission. They had paid $17 million in 1983-84 for diagnostic tests whereas, in 1974, only $4.133 million were expended. This was a fourfold increase, and I appreciate the concern of the Minister. But at the same time, the cost for government services for personal care homes had gone up 10 times. At the same time, the cost for hospital institutional care had gone up five times.

I am not quite certain why it is necessary to bring in this legislation, to select private laboratories for this restrictive legislation. If the drive for successive Ministers of Health has been to emphasize out-patient care - and I can assure you, as an old doctor here, this has been going on steadily for the last 20 years - then one would expect that the cost of laboratories would have risen. When one considers that we have been encouraged to keep patients out of hospitals, then one would have expected that we would be doing more laboratory tests outside of hospitals. This should have put up the costs.

We have an aging population now. We are told that by the Minister and others on a daily basis. We are bound to do more laboratory tests on these particular patients, and the advances in medical diagnostic technology - and I don't have to mention angiograms or C.T. scans. It's obvious that the costs have gone up. I understand the Minister's interest, but the costs in his own area have gone up even more. We think that there is some reason behind this, but we don't know what it is yet.

If there are any complaints regarding standards, then I am certain our College of Physicians and Surgeons would be pleased to deal with the problem, if they are informed. It can't be lack of efficiency, for these diagnostic services that are available are available to personal care homes, to rural hospitals that don't have some of the diagnostic equipment, as well as to the offices of individual physicians. There is an ease of communication and an availability of laboratory consultation that is unmatched in the government laboratories, and you can ask any physician this.

May I take a few moments to explain the present situation? I won't be long now, but the Attorney-General was expressing an interest in a certain area. At the present time, all diagnostic medical laboratories in the Province of Manitoba are supervised by the Manitoba College of Physicians and Surgeons. Each laboratory must have a medical laboratory director, approved by the College of Physicians and Surgeons, who is responsible for the standards set by the College. These standards include the approving of specific diagnostic procedures and the ongoing monitoring of standards and repeated inspections of the facilities. This is a steady thing that goes on all the time.

For example, standardized specimens of blood and andardized bacterial cultures and so on are sent to ese laboratories from independent laboratories. The sults are then brought back, and then they are sent ıt to the laboratories and to the College of Physicians ıd Surgeons. I can assure you, these laboratory rectors are brought in and said hey, how come you e out of line a little bit. In fact, this standard situation ıat we control the standards here is so good that the overnment labs in hospitals have accepted it, because ıey find it's an excellent way of keeping up the andards. I believe that our College of Physicians has et the best standards in Canada.

If a diagnostic facility or a diagnostic procedure is pproved by the College of Physicians and Surgeons, ıen the MHSC, the Hospital Commission, decides hether they will pay for this procedure done in that articular facility. In other words, you go to the College. he College suggests the standards are good, and they ill check it out when it's finished. Then you go to the ealth Commission and you say, will you pay for it. If ıe Manitoba Health Commission decides for whatever eason that they will not pay for a specific test or rocedure approved by the College of Physicians and urgeons, then the laboratory director can decide to erform the service free of charge or submit a charge) the patient, but he must still abide by the College tandards, regardless of any economic factors.

For example, laboratories in Winnipeg certainly have ioneered a number of advances in medical diagnostic echniques over the years without the insuring body ven being involved. Therefore, if the MHSC is unable) pay for these services, then it has the option to efuse to pay and explain the situation to the people f Manitoba. Instead, this restrictive legislation is rought in.

If you turn to Page 2, I think it is, subsection 140.3(1) I think that's a clause, the (1) - and it says that this egislation does not say they refuse to pay, but rather states the laboratory physician cannot operate a iagnostic laboratory without the approval of the ommission.

If the businessmen of Winkler or a Kinsmen Club in randon or the INCO Corporation in Thompson or the hysicians in Dauphin decide to subsidize a evelopment of a laboratory facility for the benefit of ıe people in their area, then government can block his diagnostic laboratory, even though it has high tandards and is approved by the College of Physicians nd Surgeons. They, in fact, can block this diagnostic aboratory even though the people in that area would ıe willing to pay for the service themselves. Where is he freedom of choice in this case for the citizens of Manitoba?

Furthermore, this item of legislation will restrict the aboratory physicians from practising anywhere in the rovince that he or she wishes. Chief Justice McEachern f the British Columbia Court has ruled that the B.C. Government Medical Services Commission violated the Charter of Rights when it set out to tell doctors whether nd where they could practise medicine in B.C., a situation which I should remind you applies to all Canadians, even doctors, by protecting their mobility ights as well as their liberty to pursue a livelihood.

The Chief Justice's own summary states: "It will thus e seen that this scheme permits the Commission grandfathering . . . to determine who may practise in British Columbia and where they may practise. It follows, therefore, that the Commission positively determines where some practitioners will practise, and negatively limits others from practising at all."

Now there is more on the quotations, but I think the important one is the fact that the Chief Justice said: "What has happened, in my view, is that the government and the Commission, in their understandable anxiety to control costs, have decided upon a drastic procedure which is far beyond their authority. They have taken upon themselves drastically to regulate the medical profession, which is clearly in excess of jurisdiction . . . that the impugned decision must be set aside."

I think this is important because it not only pertains to the medical profession but it pertains to all workers in Manitoba,

Now under section 144, the regulation for the sections, you turn to part (b), at the bottom of Page 4, I won't ask you to do this, it merely means that the requirements for diagnostic laboratories and the operations thereof. As a physician, I am more than somewhat surprised by this particular regulation. I would consider it to be a control of standards in the laboratories which up until now, has been the function of the College of Physicians and Surgeons. We could have another group of standard officers for the diagnostic laboratories operating out of the Health Commission. I hope the Minister doesn't plan to do that because I've had a little experience with the standard officers in the Health Commission. Again, I ask though, why is this act necessary?

Finally, if you turn to Page 3, item 140.3, section (a) that there is a need for the diagnostic laboratory or proposed diagnostic laboratory. I've searched within the act to see if there is a definition of the word "need." I'd certainly appreciate a definition for the benefit of those who do wish to interpret the act.

At present, there is a committee within the Health Commission, through the co-operation of some voluntary physicians and chaired by a member of the government, which looks at the methods of rationing the health dollar by deciding what priorities should be given to various diagnostic procedures and facilities. These priorities are given on the basis of the health dollars available and have little to do with the actual standards. The recommendation of this committee then goes to the Board of the Manitoba Health Services Commission where the final decision is made on an economic basis and on the co-operation and I presume, the political decisions of the Minister.

I have no criticism of this as long as the general public realizes that this is, indeed, rationing of health services, and the distribution of the health dollar is being decided by the paying agency and the Minister of Health. However, I think it is a very dangerous step for the paymaster to be citing standards, as this function should be kept separate from the paymaster.

In summary, I am opposed to this private laboratory legislation upon the basis that it usurps some of the functions of the college; that it limits the freedom of practice of laboratory physicians; that it will deny the rights of the average individual by limiting his freedom of choice of laboratory services and in the long run, I believe it will lower standards of care within the province. This is restrictive legislation and I am unable

to see that it is necessary. If a government wishes to improve efficiency in health, then look at the areas in which it is spending its health dollars directly and keep out of an area which is working well and provides good health in a manner which the government itself requested and avoid limiting the freedom of both physicians and citizens in Manitoba.

Thank you.

MR. G. FILMON: Mr. Chairman, I wonder if I could just ask Dr. Ewart to repeat those comparisons of increases in costs of various aspects of health care in this province between 1974, I think, and the present. I think Dr. Ewart was indicating that the rationale given in second reading for this bill was that the costs of diagnostic and laboratory services have increased dramatically over that period of time.

DR. W. EWART: Approximately four times the cost, four times the increase for the diagnostic tests, approximately five times the increase for institutional care of all types and approximately ten times the increase for personal-care homes. Those are Health Commission figures roughed out.

MR. G. FILMON: So Dr. Ewart is indicating that, although it was said that diagnostic and laboratory costs have increased four times between '74 and'84, institutional care has increased five times and personal care costs have increased ten times. Do those figures include the cost of physicians?

DR. W. EWART: I don't know. I don't know the cost of physicians in there. I'm not presenting anything relating to cost of physicians.

MR. G. FILMON: Do you have any indication as to what would have been the cost increase of physician services over that period of time?

DR. W. EWART: I'm guessing - two to three times.

MR. CHAIRMAN: Other questions?

The Member for Pembina.

MR. D. ORCHARD: Mr. Chairman, to Dr. Ewart as a practising physician, I'd like to find out from you if there would be any fact to allegations made in the House today in speaking to this bill on second reading, that laboratory diagnostic testing procedures were inadequate in Manitoba with specific reference to - if I can recall the correct terminology - Pap smear tests was the one example that was cited by a member of the Legislature today in which he indicated that the standards were woefully inadequate and hence believed that the Commission should be directly involved as is mandated under this legislation in providing for standards and checking procedures.

As a practising physician, Dr. Ewart, are you aware of this situation of substandard diagnostic procedures?

DR. W. EWART: No. I'm quite certain there are areas that have been and are being improved. I know that this is constantly part of the College function. I just repeat again. I think our laboratory standards are probably the best in Canada and this has been state(by a number of different people at different times.

MR. D. ORCHARD: Do you, Doctor Ewart, share th(concern that with the Commission as the fundin(organization or the "paymaster," I guess is the word now assuming the standards and also assumin(exclusive ability to fund new diagnostic procedures, d(you have any concerns about whether that will restric the availability of modern diagnostic techniques t(Manitobans?

DR. W. EWART: I have no doubt in my mind that wher the paymaster is also prescribing the standards o(monitoring the standards, that there will be a clas' between the two and that the paymaster, the dollars will win out. At least, today what we have is a syster where the facilities and the procedures are evaluatec on the basis of standards and then the paymaster has the option to decide what he wishes to pay for. This is good, providing the paymaster states what he is willin(to pay for to the public, and what he can pay for.

MR. D. ORCHARD: One last question. Section 140.3(2' lays out the criterion that the Commission may grant any approval required for the operation of a diagnostic laboratory, etc., etc., as the Commission may require, providing that granting the approval would not be contrary to the public interest. I posed the question to another presenter this evening.

Can you conceive of a circumstance where a diagnostic laboratory would be contrary to the public interest, whatever the public interest might be, but presumably . . .

DR. W. EWART: Well, quite honestly, I think this is the classical example when you are dealing with things at 3 o'clock in the morning, when you are getting through an important bill to every doctor in Manitoba and, therefore, to every patient in Manitoba, and you are coming out with stuff like that which is, as far as I am concerned, nonsense. Just nonsense. Nothing can be put through contrary to the public interest for the approval. It all has to go through the College standards anyhow. So I don't see how the College would be putting through something and saying these are good standards when it's contrary to the public interest.

Gentlemen, as legislators, you've got to talk to some of the people in the field once in a while and not at 3 o'clock in the morning or 2 o'clock in the morning before an act goes through.

A MEMBER: Did you get that, Andy?

MR. CHAIRMAN: Are there other questions? Hearing none, thank you, Dr. Ewart.

DR. W. EWART: Thank you for your kind hearing.

BILL 98 - THE EXPROPRIATION ACT; LOI SUR L'EXPROPRIATION

MR. CHAIRMAN: The next and the last bill on our list is Bill No. 98, An Act to Validate an Expropriation Under The Expropriation Act. The presenter is Mr. Wayne Hancock, private citizen.

Mr. Hancock.

MR. W. HANCOCK: I am not unlike the last speaker where I have to admit I resent appearing at this late hour. I can't see why something else couldn't be arranged, particularly if you have senior speakers at 2:15 in the morning, but I suppose that's your business.

First, I'll read a letter to the editor that I wrote. Maybe I should explain that I have been lobbying City Hall and I am quite familiar with this subject, plus Central Park expansion and so on.

Let's consider the expropriation of 50 feet from the Free Press with a little perspective. An example: No. 1 - Core, to satisfy government, expropriated a strip of north Portage and chased out the video parlours, etc., plus made noises about expropriating all of the Free Press property. The price tag was $20 million to $40 million, depending on you talked to, but then they settled for 50 feet. Now bear in mind they settled for 50 feet when there was no concrete plan except a silly extension of Central Park.

Politicians, in realizing that Core did not have the expertise to handle this size project, then formed North Portage Development Corporation and simply gave them so much land to work with including this 50 feet. Only months ago, Izzy Coop, the President of North Portage Development Corporation, admitted to not knowing that the Free Press had warned they would fight expropriation. So he went ahead and he made the North Portage Mall plans and then he had to defend them once he found out the Free Press was going to fight it.

No. 3, the North Portage Mall plans have been reworked several times. The initial expropriation reasoning - that was Core - was to extend Central Park to Portage Avenue. Well, they scrapped that. Next came extending Central Park to the back lane behind Portage Avenue, and now they've scrapped that. Now the plan is to put in a line of little shops that will totally eliminate any view - and if you look at the model you will understand what I mean - and simply hide the Free Press.

Now I contend a brick wall with an access gate would do exactly the same thing. You don't need a little line of buildings there and take away their 50 feet. Because the point is the 50 feet doesn't butt up against the atrium; it runs up to the side of the atrium. I have passed a little map - I don't know if you have seen it or not - but if you want to go to north Portage they have a scale model.

In order to facilitate a mini-grand opening - that was No. 4 - of this mall, called Phase I, in the fall of 1986, what they are going to do is they are going to open a little heart of the centre in the fall of 1986. This is going to be a grand opening, and this is going to be just before the next civic election; the complete opening will be the fall of 1987. It seems like our politicians will pay any price to - in example, the cost of expropriation plus court costs plus damage compensation - possibly millions - plus unfair legislation - that's No. 1; no. 2, the possibility of expropriating all the Free Press that the Free Press proves gross injury to their operation, and that's not impossible.

You see, the mini-grand opening is simply visual representation over reality. We have the esplanade of 120 houses and two rows of specialty shops, plus the North Portage Mall, rising majestically in the background - just the shell, mind you, but that is good enough - and this is where we are going to have a grand opening in the fall of 1986. That is the only reason we are taking away the right of the Free Press to its day in court.

The press walked away from up to $1 million by not jumping on the tax rebate bandwagon with the rest of downtown, plus Main Street, etc., and they certainly could have.

The Press increased their holdings downtown when everybody else was heading to the cheap tax base in the suburbs. City councillors even questioned them about that, but they didn't get very far. The Press could have picked up Logan Industrial Park for next to nothing, and anybody sitting at this table knows that, and still had a central location. The Press will take over 700 consumers out of our downtown when and if they go. There is no guarantee if this nonsense carries on that they won't go.

"Far from being crucial to the retail component," and that's an Izzy Coop quote, "this 50 foot strip is nothing but a trivial add-on and purely political."

In conclusion, I would like to ask this committee the following questions:

Aside from proving this legislation is legally possible, which of course it is, can you prove this is crucial to the mall development because in conversation with Mr. Izzy Coop, I found he couldn't prove it? I asked him, we had a long conversation as a matter of fact.

No. 2, how can a dozen a little businesses employing a handful of people jeopardize a huge operation like the Press, setting aside moral obligation to an over 100-year-old business, where are our priorities?

No. 3, did the original legislators, who constructed our Expropriation Act intend this act to be used in this trivial manner?

No. 4, perhaps this committee really ought to look at the scale model before recommending anything. Then you could make an informed judgment.

MR. CHAIRMAN: Questions? Hearing none, thank you, Mr. Hancock.

This Committee on Statutory Regulations and Orders has now heard all presentations of those presenters and representatives of interest groups who were able to come this morning and tonight starting at 8:00 p.m. until early this morning hour.

Before we rise as a committee, is there any suggestion as to how the committee shall proceed tomorrow when we resume at 10:00 a.m.?

The Attorney-General.

HON. R. PENNER: Yes, I would ask that the committee resolve that we formally begin the clause-by-clause consideration of the bills in the order in which they are listed on the paper.

MR. CHAIRMAN: Is that agreed by the committee? (Agreed)

What is the pleasure of the committee?

HON. R. PENNER: Committee rise.

MR. CHAIRMAN: Committee rise.

BRIEF SUBMITTED BUT NOT READ

Brief of July Silver on behalf of MAST:

Mr. Chairman, and members of the committee.

I am here on behalf of MAST to offer support for Bill 26. In particular, I would like to support the provision for retirement at age 55 as described in section 6(2.1) and for the determination of designated services for part-time services as described in section 6(6).

MAST realizes there is a cost involved which must be borne by either teachers or the government. It is our understanding that the extra costs for the first five years will be paid from a surplus contained in the Teachers' Retirement Allowances Fund. At the end of five years there may be extra costs to the government. If this is the case, we would not want the additional payment by government to be considered education monies with an accompanying reduction in the grants provided to school boards.

We support the early retirement provisions for the following reasons:

(1) Not everyone as he or she gets older can relate to children. If one has lost the enthusiasm for work with younger children, every effort should be made to allow that person to retire.

(2) There are many young, bright, enthusiastic teachers who are fully qualified to teach but are unable to get a job.

(3) We believe the education of the children in our schools will benefit by providing opportunities for new teachers with new ideas to enter the classroom.

We beieve it is fair to use the annualized salary rate for part-time teachers in determining their average salary for pension purposes. We suppport the use of part-time teachers and we believe this change will encourage more teachers to teach part time or share jobs with other teachers who may be unemployed.

We encourage this committee to pass Bill 26 with these two provisions.

COMMITTEE ROSE AT: 2:25 a.m.