LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Tuesday, June 27, 1989

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Driedger (Emerson), Ducharme, McCrae

Messrs. Doer, Edwards, Ms. Hemphill, Messrs. Pankratz, Patterson, Plohman, Praznik, Rose

MATTERS UNDER DISCUSSION:

Bill No. 3—The Highway Traffic Amendment Act

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Mr. Chairman (Helmut Pankratz): The Standing Committee on Industrial Relations come to order, please.

When the committee met on Thursday, we heard presentations from members of the public on Bill No. 3, The Highway Traffic Amendment Act. Today, we are going to consider the Bill clause by clause.

During consideration of the Bill, the title and the preambles are postponed until all other clauses have been considered in their proper order by the committee. I would like to, at this time, before we go to Bill No. 3, ask the Minister whether he has any comments that he would like to make at this time.

Hon. Albert Driedger (Minister of Highways and Transportation): Mr. Chairman, just a few comments that I would like to make to the committee. As we had the hearings the other day and heard the representations, at that time we tabled the amendments to this Bill. There was some concern expressed about the amount of amendments that were forthcoming.

I would just like to indicate that I believe all Members of the committee have received clarification of the amendments that we are bringing forward. These amendments have come forward based on the tightening up of the legislation, as well as in consultation with the Members of the committee, Members of the Opposition, and also from advice that we received from the people from Minnesota who attended here the other day.

* (1005)

As indicated last time, it is important for us that we hopefully can get approval on this Bill, get it through the committee stage. Certainly, we feel it is very important legislation. It is very important that we hopefully get it passed this week so we can implement the necessary requirements that we have to do, to get the Bill coming forward. Hopefully, if we can get approval, get the Bill passed this Session, then we would look at possible implementation of September.

If the Bill would not pass, then we would probably have to be dealing with it when we come back in September, and subsequently we might have difficulty getting it in place before the holiday season.

We believe that the amendments have basically dealt with some of the concerns that have been expressed. Like I said, I think there has been dialogue and co-operation with all Members of the committee and from the Opposition Parties.

With those comments, Mr. Chairman, I ask the indulgence of the Members of the committee in terms of going through clause by clause and getting the amendments that we have forwarded, and I indicated September. I believe if we passed this today it should be ready to go by October is what my information tells me.

With those comments, I want to thank all the Members of the committee who have been working very co-operatively in terms of dealing with some very important legislation. Thank you.

Mr. Chairman: Thank you, Mr. Minister. Do the Opposition Critics have any comments that they would like to make at this time? Mr. Edwards.

Mr. Paul Edwards (St. James): I would simply reiterate our commitment to dealing with this in as timely a fashion as possible. I would, therefore, not make any comments at this time and just hope we can get on to the Bill, and get through it this morning if possible.

* (1010)

Mr. Chairman: Okay, I would just like to remind Members before we start, the amendments to clauses must be proposed in the order of the clauses, and in order of the respective sections of the clauses, in other words, that we do not jump back and forth.

With that, Members of the committee, I would like to open Bill No. 3, The Highway Traffic Amendment Act.

Clause 1—pass; Clause 2—pass; Clause 3—pass.

Clause 4—Mr. Edwards.

Mr. Edwards: Mr. Chairman, I propose I will be moving a motion to amend and add in fact a new Clause 4.1. I want to speak very briefly at this time to what that motion entails and the reasons for it. If that is acceptable to the Chair, I will move the motion at the end of my comments or would the Chair prefer me to move it right now?

Mr. Chairman: What is the will of the committee? Would you want, Mr. Edwards—

Mr. Albert Driedger: Move the amendment and then speak on it.

Mr. Edwards: Fine.

Mr. Chairman: Are you going to move the amendment?

Mr. Edwards: Yes, I am. I move

THAT Clause No. 4 be amended by adding Clause 4.1 to read as follows:

4.1 Subsection 225(5) is repealed and the following is substituted:

Penalties

225(5) A person who violates a provision

(a) of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of not less than $500 and not more than $1,000, or to imprisonment for a term not exceeding six months, or to both the fine and imprisonment; or

(b) of subsection (2), (3) or (4), is guilty of an offence and is liable on summary conviction to a fine of not less than $250 and not more than $500, or to imprisonment for a term not exceeding 90 days, or to both the fine and imprisonment.

(French version)

MOTION:

Il est proposé que le projet de loi soit amendé par adjonction, après l'article 4, de ce qui suit:

Abr. et rempl. du paragraphe 225(5)

4.1 Le paragraphe 225(5) est abrogé et remplacé par ce qui suit:

Peine

225(5) Quiconque enfrient:

a) une disposition du paragraphe (1) est coupable d'une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende d'au moins 500 et d'au plus 1000 et d'un emprisonnement n'excédant pas 6 mois, ou de l'une de ces peines:

b) une disposition du paragraphe (2), (3) ou (4) est coupable d'une infraction et est passible, sur déclaration de culpabilité par procédure sommaire, d'une amende d'au moins 250 et d'au plus 500 et d'un d'emprisonnement n'excédant pas 90 jours, ou de l'une de ces peines.

That concludes the motion, if I may speak very briefly to it. Clause 225 of The Highway Traffic Act presently reads that "a person who violates any provision of," and then the distinction is made between Subsection 1 and Subsections 2, 3 and 4. The fines are respectively not more than $1,000 and not more than $500.00. I am proposing to change that to read that the fines must be not less than $500 but as well not more than $1,000, and not less than $250 and not more than $500.00. This in effect puts in a minimum and, I believe, puts in a maximum which is reasonable and, obviously, this is in addition to other penalties one pays for driving while suspended or disqualified.

Therefore, I recommend this motion to the committee. I think it is reasonable given the tenor of the whole Bill that we put in minimums so that we are saying to the public and indeed to the courts that there will be a minimum fine in place for driving while suspended, in addition to obviously the new impairment provisions.

I might simply add that these are in keeping with other jurisdictions in the country and I do not think represent overly harsh penalty provisions for driving while suspended. I will be happy to answer any questions which other Members of the committee may have.

Mr. Chairman: Anybody else have some comments to make? Mr. McCrae?

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, the whole matter of impaired driving—suspended driving, penalties, and changes in the way we deal with these matters—has been the subject of discussion since the announcement by my colleague, the Minister of Highways and Transportation (Mr. Albert Driedger), and myself of these changes in The Highway Traffic Act to deal with those offences.

With respect, and I appreciate the interest the Honourable Member for St. James (Mr. Edwards) has shown in these matters, I suggest that the changes that we are bringing in, in Manitoba that the Government is proposing are new in Canada. It has been suggested that what we are proposing is already the toughest legislation in the country. With respect also, increases in fines, increases in suspensions, have been tried in the past, and it is precisely because the success rate has been somewhat of a disappointment in regard to these types of increases in penalties that we have moved to this other system whereby we go to the administrative suspension.

* (1015)

While I appreciate the effort made by the Honourable Member and his wish to help in this matter, I think that we should try to see if the administrative licence suspension and the impoundment provisions contained in the legislation we are bringing forward to see if they are going to work. We have every indication that they have worked in other jurisdictions, certainly the administrative licence suspension. So what I would like to do is to see how this program will work. I suggest it will work well. I would never want to rule out ever again looking at increased penalties in terms of fines and suspensions.

The other aspect of this is that in these cases, wher we increase fines, we increase suspensions. That can be seen to have the most devastating effect on a certain group in our society, that being the poor. With our thrust

we have been attempting to deal with this in a very stern and severe kind of way, but in a way that we do not have to go out of our way, I suggest, in regard to penalties at this time when we have other measures we are about to put in place that might have an unfair impact on those poor segments of our society. I would decline my support for the Honourable Member's amendment with those comments and suggest that we should see how the other measures proposed by the Government will work before, in desperation if you like, we move to increasing monetary and suspension penalties.

Mr. Chairman: Before we carry on with this discussion, I would like to ask that the committee agree that everything that will be said, passed and whatever, will be in English and in French. Will that be agreed by the committee? (Agreed)

Mr. Albert Driedger: I would just like to reply briefly to the amendment that the Member is bringing forward. The other concern that we have is the fact that we are establishing minimums. Our feeling is that the courts have some concern that we have maximum and minimum that takes away the discretion of the court to some degree. They are not necessarily that excited about this kind of thing. We feel by establishing the maximums which we have that there would not be a need to establish a minimum which would be at the discretion of the courts themselves.

Mr. Chairman: Mr. Edwards, could I ask you, it has been suggested to me by the legislative Clerk that all amendments have to be moved by the Mover in English and in French, so would I be able to ask you - (Interjection)- unless otherwise specified.

Mr. Albert Driedger: Then consider it done that way.

Mr. Edwards: Absolutely, and I will be proposing other amendments, and all of them can be taken to be moved in English and French.

Mr. Chairman: Thank you very much.

Mr. John Plohman (Dauphin): Point of order, Mr. Chairman.

I would think that it would be proper procedure to hear from all the response to the amendment before Mr. Edwards speaks again to it. He did introduce it.

Mr. Chairman: Very good, Mr. Plohman. I was actually just going according to the way people put up their hands and try to keep it in that order, but I think you are bringing up a very valid point.

Ms. Maureen Hemphill (Logan): Mr. Chairman, we want to indicate our regret at not being able to support the amendment. I think we have some of the same concerns that have been indicated already by the Minister, and that is that by putting in minimums of $500, we know who is going to go to jail. The poor people are going to be serving their time in jail because they are not going to have the $500.00.

I would much prefer to see the discretion of the courts to be able to make a decision, that in some cases a fine of $100 is going to be like $1,000 for somebody else. I would like to see that discretion made so that we do not continue the problem that we have right now where people are going to jail because they cannot afford the fines, and I think that is something we want to get away from.

* (1020)

Mr. Edwards: It is perhaps a lost cause, given the comments that have been made, but I want to respond briefly to the comments, first of all, that the Minister made. There is a feeling that fines are unduly harsh on the poor. We have a Fine Option Program in this province which functions quite effectively. I think we all know that. Secondly, the fines, as we all know, lead to a levy being placed which goes to victims.

With respect to the impoundment provisions that the Minister is proposing, let us be clear that those impoundment provisions only really have an effect if you own a car. The person who is caught driving while suspended, who does not own a car, is not punished by the impoundment provisions. The owner is punished. Therefore, this fine simply raises the minimum and the fine is already in place. The fact is that the maximum fine, as it stands today is, in the case of subsection (1), "not more than $1,000.00." I am not suggesting that it go beyond $1,000.00. What I am suggesting is that there be a minimum of $500 and, with the Fine Option Program and throughout The Highway Traffic Act and throughout most other provincial statutes, fines are the primary form of punishment. That is why we have a Fine Option Program in place for people who cannot afford to pay. The impoundment provisions, I reiterate, do not punish the person who does not own a car anywhere near the extent that they punish the person who owns a car. There is a built-in discrimination.

I am simply trying to rectify that insofar as is possible through fines. I also say that with respect to the Minister's statement, the Minister of Highways and Transportation's statement (Mr. Albert Driedger), that this takes away discretion. I ask him, if he thinks this takes away discretion, what does he think that pre-trial suspension does? The courts are in fact ignored as part of the philosophy of this Bill. I am simply building in minimums which are throughout in fact many provincial statutes and are in no way, in my experience anyway, seen as a great intrusion into the work of the courts. This simply sends a message, which I think is an important message to send, that you will not get off for $50, you will not get off for $100.00. You are going to pay a minimum.

I will leave my comments at that. I hope I have convinced those who have already spoken but I perhaps doubt that, although I continue to welcome any questions on my most recent comments.

Mr. Allan Patterson (Radisson): I must admit, I guess, that I suffer from a generation gap at times and I am still of the firm view that to drive and own a automobile is not a right but a privilege in our society. So, therefore,

I am also firmly of the view that as mature individuals we must accept the consequences of our own behaviour and be prepared to so do.

So the bleeding heart bit about the poor, I think, does not hold water. I think driving when suspended is an extremely serious offence and the person who does it should know the consequences of that behaviour and be prepared to meet them. Secondly, any individual who can own and operate an automobile could scarcely be called poor.- (Interjection)- Well, there is public transportation that is a lot cheaper.

An Honourable Member: In Winnipeg, but what do you do out in the country?

Mr. Chairman: Please, let us keep this orderly. Mr. Patterson, are you through with your comments? Mr. Doer.

Mr. Gary Doer (Leader of the Second Opposition): Thank you, Mr. Chairman. In some ways, the Member for Radisson (Mr. Patterson) is making the point about the real principles in the Bill, about whether driving is a right or a privilege and, therefore, the provisions in the Bill.

* (1025)

One thing we do know when we look at the Bill in its entirety, and I think we have to look at amendments in relationship to the thrust and goal of the total Bill, and that is the way we would like to review these amendments. The one great equity part of the Bill is that the immediate withdrawal of your privilege to drive is equal for the rich and the poor in this Bill. Therefore, we think the emphasis should be on that immediate consequence as a privilege and, therefore, we think that the support generally is in that area, rather than getting into fines and imprisonment. We know that any study on sentencing, particularly with minimums and imprisonment, have a bias against the poor. The great advantage of the total Bill is the immediate and equitable dealing with the privilege of driving with a licence.

That is why we will not support these amendments. We think that the thrust of the Bill is to have immediate consequences to deal with the problem of drinking and driving. We think that is dealt with in other parts of the Bill without getting into the provision of penalizing the poor more, as the Member for Logan (Ms. Hemphill) has indicated.

Mr. Edwards: I might make a brief response to the Member for Concordia's statements. I ask and I simply bring to his attention that there are other provisions in this Act, specifically the provision for fees to be prescribed for hearings. I ask him to keep his comments in mind when we come to consider those sections, given his comments about expenditures.

Secondly, I take the comments here as somewhat of an indictment on the Fine Option Program. That is extremely regrettable to me because the Fine Option Program is put into place specifically to deal with the poor who are given fines, and has been extremely effective. I sense there is a feeling that it is not adequately doing its job and I find that extremely regrettable. I think if anyone takes the time to look through this Act and many other Acts, you will see that fines are the primary way of punishment. Now they are not perfect, that is clear, but Fine Option attempts to redress that by allowing one's labour to take the place of money and I firmly support that program, as does our caucus.

Mr. Doer: Well, as the Party that put in the Fine Option Program, we are not deserting it. We have not deserted our principles on the Fine Option Program. That does not mean to say that we do not recognize the bias in sentencing. If the Member for St. James (Mr. Edwards) is not aware of any studies of sentencing, I am quite surprised. They will show there is a correlation between wealth, status in the community and the types of sentences people receive.

So we have not abandoned any faith in fine options. We established the Victims Assistance Program. We will probably be fighting the Minister of Justice (Mr. McCrae) if he plans on changing it, as we have indicated from Day One.

We also recognize, whether we like it or not, some of the realities of our society, which has unfortunate features of biased sentencing. That is why we will reject the proposal from the Member and deal with equity in terms of licence suspensions as part of the Bill.

Mr. Edwards: A final comment, the Member for Concordia (Mr. Doer) is quite correct. Overall in the penal system, the bias towards the poor, there is no question. The interesting thing about driving offences, and offences concerning the operation of motor vehicles and licensing is that it is an anomaly to that general rule.

If the Member cares to read any number of reports done by experts in this field, you will see that drinking and driving and driving while suspended and driving offences cover the entire socioeconomic range. That is the very interesting feature of drinking and driving offences. That is why the deterrent effect of fines, as well as suspensions, is in fact much higher in driving offences.

I bring that to the attention of the Member for Concordia (Mr. Doer) in conclusion, and I certainly would think that we could vote on this at this time.

Mr. Chairman: On the proposed motion of Mr. Edwards to amend Clause 4, with respect to both the English and French texts, shall the motion pass? All those in favour, say yea; all those opposed, say nay. I believe the nays have it.

Mr. Edwards: I would like a recorded vote, Mr. Chairman.

Mr. Chairman: The motion is defeated. Do you have to not request that before we call the question?

An Honourable Member: No.

Mr. Chairman: No.

* (1030)

Mr. Edwards: A recorded vote.

Mr. Chairman: All right. Record the vote. All those in favour, let us see your hands, three; all those opposed, seven. Three in favour of the amendment and seven against. The amendment to the motion is defeated.

Clause 4—pass; Clause 5—pass; Clause 6—pass; Clause 7—pass; Clause 8—

Mr. Albert Driedger: Clause 8, Mr. Chairman, we have an amendment.

Mr. Chairman: Clause 8, there is an amendment the Minister indicates. Mr. McCrae.

Mr. Albert Driedger: Mr. Chairman.

Mr. Chairman: Mr. Minister.

Mr. Albert Driedger: I think the amendment is about the third paragraph down. Can we go through section by section possibly?

Mr. Chairman: Okay. Clause 8, and then we will take it section by section.

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, I move

That the proposed new subsection, 242.1(3) to The Highway Traffic Act as set out in Section 8 of Bill 3, be struck out and the following be substituted:

Storage of Impounded Vehicle

242.1(3) A motor vehicle seized, impounded and taken under this section shall be stored where the peace officer directs, and all costs and charges prescribed by regulation for the transportation, towing care, storage disposition and other related charges respecting the motor vehicle, all costs and charges on account of administration prescribed by the regulation to be paid to the Minister of Finance upon the release of an impounded motor vehicle, and for searches, registrations and other charges under The Personal Property Security Act reasonably necessary for a performance by the garage keeper of his or her obligations, are a lien on the motor vehicle and the lien may be enforced in the manner provided in The Garage Keeper's Act.

(French version)

MOTION:

Il est proposé que le nouveau paragraphe 242.1(3) du Code de la route, figurant à l'article 8 du projet de loi 3, soit supprimé et remplacé par ce qui suit:

Remisage de véhicule automobile

242.1(3) Le véhicle automobile saisi et mis en fourrière en vertu du présent article est remisé lorsque l'agent de la paix l'ordonne. Tous les frais prescrits, y compris les frais de transport, de remorquage, de garde, de remisage, de vente ou de destruction du véhicule automobile, les frais administratifs prescrits qui doivent être versés au ministre des Finances dès la sortie du véhicule automibile mis en fourrière et les frais qui sont prévus par la Loi sur les sûretés relatives aux biens personnels, notammant à l'égard des recherches et des enrigistrements, et qui sont raisonnablement nécessaires à l'exécution des obligations du garagiste, constituent un privilège sur le véhicule automobile. Le privilège peut être exercé de la façon prévue par la Loi sur les garagistes.

I move this motion with respect to both the English and French texts.

Mr. Chairman, this is a technical change to ensure that the Government's costs can be fixed by the Minister of Finance and will be collected by the garage keeper on behalf of the Government. Later on, we will be dealing with an amendment, another one, and that is a corresponding change to the regulation-making power.

Mr. Chairman: I have received a copy of the amendment. Any discussion on the amendment?

Mr. Edwards: I simply want to ask, has the Minister of Justice got figures that he can give us that he would anticipate this cost would run in the normal course?

Mr. McCrae: The type of figures the Honourable Member is talking about would depend upon the number of people's vehicles who are impounded. The administrative costs would bear a direct relationship, I suggest, to the number of people's cars impounded.

Mr. Edwards: Let me just get clear. The administration fees are going to fluctuate according to how many cars are impounded. That is the statement as I take it from the Minister. Does that mean that the fees are going to fluctuate for each particular impoundment?

Mr. Albert Driedger: Mr. Chairman, it is very hard for us to establish the exact price because depending on how many, as was indicated by the Attorney General, it is an average that will affect the administration costs. If there is a high influx of cases, naturally the administration costs will be higher so we cannot establish a rate at this stage of the game.

Mr. Edwards: I am sorry, I am just looking for an answer as to is this going to be set—and the Minister has mentioned on an average. Does that mean that the administration is going to wait for a certain period of time and then assess what the average has been and then set it like that, or are they going to assess it per every impoundment based on the actual cost of that impoundment? How is this administration fee going to be set, and if it is going to be set in regulation, what are the review processes that have been put into place to make sure on a regular basis that it is continuing to reflect the actual cost? I gather that is the intention of this amendment.

Mr. Albert Driedger: Mr. Chairman, my understanding is a flat fee will be established. It will be an estimated

fee prior to the administration of the program and a flat fee will be established, but we cannot establish that at this stage of the game.

Mr. Edwards: There is absolutely—the Minister has mentioned an average. I have a couple of questions. At what point is that average going to be established? You say you are going to need to see what happens. How long are you going to wait before you establish and, if you are going to establish it right at the outset, which I presume you will, then what will that fee be?

Mr. Albert Driedger: Mr. Chairman, my understanding from people who are working with this indicate that we will probably be able to establish a rate in approximately a month. They are working on the details of the regulations in terms of trying to establish what administrative costs will be and that would probably be able to be established in approximately a month's time.

Mr. Edwards: The Government is asking for us to include an administration fee which will be presumably set by regulation but remains undefined today which will be based on an average, but in fact not an average of actual occurrences but simply a presumed average. That in fact, it occurs to me, may not reflect the actual cost. Are there review provisions in place for this to be rectified if it does not reflect the actual cost, and will that be done on a regular basis?

Mr. Albert Driedger: I would expect we would have no difficulty with that. We will be estimating as best we can within the next month, based on the information that comes forward. If there is a big variance from the actual cost and what we are charging, we have no difficulty reviewing it and changing the rate or amending the regulation, I am sorry.

Mr. Edwards: Is there not a ball park figure you can give us, Mr. Minister?

Mr. Albert Driedger: Mr. Chairman, I certainly cannot and staff cannot at this stage of the game either. We are not trying to keep anything back in terms of this. We just do not have that information at this stage of the game. The moment it comes forward, we will make that information available in terms of the regulations that we bring forward.

I have before me another brief which has been presented to us and the legislative Clerk is handing it out to all Members of the committee at the present time. We are just passing it out for information. Okay, Mr. Edwards.

Mr. Edwards: It occurs to me that given the conversation we just had on my amendment wherein we were discussing set costs for driving while suspended, we are now by the Government's initiative going to be putting in penalties for driving while suspended which are undefined and a ball park figure cannot even be given. So I simply draw that to committee Members' attention who have spoken against the amendment I had, that this seems extremely contradictory given the statements of the Minister. I have no problem with covering the costs. I simple am quite disturbed that we cannot at this stage, after working on this for a year, over a year by the Government's own account, sort of come to any ball-park figure at least that might be a cost we can expect.

Mr. Albert Driedger: Mr. Chairman, first of all, this is not a penalty. What we are dealing with is a recovery of cost, administrative cost, so it is not a penalty and that is what we are trying to establish. Not dealing with it in that respect, we are trying to establish what our administrative costs would be. We will do the best estimate that we can make to try and recover these costs. It will be then put into regulation to establish those costs and if, as indicated before, there is going to be—I expect we should be able to hit it relatively close. If there is a big variance somewhere along the line, we are prepared to review that and change the regulations.

Mr. Chairman: Mr. Plohman.

Mr. Plohman: Mr. Chairman—

Mr. Chairman: Yes, excuse me, please pull the mikes close because it is difficult in hearing and it has to be recorded.

* (1040)

Mr. Plohman: My mike was not on yet. I usually speak loud enough, and I can speak louder if you wish, Mr. Chairman.

Society should not have to pay the costs of administering drunk driving programs and I think clearly that is what is being proposed here, that the offender pays the costs. It just adds to the financial costs of the people who are involved in the offences and speaks, I think, to the reasons why we should not have supported, which we did not, the amendment that was made by Mr. Edwards earlier that would incur additional financial costs and make it even more hard on the people who can least afford them, as we spoke in that particular amendment.

In this case though, we think that this is the minimum that should be attached to the offender and that is the actual cost of the offence and the administration surrounding. I agree that it would be nice to know exactly what it is, and I can understand why I would think that the administration should be able to give us a ball park figure at this time, that they would have thought that out to that extent. However, if they have not, I think it is important that we have that information as soon as possible.

Ms. Hemphill: Yes, I just wanted to-

Mr. Albert Driedger: Mr. Chairman,

Ms. Hemphill: You have got a ball-park figure?

Mr. Chairman: Ms. Hemphill, the Minister would like to make some remarks.

Mr. Albert Driedger: Mr. Chairman, we are throwing out a rough figure of approximately $50.00. We do not want to necessarily be held to that, based on that, but this is an approximation. If somebody had concerns whether it was $500 or $200, we are throwing out a ball park figure of around $50 based on the limited information we have at this stage of the game.

Ms. Hemphill: We appreciate the ball-park figure. I think that we were feeling the same way, that one would think that you would be able to be given a reasonable estimate of what you thought it was going to cost, so we appreciate the $50 figure.

I think we will indicate that we will want to be monitoring the costs very carefully. I appreciate also the fact that the Minister has said that they just want to recover their costs, which we believe they should be doing and that they will monitor it and they are prepared to change the regulation and the amount, if the experience shows that it should be less.

Mr. Chairman: Ready for the question? On the proposed motion of the Minister of Justice (Mr. McCrae) to amend Clause 8, Section 242.1(3), Storage of Impounded Vehicles, with respect to both English and French texts. Shall the motion pass? All those in favour, say yea; against? Motion carried.

Mr. Albert Driedger: I wonder if for the clarification of the committee, as we go into Section 8, if we could take and pass the individual regulations 242.1(1) and go on, because we have more amendments. Would that be acceptable?

Mr. Edwards: Can I just ask, the Opposition seeks to put forward amendments, and does the Minister want us to bring ours forward in that same sequence?

Mr. Albert Driedger: Yes.

Mr. Edwards: Well, then I want to revert back because I would like to propose an amendment with respect to 242.1(1) and that amendment to read as follows. I move that—

Mr. Chairman: Is it the will of the committee? Do you have leave to revert back? -(Interjection)- That is the legislation. We have to follow legislation.

Mr. Edwards: We did not-

Mr. Chairman: Do we have leave? Leave has been granted, Mr. Edwards, you can revert back.

Mr. Edwards: Mr. Chairman, we did not pass that particular section. We were working on that whole section, but I will move under 242.1(1) the amendment to read as follows.

I move

That Clause 242.1(1) be amended by adding the following to subsection 242.2(1), after "Criminal Code":

, and who believes on reasonable grounds that the motor vehicle is not stolen,

(French version)

MOTION:

Il est proposé que l'article 8 soit amendé par insertion après Code criminel, au paragraphe 242.1(1), de ce qui suit:

, et qui a des motifs raisonnables de croire que le véhicule automobile n'est pas volé,

and I move both the French and English versions.

If I may speak briefly to this. Mr. Pinx, in his submission to this committee, raised I think an interesting situation with regard to this provision, which was that a person may have their vehicles stolen and subsequently would be forced under this legislation to apply to the officials and go through, perhaps hire a lawyer, a very good chance that the person would hire a lawyer, this entire process without having any fault because that person's vehicle had in fact been stolen. It seems to me a minimal protection against that, that we put in here that the police officer must also have reason to believe that the vehicle was not stolen, and that would allow that peace officer to exercise discretion at the scene to relieve a person whose vehicle had been stolen. Presumably, the peace officer is going to do what a police officer normally does, which is make the minimal investigations to ensure that vehicle has indeed been stolen.

I suggest that this is a minimal protection for the innocent in our society who lose their vehicles due to theft, and we do not want to cause them undue hardship and penalty going through the processes to get their car back.

Mr. McCrae: Mr. Chairman, the Honourable Member is being responsive to the public hearings we had with regard to this Bill. Mr. Pinx did indeed raise the issue of what happens if your car has been stolen and driven by a suspended driver and seized. The fact is, in the case of a stolen vehicle, the authorities do seize stolen property anyway and, in the normal course of events, one does get his or her property back in the normal course of events anyway.

So in that sense I do not see the need for the Honourable Member's amendment if the case cited by Mr. Pinx was that it was my car and I believe it was the Honourable Member or else the Honourable Leader of the New Democratic Party who stole my car and he is a suspended driver. Well, the fact is the right of return of your vehicle was there before and that same right is there now.

Mr. Edwards: I simply bring to the attention of the Minister that while, if a car is a stolen piece of property, that is true it is given back in the normal course of events. It is not given back in the same way that you would have to go through this legislation to get that car back.

Therefore, given that a police officer is going to take the stolen vehicle anyway for a certain period of time, but give it back without forcing the person to apply, I take it from the Minister's comments that he would have no problem in supporting a simple clarification

of that, that it is not his intention under this Act to force a person who has had their vehicle stolen to go through a hearing process and perhaps spend money and hire a lawyer.

I think that this is minimal clarification and guarantee that will not happen, and I look for the support of the Minister for this amendment because in keeping with his statements, I think this is minimal protection, and what we do not want is the person who owns the car to have to go through this process. If the police are going to take it as a regular stolen vehicle case, then indeed we already have a process in place. We do not need this and in fact it is clear that it is not the intention of the Government to cover that scenario. This appears to me to be a minimal protection against that.

Mr. Chairman: Anybody else have any comments to make in respect to this amendment? Ms. Hemphill.

Ms. Hemphill: Mr. Chairman, I think we believe that the right of the return of the vehicle is there and that this amendment is not necessary. We believe that the right of return of the vehicle is there, yes.

Mr. Edwards: Simply to respond to the Member's comments, it certainly is there. The issue is what it takes to exercise that right. There is no question that it takes a significant amount of effort on the person who has lost their car to get it back. Now, that is not such a terrible thing if there is some cause for forcing a person through that. In the case of a stolen vehicle, there is no cause and we do not want innocent people, innocent victims of crime to be forced to go through that process. That surely is the last thing that was intended by this Bill.

All I am asking for is the absolute minimum to ensure that a person who is the victim of a crime is not further victimized and punished when there is no cause for it. It is a very minor amendment. I encourage the committee Members to see it in that light, a simple clarification and ensuring that does not occur.

Mr. Bob Rose (St. Vital): Clearly, the way that this is written that it allows and probably will, the police will impound the vehicle. If nothing else, that will necessitate an additional expense to the Crown. You can be sure as God made little apples that there will be bureaucratic bungles up on this and people will have to hire lawyers and go to a lot of expense and inconvenience to get their vehicle back when it is stolen.

I think that my colleague is absolutely right, and we should look at an amendment of this section, otherwise it is going to be a very costly thing to straighten out, and it will be amended in the future anyway, common sense dictates that. I think that the Government should look at that in a way of co-operation, not just dig in their heels and say this is the way the Bill is going to be. We have got the support of the NDP so let us do it, because if you go along with this one, I can guarantee you are going to have problems both with people who have had stolen vehicles and the bureaucracy in straightening out the mess.

* (1050)

Mr. McCrae: Very briefly, Mr. Chairman, let us not confuse the issues here. A stolen vehicle is a stolen vehicle. Because a suspended driver has his vehicle seized really does not enter into this picture. A driver of a stolen vehicle is going to have the vehicle seized too. The vehicle is seized and impounded. The owner of the vehicle, the victim, has the same rights to have his car returned or her car returned as previously, so that this amendment does not bring us anything new.

Mr. Edwards: I bring to the Minister's attention that the section reads simply that a peace officer has reason to believe that a person has operated a motor vehicle as defined in the Act, contrary to Section 225, i.e., without insurance or without a licence, or Section 259 of the Criminal Code, that peace officer shall seize. If that is not what the Minister intends, if the Minister intends the police officer to exercise some discretion on the scene and say, is it stolen, therefore, we do not go under this Act, we go under a different process because it is stolen. If he intends the peace officer to exercise that discretion anyway, let us put it in here for the benefit of the police officers. Let us put it in here for the benefit of the people and the police officers.

Mr. Chairman: Are you ready for the question? All those in favour of this amendment to 242.1(1)?

Mr. Chairman: I believe the Nays have it. Recorded vote.

Mr. Edwards: Recorded vote, Mr. Chairman.

Mr. Chairman: All those who are in favour of this amendment please raise their hands, three. All those opposed to this amendment, please signify, seven against.

The amendment is defeated.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new Subsection 242.1 to The Highway Traffic Act, as set out in Section 8 of Bill No. 3, be amended (a) in Subsection 4 by—

Mr. Edwards: Excuse me, Mr. Chairman.

Mr. Chairman: I had recognized the Minister of Justice.

Mr. Edwards: We had decided to do this in order of process and there was another amendment to Subsection 1. May I ask—

Mr. McCrae: Oh, I am sorry. Am I out of order, Mr. Chairman?

Mr. Chairman: I was not aware of this. I guess we need leave to go back again. Grant Mr. Edwards leave? (Agreed)

Mr. Edwards: Mr. Chairman, while we are on Subsection 242.1(a) I would like to—

Mr. Albert Driedger: Mr. Chairman, I wonder if we could have a clarification. I know it is confusing with

the numbers the way they are. If we could deal with them, like the previous amendment dealt with 242.1(1). Is there a further amendment on that from the Member?

Mr. Edwards: No, there is not.

Mr. Albert Driedger: Could we follow it in that order and then we will not get confused in terms of where our amendments come in or where the Member wants to bring his in. Would that be acceptable?

Mr. Chairman: We pass them clause by clause, so we will go through the sections and then at the end we will ask to pass the clause in its entirety. So I would like to now go down to 242.1(2). Are there any amendments to that one?

Mr. Edwards: I move

THAT Clause 242.1(2)(a) be amended as follows:

(a) by striking out "and" at the end of subclause (iii)—

Mr. Chairman: Mr. Edwards, have you got copies of this amendment?

Mr. Edwards: Yes, absolutely.

Mr. Chairman: Would you circulate it, please?

An Honourable Member: I am just making a correction.

Mr. Chairman: Okay then, carry on, please.

Mr. Edwards: . . . subclause (iii);

(b) by striking out the semicolon at the end of subclause (iv) and substituting ", and";

(c) by adding the following after subclause (iv):

(v) the right to make an application under subsection (4);

(French version)

MOTION:

Il est proposé que le nouvel alinéa 242.1(2)(a) soit amendé:

a) par suppression du terme "and" à la fin de la version anglaise du sous-alinéa (iii);

b) par suppression du point-virgule à la fin du sous-alinéa (iv) et son remplacement par une virgule;

c) par adjonction, aprés le sous-alinéa (iv), de ce qui suit:

(v) le droit de faire la demande visée au paragraphe (4);

That is the end of the motion, Mr. Chairman, if I may speak briefly to it. All this does again, and it is in response to the discussion at the committee stage. I cannot recall if this came out in the actual presentations or the questions or discussions afterwards, but we want to ensure that in the acknowledgement of seizure and impoundment document which is given, there is also a simple statement that the person is entitled to apply under the process set out in Subsection (4). It seems to me that the form that is devised by the branch could clearly accommodate that.

We have already got in there the name and address, the year, make and serial number of the car, the date and time of seizure. We simply want to include notice that person is entitled to apply to get the car back. It seems to me that it is again a minimal requirement imposition on the bureaucrats to have the form reflect that, so that a person has notice that they can apply on certain grounds to get the car back.

I bring to the Minister's attention that with respect to the pre-trial suspension, if I am not incorrect, the document which is handed out at that stage does include advice as to the appeal procedures. Again, I think this is a minimal thing to put into the statute. I encourage all Members to see it as such and as simply a giving of information to the public which none of us, I am sure, oppose.

Mr. Albert Driedger: Mr. Chairman, I hate to be shooting down the Member's suggestions all the time. The Minister will be prescribing forms and under those forms there will be provision for notice for application. So really we feel the amendment is not necessary at this stage of the game.

Mr. Edwards: Mr. Chairman, that form is specifically what this provision is about. This provision guarantees what will be on that form. I am simply asking that in addition to such seemingly common sense things as the time and place or the name and address, the year, make and serial number, the place where the vehicle is impounded, those are things which will be in the form. I am simply saying that another thing that should be in this form is notice of what process you go through to get your car back if you feel it has been wrongfully taken.

It is an administrative thing which this Minister has seen fit to put in the Act, that is, what the form is going to include. It seems to me that this is a minimal addition to that form.

Mr. Chairman: Are you ready for the question?

Mr. Plohman: Mr. Chairman, I just want to say that this section deals with direction to a peace officer and the activities that he shall carry out. Therefore, information to the public is not proper in this particular area. That is what the Member is arguing, that this is further information to the public and that is not the function of the Bill. That can be provided in supplementary materials. This section is dealing with actions that the peace officer shall undertake.

Mr. Edwards: Let me just walk the Member through this because I sense that they desperately would like to support the Government on everything in this Bill, but I think this is a common-sense thing that I think we can all agree on.

This (a) reads: "The peace officer has to complete an acknowledgment of seizure and impoundment." Now that would be a form, a document drawn up by the administration. It then goes on to say—and this is, by the way, given to the person whose car is taken—the specifics, the name and the address, the year and make, these details which will be in that form. I am simply adding one more detail. That detail is, notice of subsection (4) which includes how you get your car back if your car is wrongfully taken. It is a very, very minimal, but I think important, addition to that form. I simply bring to the Member's attention that I believe, and I am just looking further in this Act, that the notice and order which is given at the pre-trial suspension does in fact include notice of the appeal provisions.

* (1100)

I think that it is very common for notices of this type to include information as to how you appeal. I think that it is just a simple addition to the form and I just want to make crystal clear in this Act that is included. I think it helps this Act when and if a challenge is taken to show that there were efforts made to accommodate in statute a very minimal obligation of fairness to those whose car is taken, and simply giving somebody information which is already in the Act is to me a minimal part of that duty.

Mr. Chairman: All those in favour of the amendment, please signify. All those opposing the amendment, please raise your hands. Seven against and three in favour of the amendment. The amendment did not pass.

Can we carry on? Are there any more in regard to 242.1(2)? Then we will go to 242.1(3) we had dealt with, as amended.

Then we go to 242.1(4)—Mr. Edwards.

Mr. Edwards: I simply have a question and it is not an amendment, you will be I am sure somewhat pleased to hear. I just simply want to ask, when it says "before the expiry of 30 days apply to a justice," how does the Minister see that taking place in a normal situation? What justice? Is that a magistrate or a Justice of the Peace? How does the Minister see a person who has this occur, finding out that they can apply to a justice? Is he supposed to go and read the Act?

Mr. McCrae: The information will be on the form. There will be about 30 justices scattered around our province who will be designated to do this, so that it will be readily accessible.

Mr. Albert Driedger: Mr. Chairman, I believe you have an amendment.

Mr. McCrae: Yes, Mr. Chairman. I will get on with the one I started earlier on, but I will start it over again.

I move

THAT the proposed new subsection 242.1 to The Highway Traffic Act as set out in Section 8 of Bill No. 3 be amended:

a) in subsection (4) by striking out "other than an owner who is charged in connection with the seizure and impoundment of the motor vehicle,";

b) in subsection (4) by adding "designated by the Chief Judge of the Provincial Court of Manitoba for the hearing of such applications" after "justice";

c) in subsection (5) by adding "by an owner other than an owner who is charged in connection with the seizure and impoundment of the motor vehicle" after "4";

d) by adding the following after subsection 5;

Issue to be determined

242.1(6) Where, after considering an application under subsection 4 by an owner who is charged in connection with the seizure and impoundment of the motor vehicle, the justice is satisfied that the owner, before he or she drove the motor vehicle, had no reason to believe that his or her licence or permit was suspended, that he or she was disqualified from holding a driver's licence or was prohibited from driving a motor vehicle and that the owner had at the time of the seizure an impoundment complied with subsection 27(5), the justice shall:

(a) revoke the order of impoundment;

(b) subject to the lien described in subsection (3), direct that a peace officer order the garage keeper to return the motor vehicle to the owner or to a person authorized by the owner; and

(c) direct that the fee paid by the applicant be refunded.";

(e) by numbering subsections (6) to (11) as (7) to (12);

(f) by deleting "(5) and (6)" in subsection (7), now renumbered as subsection (8), and substituting "(5), (6), and (7)".

(French version)

Il est proposé que le nouveau paragraphe 242.1 du Code de la route, figurant à l'article 8 du projet de loi 3, soit amendé:

a) par suppression, au paragraphe (4), des termes, "s'il n'est pas accusé relativement à la saisie et à la mise en fourrière du véhicule automobiles";

b) par insertion des termes "que le juge en chef de la Cour provinciale du Manitoba charge d'ententre les demandes", après "juge";

c) par insertion au paragraphe (5), après le numéro de paragraphe "(4)", des termes "et faite par un propriétaire qui n'est pas accusé relativement à la saisie et à la saisie et à la mise en fourrière du véhicule automobile";

d) par insertion, après le paragraphe (5), de ce qui suit:

Question à trancher

242.1(6) Lorsqu'il est convaincu, après avoir examiné la demande visée au paragraphe (4) et faite par un propriétaire qui est accusé relativement à la saisie et à la mise en fourrière du véhicule automobile, que le propriétaire n'avait, avant de conduire le véhicule automobile, aucune raison de croire que son permis était suspendu, qu'il avait perdu le droit de détenir un permis de conduire ou qu'il lui était interdit de conduire un véhicule automobile et que ce propriétaire avait au moment de la saisie et de la mise en fourrière observé le paragraphe 27(5), le juge:

a) révoque l'ordre de mise en fourrière;

b) sous réserve du privilège visé au paragraphe (3), enjoint qu'un agent de la paix ordonne au garagiste de remettre le véhicule automobile à son propriétaire ou à la personne que celui-ci autorise;

c) enjoint que le droit versé par le requérant lui soit remboursé.

e) par substitution, aux actuels numéros de paragraphe (6) à (11), des numéros (7) à (12);

f) par suppression des termes "(5) et (6)" au paragraphe (7), devenue le paragraphe (8), et leur remplacement par "(5), (6) et (7)".

Mr. Chairman, I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice (Mr. McCrae). Any discussion on this?

Mr. McCrae: Mr. Chairman, the Honourable Minister of Highways (Mr. Albert Driedger) has asked that I clarify this matter.

This substantive amendment introduces the possibility for the suspended driver who is the registered owner of a car to have a hearing to get the car back. Criminal Code suspensions and roadside suspensions for alcohol consumption or suspensions for which the driver will always have personal notice as he or she is either suspended in open court or served with a notice of suspension by the police officer. However, there are some suspensions, for example, for non-payments of fines that are served by mail.

A person who complied with Subsection 27(5), that is, gave notice of a change of address to the registrar but who did not receive notice of suspension will be allowed to get the car back. Mr. Chairman, this is in direct response to issues raised at the public hearings into this matter. We feel that this amendment does provide that degree of protection for those who, as the Honourable Members opposite have reminded me sometimes, Motor Vehicles are not able to get service through to a person for whatever reason. There should be no case of a totally innocent person being subjected to any kinds of sanctions whatsoever, so that is to provide that kind of protection.

The change introduced in Clause b) of the motion has been discussed with the Chief Judge of the Provincial Court. It would not be desirable to have more than 300 magistrates and Justices of the Peace in the province all hearing these matters. The cost of training them all would be prohibitive. It is intended that a sufficient number of magistrates located around the province be given the training so that rapid hearings into impoundment matters will be possible.

Mr. Edwards: This amendment deals with Clauses 4, 5, and 6 of this matter and a new 6 is added which then bumps the other numbers up one accordingly. Therefore, my questions are going to be based on the working of the three subclauses.

This impoundment provision refers back to Section 225 of The Highway Traffic Act. That, in addition to Section 259 of the Criminal Code, lays the base for an impoundment. If you look at Section 225 of The Highway Traffic Act, it makes a distinction between those who drive while their licence is suspended and those who drive while their registration is ineffective. There is a distinction drawn, in other words, between you yourself as a driver driving without a licence and you as the owner of a car driving without registration for your car. This Act does not address that distinction which is drawn in The Highway Traffic Act and which is incorporated in this Act.

With specific reference to these subsections, the issues to be determined and the rights to apply to a justice to get your car back, I would ask the Minister what provision is made for giving a defence that your car was taken away and you had, on reasonable grounds, the belief that it in fact was insured because that is not addressed at all in this section, and I think that is quite an oversight given that the Bill specifically goes back to Section 225, and yet does not deal with it in its entirety.

I want to bring one example to the committee Members. That is that I have experienced and many others have experienced MPIC making mistakes. Sometimes, you think you have insurance and you have every reason to believe you have insurance and MPIC has not sent you the correct notices or has failed to register your vehicle when you paid the amounts of money. That defence is not provided for here in this Act. It is provided for in The Highway Traffic Act, but it is not included in this. This Act specifically refers back to the very section in The Highway Traffic Act that incorporates that defence.

I want to ask the Minister how he accounts for failing to provide for those two types of issues that are dealt with under Section 225.

Mr. Albert Driedger: Mr. Chairman, the Member has a valid point. What is required, I think, is under the Section 242.1(1) should read, "under Section 225(1)," which would deal with the unlicensed driver, not unregistered vehicle.

Mr. Edwards: I thank the Minister for that acknowledgment. Given that then the issue to be determined is going to be restricted to those who drive without a licence, is the Minister willing to incorporate another addition to this clause which would allow a

similar defence if your car was not registered, because let us be clear that this section will take away your car—it is not your licence—it is your registration is not in effect. If MPIC has made a mistake, you will not have a defence under this Bill.

* (1110)

I, therefore, propose to the Minister—and I am not moving this in the form of a motion, although I will, but I suggest to the Minister that he include a provision that a person under this section is also entitled to a defence under 225(5.1), because 225(5.1) does include defences covering both situations, that is, situations where you legitimately had a right to believe that your licence was effective and situations where you legitimately had a right to believe that your car was registered.

Mr. Albert Driedger: Mr. Chairman, if we were drafting an amendment to 242.1(1) which should read under the third line, Section 225.1, which would—

Mr. Chairman: Excuse me. We need leave to revert back. We have this matter we are dealing with right now and that one we should dispose of first before we revert back.

Mr. McCrae: We could proceed, I suggest, while this relatively simple amendment is being drafted in both languages. We can proceed and when that is complete, we could come back to that, by leave, I understand.

Mr. Chairman: Is that the will of the committee?

Mr. Edwards: That is fine. I simply bring to the Minister's attention that it is not 225.1. I am sure he means 225(1).

Mr. Albert Driedger: Bracket sub 1.

Mr. Chairman: On the proposed motion of the Minister of Justice (Mr. McCrae) to amend Clause 8, subsection 242.1(4) and (5) and (6) with respect to both English and French texts, shall the motion pass? All those in favour, say aye; opposed nay. No nays. The motion is passed.

Mr. Chairman: 242.1(7)—pass; 242.1(8)—pass; 242.1(9)—pass; 242.1(10)—pass; 242.1(11)—pass.

Is it the will of the committee to just have a brief break until the amendment is ready?

An Honourable Member: No.

Mr. Chairman: You want to carry on?

An Honourable Member: Yes.

Mr. Chairman: Okay. We shall proceed. Clause 9—the Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new subsection 263.1(1) to The Highway Traffic Act as set out in Section 9 of Bill No. 3, be amended by striking out everything before Clause (c) and substituting the following:

Notice and order of suspension

263.1(1) Where

(a) a peace officer

(i) by reason of an analysis of the breath or blood of a person, has reason to believe that the person has consumed alcohol in such a quantity that the concentration thereof in his or her blood exceeds 80 milligrams of alcohol in 100 millilitres of blood contrary to section 253(b) of The Criminal Code, or

(ii) has reason to believe that a person while having alcohol in his or her body failed or refused to comply with a demand made on that person to supply a sample of his or her breath or blood under section 254 of The Criminal Code, and

(b) the occurrence is in relation to the operation of or having care and control of a motor vehicle as defined in this Act,

the peace officer on behalf of the registrar shall

(French version)

MOTION:

Il est proposé que le nouveau paragraphe 263.1(1) du Code de la route, figurant à l'article 9 du projet de loi 3, soit amendé par suppression du passage qui précède l'alinéa c) et son remplacement par ce qui suit:

Avis et ordre de suspension

263.1(1) L'agent de la paix est tenu de prendre, au nom du registraire, les mesures mentionnées aux alinéas c), d), e) ou f), lorsque les conditions prévues aux alinéas a) et b) sont réunies:

a) l'agent de la paix:

(i) ou bien a, en raison d'une analyse de l'haleine ou du sang d'une personne, des motifs de croire que la personne a consommé une quantité d'alcool telle que son alcoolémie dépasse 80 milligrammes d'alcool par 100 millilitres de sang contrairement à l'alinéa 253b) du Code criminel;

(ii) ou bien a des motifs de croire qu'une personne a, pendant qu'une quantité d'alcool était présente dans son corps, refusé ou fait défaut d'obtempérer à un ordre de fournir un échantillon d'haleine ou de sang qui lui a été donné en vertu de l'article 254 du Code criminel, pour une raison autre qu'une incapacité physique d'obtempérer à l'ordre;

b) l'événement a trait à la conduite, à la garde ou au contrôle d'un véhicule automobile au sens de la présente loi;

I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice (Mr. McCrae), discussion?

Mr. McCrae: Mr. Chairman, if I could just give a very brief explanation, if that is all right, the words added to Subclause (a)(i) tie the police officer's reason to believe to the analysis of the breath or blood. This means that the police officer's belief will always be founded on objective evidence. Similarly, the change in Subclause (ii) requires a belief that there was alcohol in the body. Finally, the word "charge" has been changed in Clause (b) to "occurrence," because there has been no criminal charge.

Mr. Edwards: I appreciate the point which the Minister is trying to make with this amendment.- (Interjection)- Perhaps we could just discuss that before we draw conclusions.

I see that in Subsection (1) here, by reason of an analysis of the breath or blood of a person, the standard still reads, "has reason to believe." While the evidence that is to be considered is put in, the standard remains "has reason to believe." To that extent, that is in my view the key part of this subsection, that is, "has reason to believe." Conversely, under part (2), that standard is changed to "is satisfied."

My question to the Minister is, what is the basis for that distinction in standards?

Mr. McCrae: With respect to "has reason to believe," the police officer would have something objective to deal with, that being a reading on a breathalyzer machine. In regard to "is satisfied," as I understand my advice that has been given to me a moment ago, does not have in the case of "is satisfied" that breathalyzer reading which is the objective piece of information, if you like, on which he has a reason to believe. So, the "is satisfied" deals with a situation where that kind of objective information is not available to the officer.

Mr. Edwards: I do not want to get into a lengthy legal debate about this. However, clearly when a person refused to blow, that is a question of fact which is decided in a court of law every day in this province under that particular section of the Criminal Code.

Now, granted this is not a penal statute, we are not dealing with that section. We are dealing, however, with the same set of circumstances, which is a person who refuses to blow. That is an objective standard. Facts come to light which may or may not support that. That is what is important in respect to this section. Whether or not the person refused to blow, that is a question of fact.

A question of fact requires, it seems to me, just as there already is in part (1), an objective standard as to whether or not that person, that peace officer in this case, did in fact have reasonable grounds for making that conclusion of fact. To that extent, the test of "is satisfied," which is an entirely subjective standard, is satisfied, who is satisfied? The police officer is satisfied, does not lend itself to any review. I simply suggest, and I will make this by way of a motion, but I suggest to the Minister that, and I am not going to be putting in suggesting reasonable and probable grounds, which is the criminal standard. I know that is feared by the Minister and his advisers in their defence of this Act.

* (1120)

Why not simply take "has reason to believe," and make it consistent in this section and say "has reason to believe that a person while having alcohol in his body, etc., etc., refused to blow?" Why not simply have that standard be consistent? I see absolutely no reason, given that both of these are questions of fact, for that distinction.

Quite frankly, it is extremely dangerous in my view, comes the challenge of this piece of legislation, and none of us want this legislation not to stand up to judicial review. I suggest that inconsistency, that subjective standard of "is satisfied" is really dangerous in a court's hands when it comes to reviewing the constitutionality of this Act.

Mr. Chairman: Okay, may I ask the question?

Mr. Plohman: Could the Minister clarify as to why "satisfied" was used as opposed to "reason to believe" in the second portion of that amendment?

Mr. McCrae: As I understand it, Mr. Chairman, in the second part of it the officer does not have an objective piece of information to look at, that being the reading on a breathalyzer. That is the reason.

Mr. Edwards: Perhaps I can just add my comments to the Member's question. That is true, there is not sort of a little machine that says you are .08 or you are over, but the issue as to whether a person refuses to blow is still a question of fact. It is, "did the person blow, did they not blow," just as "are they .08 or are they higher" is a question of fact.

It is a subjective standard in that context, is giving an enormous amount of power, which this Minister clearly does not intend, to the police officer to make up his own mind. He does not intend that, because he has built in a review of that police officer. The review has to be based on objective standards. This test, in my view, is inappropriate. I am trying to help. I want this Bill to withstand the constitutional challenge.

I might add "has reason to believe" is obviously a standard that this Minister has adopted for his other section. It does not link this to the Criminal Code or the criminal process. It is a very minimal effort at consistency.

Mr. Chairman: I will ask for the question. Anybody else have any comments to make on this amendment?

Mr. Plohman: Mr. Chairman, just waiting for the Minister to provide some additional information. It seems to me that perhaps not fully understanding, Mr. Edwards, is the thrust of his argument but the operative

part of this clause is that he refuses a breathalyzer, and that is then sufficient reason to withdraw the licence. That seems all that is necessary here. It does not change that. Either he is "satisfied" or "has reason to believe." The fact is, he refuses a breathalyzer and that is the reason for withdrawal of the licence or impounding of the vehicle.

Mr. McCrae: Mr. Chairman, I have expert legal opinion here with me and in the interests of uniformity I would be satisfied—I should not use that word—to go along with the expression "has reason to believe" in Subclause (ii), so that would require an amendment to the amendment. If that would satisfy the Honourable Member in an attempt to move towards uniformity, I think we could agree to that change, to change the words from "is satisfied" to "has reason to believe."

Mr. Edwards: I certainly am satisfied with that.

Mr. Chairman: Could I ask the question then? Minister of Justice, are you moving that?

Mr. McCrae: I would so move in both languages, Mr. Chairman.

Mr. Chairman: So move both languages that amendment?

Mr. Albert Driedger: Mr. Chairman, you know we are going through a pretty complex system here. We have two, another amendment that we have written out and this one pending. If we can officially adopt them as we go along. We are getting the paper work done. Would that be acceptable? The first one was on the other page where we had 242.1(1) where we had—no, we were adding behind 225(1). We have that written out. We are trying to conform and comply with the regulations here. If we could do the same thing, just the wording change in 263.1(1)(ii), "has reason to believe," we will get the paperwork done if we can sort of operate on that basis, and then maybe we can move on. Would that be acceptable?

Mr. Plohman: Mr. Chairman, is the Minister saying that we should formally pass it now and that he will do the paperwork later, and that we will not go back to it later?

Mr. Albert Driedger: Yes, they are doing the paperwork right now. If that is acceptable, we are just trying to expedite things.

Mr. Plohman: But we do not have to go back and formally pass it again later?

Mr. Albert Driedger: That is what I am requesting.

Mr. Plohman: I would agree with that, as long as the amendments are that short and simple.

Mr. Chairman: Members of the committee, we have before us a motion and an amendment to the motion, and I would like to ask the question to the amendment of the motion. All in favour, say yea; nays? So the amendment to the motion is carried.

Now, the amendment. All those in favour of the amendment, say yea; nays? I declare the amendment carried.

Mr. Edwards: I would like to propose an amendment to add something to the new 263.1(6). I would like to add a 6.1, and I will move that formally at this time.

Mr. McCrae: We have some that come before that though.

Mr. Edwards: Okay, I am sorry.

Mr. McCrae: I have one with respect to 263.1(1), so I think that would numerically come ahead.

Mr. Chairman, I move

THAT the proposed new subsection 263.1(1) to The Highway Traffic Act as set out in section 9 of Bill 3 be amended

a) by striking out "or on the expiry date of the licence or permit seized by the officer, whichever is the earlier" in subclause (c)(ii); and

b) by striking out "(d)(ii)" in clause (d) and substituting "(c)(i)"; and

c) by striking "or on the expiry date of the licence or permit, whichever is the earlier" in clause (e).

(French version)

Il est proposé que le nouveau paragraphe 263.1(1) du Code de la route, figurant à l'article 9 du projet de loi 3, soit amendé:

a) par suppression des termes "ou à la date d'expiration du permis saisi, si cette date est antérieure", au sous-alinéa c)(ii);

b) par suppression des termes "d)(ii), à l'alinéa d), et leur remplacement par "c)(i)";

c) par suppression des termes "ou à la date d'expiration du permis, si cette date est antérieure", à l'alinéa e).

I move this motion with respect to both the English and French texts.

Mr. Albert Driedger: Are you covering the whole works right away?

Mr. McCrae: Mr. Chairman, these are all technical changes. The original Bill provided for a suspension beginning earlier than seven days in cases where the driver's licence was due to expire in less than seven days. This is eliminated so that all permits will be for seven days. While it produces a slight anomaly in that if a person's licence was due to expire, say, in two days, he or she would now receive a temporary permit for seven days. The rarity of these occurrences together with the complexity and cost of administering different temporary permit periods makes it preferable to eliminate the concept, and this is done by motions (a) and (c). Motion (b) corrects a clerical error.

What this does, as I understand it, is that if your licence is about to expire and you are picked up for impaired driving you will still get your seven day permit, even though that seven days would go beyond the termination of your present driver's licence. It is done for various reasons, but it is important also that it be done. I think it makes for an administrative problem for us if we did not pass this amendment.

Mr. Chairman: Any discussion? All those in favour, please say aye.

Some Honourable Members: Aye.

Mr. Chairman: I declare the amendment passed.

I thought we would deal with Clause 9 totally. Okay, we can revert back any time.

Members of the committee, we will revert back to Clause 8, by leave. Do we have leave to revert back to Clause 8? (Agreed)

* (1130)

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new subsection 242.1(1) as set out in Section 8 of Bill 3 be amended by striking out "225" and substituting "225(1)".

(French version)

Il est proposé que le nouveau paragraphe 242.1(1) figurant à l'article 8 du projet de loi 3 soit amendé par suppression des termes "de l'article 225" et leur remplacement par "du paragraphe 225(1)".

I move this motion with respect to both the English and French texts. That is one we agreed to a little while ago, right?

Mr. Plohman: I thought we had already agreed that we would not go back to this, as that was the clarification I was making a few moments ago, that we had passed it. Now you send something out that we cannot read anyway, so what is the sense of it?

Mr. McCrae: Yes, we did agree not to go back to that, John. You are right. I apoiogize to the Honourable Member for Dauphin and all the other Members of the committee.

Mr. Chairman: Leave was granted to go back. We are back at Clause 8 and this amendment before us, which was presented by the Minister of Justice.

I would like to ask the question whether this amendment shall pass? All those in favour, say aye. All those that are opposed, say nay.

I declare the amendment passed.

Now, shall Clause 8, as amended, pass?

All those in favour, say aye; nay?

I declare Clause 8 passed.

With the will of the committee we go back to Clause 9—Clause 9, 263.1(2). Is that correct?

An Honourable Member: Pass.

Mr. Chairman: 263.1(3)—the Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new subsection 263.1(3) to The Highway Traffic Act as set out in section 9 of Bill 3 be amended

(a) by striking out "and" at the end of clause (c);

(b) by striking out the period at the end of clause (d) and substituting "and"; and

(c) by adding the following after clause (d):

"(e) a copy of any certificate of analysis under section 258 of The Criminal Code with respect to the person described in subsection (1)".

(French version)

Il est proposé que le nouveau paragraphe 263.1(3) du Code de la route, figurant a l'article 9 du projet de loi 3, soit amendé:

a) par suppression dans le texte anglais du terme "and", à la fin de l'alinéa c);

b) par suppression du point à la fin de l'alinéa d) et son remplacement par un point-virgule;

c) par adjonction, après l'alinéa d), de ce qui suit:

e) une copie du certificat d'analyse prévu à l'article 258 du Code criminel et concernant la personne visée au paragraphe 1.

Mr. Chairman, I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice.

Mr. McCrae: Mr. Chairman, this motion requires that a copy of a Certificate of Analysis be forwarded by the police officer, and this was a drafting clerical slip.

Mr. Chairman: Any discussion in regard to this amendment?

All those in favour of the amendment as presented, please say aye. All those opposed, say nay.

I declare it passed.

263.1(4)—pass.

263.1(5)—the Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new subsections 263.1(5) and (6) to The Highway Traffic Act be struck out and subsections 263.1(7) to 263.1(9) as set out in section 9 of Bill 3 be renumbered as subsections 263.1(5) to 263.1(7) respectively.

(French version)

Il est proposé que les nouveaux paragraphes 263.1(5) et (6) du Code de la route sojent supprimés et que les paragraphes 263.1(7) à (9), figurant à l'article 9 du projet de loi 3, deviennent les paragraphes 263.1(5) à (7) respectivement.

Mr. Chairman, I move this motion with respect to both the French and English texts.

Mr. Chairman: Moved by the Minister of Justice.

Mr. McCrae: Mr. Chairman, this motion eliminates two subsections that were proposed which would have given the registrar the power to serve these notices of suspension by mail. This would have only been applicable in the case of a blood sample being analyzed which normally takes two weeks. The police have assured the Government that in these cases they will, in addition to serving the charge and subpoena on the driver, also serve the notice of suspension. This is to deal with blood tests, as opposed to breathalyzer testing where you do not get the test until some later period, and the police are going to be doing the serving.

Mr. Chairman: Any discussion to this amendment—pass.

Mr. Chairman: 263.1(6)—Mr. Edwards.

Mr. Edwards: I just want to clarify as we go through this now. Will we be using the new numbering that has now come into effect?

Mr. Chairman: Mr. Edwards, you are right. There will be some renumbering, I understand. We will get clarification on it. 263.1(5), we had passed; under the new numbers, 263.1(6)—Mr. Edwards.

Mr. Edwards: I would like to propose an amendment to this. The amendment reads as follows—

Mr. Chairman: Mr. Edwards, have you got copies of it?

Mr. Edwards: Yes.

Mr. Chairman: Would you distribute the copies, please.

Mr. Edwards: Mr. Chairman, I move

THAT section 9 be amended by adding the following after subsection 263.1(6):

Disposition of charge within 3 months.

263.1(6.1) Where the facts referred to in clause (1)(a) result in a charge that is stayed or dismissed, or for which a discharge is granted, within the three months referred to in subsection (6), proceedings under this section shall cease, and a suspension made under this section shall be revoked.

MOTION:

Il est proposé que l'article 9 soit amendé par insertion, après le paragraphe 263.1(6), de ce qui suit:

Décision dans les trois mois

263.1(6.1) Les procédures prévues au présent article cessent et toute suspension ordonnée en vertu du présent article est révoquée lorsque les faits mentionnées à l'alinéa (1)a) entraînent une accusation qui est arrêtée ou rejetée, ou à l'égard de laquelle une libération est accordée, dans la période de trois mois visée au paragraphe (6).

I have comments on this. May I go ahead and make them, Mr. Chairman?

This simply complies with what we heard from Mr. Pollock who was the head of the Citizens Against Impaired Driving at the committee stage last Thursday night. He indicated that he could not see any reason why a person's licence would continue to be suspended after they had been discharged or acquitted. The charge is gone. Now, we all hope that we are going to have trials within three months. The Minister has ensured us that is going to occur. I am simply providing for that occurrence. I have faith in the Minister's word, and he has committed himself to that.

In the hopefully likely event that we will have trials within three months, I simply propose, in keeping with Mr. Pollock's suggestion that it would be very unfair for the suspension to continue past an acquittal or a discharge in a court of law, and that is the nature of my amendment.

I want to say that I am anticipating what the Minister may say in objection to this. I am anticipating that this does in fact make a link to the criminal process. However, I note that the licence suspension can be taken away for any occurrence. It does not have to be a charge, and if it is a charge, it can be a charge under any statute. It could be a charge for having your rear left blinker out that leads to the suspension of one's licence. If one beats the charge that the suspension was based upon, the same set of facts, then it seems to me it is only fair that the licence be given back.

Mr. Pollock, with Citizens Against Impaired Driving, was pleased to agree with me. I think that clearly it is something that should be—it was perhaps an oversight, perhaps not—but it should be made clear in this statute. I simply reiterate that we all do hope that we have this trial within three months. That is certainly not occurring now, but let us prepare for the future. I am an optimist.

* (1140)

Mr. Chairman: Any more discussion? Mr. Minister.

Mr. Albert Driedger: Mr. Chairman, we cannot accept this amendment. The reason for not accepting it, it blows basically the whole concept of what we are trying to do, to differentiate between the Criminal Code and the legislation that we are bringing forward. It is very important that we do not accept this amendment, because that basically takes away the whole purpose of us removing that privilege. That is basically the whole guts of the legislation that we are dealing with here, and by tying that in with the Criminal Code, by and large, leaves the whole thing open to be constitutionally challenged, etc., and that is the thing that we are trying to avoid.

Mr. Edwards: Mr. Chairman, perhaps I will just wait for the Minister. I want to respond to him. I wanted to respond directly to the comment made by the Minister. If you look at my amendment, I speak of a charge. There is no link to the Criminal Code. It is a charge. Now I agree that is a penal charge, be it Highway Traffic Act or Criminal Code. However, no charge may have been laid which leads to the suspension. It is an occurrence, maybe no charge, it may just be a set of circumstances which lead to the licence being taken away. Therefore, I do not think this minimal guarantee has any impact on the fact that this suspension can take place without a charge.

All I am saying is if there is a charge, be it under The Highway Traffic Act, be it under the Criminal Code, whatever, if there is a charge and it is those facts which have led to you losing your licence, and you beat that charge in a court of law, you have it seems to me in all fairness the right to get your licence back for the rest of the three months. As I say, we do not have trials within three months now, but if we do, you are going to have people who get their licence taken away, and then two months later they go to trial, they are totally acquitted. Let us say they are absolutely acquitted on that charge. They then still have their licence taken away. That is not fair. Mr. Pollock agreed with me. I know he has been very influential in the drafting of this Bill. It does not, in my view, prejudice the desire to stay away from the Criminal Code, because all I have said is a charge. The fact is that the suspension can be taken away for an occurrence, not even a charge. It is not a problem.

Mr. Albert Driedger: Mr. Chairman, we find it a problem. We do not believe that we should enter into that area at all, because we wanted to keep it totally removed from that aspect of it. I repeat again, whether a charge is laid or not, this is separate and deals with an administrative action that we are taking. If we take away the licence for 90 days and the individual is still charged under the Criminal Code for drinking and driving, appears before a magistrate and wins his case, it does not matter, because we indicate, based on the guidelines we outlined here, that he loses his licence for 90 days. We feel that has no relationship to the Criminal Code.

Mr. Plohman: I think, Mr. Chairman, clearly this is consistent with what is done in Minnesota. From what information that we received from the people that were there, it does not matter what happens in the court system with charges being laid or not laid or guilty of or not guilty of. The fact is there is an administrative action taken, and that is done independent of the court system. I believe that we should stick to that on this particular section.

Mr. Edwards: We have one comment in response to the Minister's comments and also the Member for Dauphin's (Mr. Plohman) comments.

Regardless of whether you call it penal or administrative, losing one's licence does hurt. That is the whole point of this. It gets you off the road. It also is a great inconvenience, at the very least, to people. That is good, that is what we want to achieve. Let us be fair, if you are unequivocally acquitted in a court of law on the very set of circumstances that you had your licence taken away from, how can you justify continuing to withhold that person's licence?

It seems to me that on the issue of fairness, this has to be a part of this Act, that if you are acquitted within three months you get your licence back because the fact is—I do not care if you say it is not penal—the fact in real life is, it is a great inconvenience and it is a form of punishment. People see it that way. The courts, I know, may not see it that way, but people see it that way. If you beat the charge, if you are acquitted, if the police officer is wrong, if they got the wrong guy, you still lose your licence under this. That is not fair.

Mr. Plohman: Mr. Chairman, Mr. Edwards first started talking about unequivocally acquitted and later on he gave a number of equivocations and circumstances that would, I think, add further confusion to this issue under the circumstances. Being found not guilty or on a technicality does not necessarily mean that the person was unequivocally acquitted. I would prefer that we have administrative penalty that is in place, regardless of what happens in technicalities and legalities in the courts.

Mr. McCrae: I get the impression, Mr. Chairman, that there is something very fundamental that the Honourable Member for St. James (Mr. Edwards) is missing.

Right from Day One of this matter, he has been importing and mixing up the criminal standards and criminal laws of this country with the administrative aspects of what we are trying to do here. This is an administrative matter, it is not a criminal matter. Charges are stayed in court sometimes. There are plea bargains. The Honourable Member knows better than I all kinds of things that go on in the criminal courts. I stress again, for the Honourable Member, that this is not a criminal proceeding. If the Honourable Member could understand that, then he could understand some of the things that we have been saying.

Mr. Edwards: In response, I certainly am well aware that the effort is being made to say it is not a criminal procedure and occurrence is the word that is used, and I have used in my amendment, charge. Now, that can be Highway Traffic Act, it could be the Criminal Code. The fact is that when a person loses their licence, I do not care what you call it, it is an inconvenience at the very least. Sometimes it can cost you your job under these new things and that is good if, in fact, you are guilty—that is good.

The fact is that you can be acquitted in a court of law and still be punished by this Government. That is not good. That is not fair. That is what Mr. Pollock agreed with me on. The people in Minnesota said, and I was there, the people said there may be a plea bargain, it may be a technicality. I hear those raised again today. That is an issue to take up with Crown Attorneys in the handling of these cases. If the Minister feels that Crown Attorneys are not taking these to trial when they

should, are giving plea bargains, are giving stays, that it is something to take up with the Crown Attorney. This Minister has the ability to take it up with his Crown Attorneys. What he should not be doing is forcing innocent people to pay the price for perceived—

Mr. McCrae: Are you saying innocent?

Mr. Edwards: I am saying people who are acquitted, people who beat a charge, yes, Mr. Chairman, they are innocent.

Mr. McCrae: No, they are not. They are not guilty, there is a difference, Paul, and you know it.

Mr. Edwards: The Minister sees fit to draw the distinction between not guilty and innocent. The fact is, that it is 500 years of judicial precedent in our culture that says when you are acquitted in a court of law that means you are not guilty, that means there is nothing they have proven against you. The fact is under this law the Government subverts that by saying when a person beats the charge, and there are various levels of beating a charge, beyond a reasonable doubt is the standard. However, the fact is that under this legislation this Government continues to punish after one has been acquitted in a court of law.

If it is a problem with plea bargains, if it is problem with letting people off when they should go to trial, that is a problem in the Criminal Prosecutions Branch. That is a problem this Minister has jurisdiction over. The fact is if it is a technicality that is a problem with the police and the way they go through the charge. These are things this Minister has in his control to change.

* (1150)

Mr. Albert Driedger: Mr. Chairman, I will just indicate that the question is not whether the individual is guilty or not. The question is whether he is drunk or not, and we have outlined that specifically. He either takes a breathalyzer and he has .08 or he refuses. That is the question, not whether he is guilty or not. That is what the whole purpose is of this thing.

Mr. McCrae: Mr. Chairman, just as a analogy, I would like to put a question to the Honourable Member for St. James (Mr. Edwards).

A child, where there is suspicion of a child being abused, is apprehended by Child and Family Services under civil rules, the abuser is acquitted for some reason under our criminal rules. Do we then return the child if the abuser is, for example, the father? Do we return the child to that abusive situation? That is a very good analogy, and I would like the Honourable Member to answer the question.

Mr. Darren Praznik (Lac du Bonnet): Mr. Chairman, you may let Mr. Edwards answer that question and I will defer and speak after him.

Mr. Rose: I just wanted to get a clarification. It appears to me that if there were to be an acquittal or there was a discharge of the case, the judge would then have the power to reinstate the licence. I am saying and I am bothered, I just want a clarification of this, and maybe my colleague can give me this. If that were to be so, there would be an inequity in the law because those who had the right lawyer could get their licence back and those who could not. In other words, you are saying this cannot be overruled that the judge give the licence back.

Mr. Edwards: The Minister is not here to answer that but the answer is, yes, that is right. This supersedes anything a court can do, nothing a court can do to give this licence back.

The question from the Minister with respect to children being abused, The Child and Family Services Act has a very, very detailed procedure for appealing the taking away of a child, and that procedure is set out. It sets out standards and it sets out what evidence and it sets out what notice has to be given, and is a clear court procedure.

Under that Act, yes, under that Act, when a court goes through The Child and Family Services Act and finds that the allegation was spurious, they certainly do give the child back. I hope the Minister is not suggesting otherwise in that The Child and Family Services Act is not effective, because in fact it does provide for the giving back of the child in some circumstances.

What I am saying, and this is in response to the Minister of Transportation (Mr. Albert Driedger) comments as well, is that he makes the comment that I am making the mistake of tying this to criminal procedure. The fact is this is tied to criminal procedure. Let us look at this Act, this Act specifically mentions under here, brings in factual situations which can lead to criminal charges. It does not have to lead to criminal charges because it just says an occurrence. The fact is it may lead to criminal charges. All I am saying is, where it does lead to criminal charges, if you go to court, if you beat the charge, your suspension should not continue. That just simply does not make sense.

Mr. Praznik: I am actually quite amazed by the attitude of the Liberal Members of this committee with respect to this Bill, because there is a very, very clear difference here between the criminal law and what this Bill is trying to do administratively.

The Member for St. James (Mr. Edwards) has made the comment, if you are not convicted that no penalty should follow administratively. I would remind the Member—and he has made reference to innocence and guilt—I would remind him of the Scottish judicial system. We have a fair bit to learn from there because they have a third decision that a court can make, and that is the decision of not proven, which simply says there is not enough evidence to convict but certainly enough doubt not to acquit.

I think we have to make that very clear distinction. There are many ways in which, as the Member for St. James knows, a guilty decision may not be rendered. It may come about because of a technicality in the way the evidence was entered. There have been cases where

the Crown Attorney may have failed to prove jurisdiction simply by asking the police officer if the matter occurred in the Province of Manitoba, where a police officer or an appropriate witness may not be able to appear and the accused may move to have the matter decided and of course insufficient evidence, and is not convicted.

Very clearly, that individual may have been impaired at the time and there must be I think—the public is demanding an administrative penalty. I am concerned but not surprised when the Liberal Party moved amendments here today to try and attach, in essence, a criminal penalty to this administrative action, quite concerned by that. They are indeed mixing what are two very separate and different elements of the licensing and treatment on the roadways.

If you look at other provisions that apply to vehicles with respect to faulty equipment, etc., all of which endanger the motoring public, we do not have a trial to prove that the rear light of a car is not working. Yet, officers of the department have the ability to order that vehicle in for repair, etc., and a number of things without a trial.

I think we have the motoring public to protect here. Very, very clearly, I am disturbed, very disturbed at the attitude of the Liberal Members in dealing with this piece of legislation, Mr. Chairperson. I think the point is very, very clear, and I would hope they would appreciate and understand what this Bill is trying to do. That is very clearly, if for some reason I believe I was not impaired and can make a case in court and not be convicted, I have the opportunity to make the same case to the registrar.

I know in my experience in court in watching various matters—I remember one particular instance, not a client of mine, but that client came into court with a certificate from a doctor, had a blood analysis within about a half hour of being charged that indicated he had zero blood alcohol level, and that evidence certainly resulted in acquittal on the charge, and would certainly result in the similar action before a registrar with respect to their licence.

It is the case where that individual, who was clearly impaired, goes before a court and is able to get an acquittal on what the public would view as a technicality. Certainly, they may have beat the criminal offence but with respect to the administration they were impaired. They had breached the privilege, as the Member for Radisson (Mr. Patterson) described it, of driving, and I certainly agree with that, had breached that privilege and unless they can prove they in fact did not breach that privilege before a registrar, has lost that privilege. That is the idea of a privilege, not a right.

I think the Ministers here and the majority of Members of this committee between the two Parties who have been defeating some of these very dangerous amendments to this piece of legislation, have recognized the need to keep that separate. I think that Bill has done that and the Liberal Party has tried over and over and over again with these amendments to circumvent this process, a process that I think the vast majority of Manitobans are demanding, Mr. Chairperson.

Mr. Chairman: Any more discussion?

Mr. McCrae: Very briefly, Mr. Chairman. I do regret that the Honourable Members representing the Liberal Party would continue after all of the discussions we have had, after Ms. Bode's presentation to the Members of this House, would be continuing to try in some way to circumvent what we are trying to do here, and to provide opportunities for impaired drivers to keep their licences.

I remind the Honourable Member for St. James (Mr. Edwards) that he engaged Ms. Bode in discussion when she was here. She said this: "In addition, the courts have looked at our criminal DWI sanctions as well as our civil licence sanctions. They have been very careful to say, even if you are acquitted, even if for some reason or another your criminal charge is thrown out that has no effect on the civil proceeding. Your licence is still suspended as long as you have gone through the hearing process and the civil standard has been met. So they are very separate proceedings." I wish we could get the Honourable Member to understand the difference. With his background, I am surprised that he does not. I am disappointed that the Liberal Party in this province has taken the position it has, seemingly in favour of impaired drivers and against the interests of public safety.

* (1200)

Mr. Edwards: The last statement by the Minister is just totally uncalled for. I mean honestly, we have co-operated throughout. I stood up in this House and said I want to go to committee quick. I said I wanted to deal with this thoroughly. If the Minister says we should not spend an extra half hour or whatever it takes to go through this in detail, if he says we should not do that and that we should curtail our comments and our amendments, I am shocked, because that is not what he said and that is not what his other Minister said in the House.

Mr. Chairman: We have an amendment under discussion, and let us keep our discussion to that amendment, please.

Mr. Edwards: That curtailment had occurred earlier, Mr. Chairman. I expect it will be.

I want to deal with the comments made by Mr. Praznik. Mr. Praznik said there was no distinction. We were missing the distinction. He referred to my amendment with respect to penal consequences. The fact is, that amendment was made in the context of impoundment. If the Member for Lac du Bonnet (Mr. Praznik) would look at this Bill on impoundment, it specifically references Section 225 of The Highway Traffic Act and a section of the Criminal Code. It is criminal by its nature in impoundment. The advisers to the Crown will not dispute that.

We are now dealing, I remind the Member for Lac du Bonnet (Mr. Praznik), with suspensions. We are not dealing with impoundment. He also said that we miss what the Bill is trying to do and that there is the same appeal available to the registrar as there is to the court. That is garbage. He should read this Bill. That is not

the same. The fact is that it is not the same as Minnesota. We do not have the same guarantees. We do not have the specifically guaranteed civil standard in this Bill. We have nowhere near what Minnesota has done in this area, and this Minister knows that. He brought Ms. Bode and others to tell us that. We are trying to make this Bill as effective as possible. We are trying to raise it, we are trying to raise this Bill to the same level that the people in Minnesota got, because we are not getting the same level. We are not getting the same protections. We are not getting the same effectiveness. It is an ill-thought-out Bill, in my view.

I am not finished my remarks. The Member for Lac du Bonnet and the Minister said they were amazed at the attitude of the Liberal Party. Quite frankly on this amendment, let us keep in mind that the Member has said he does not agree with who—with the Liberal Party but not us alone—with Mr. Harvey Pollock, the head of Citizens Against Drunk Driving. When that Member goes and says we are being irresponsible in our view on impaired driving, he is attacking that organization and that Member. They will be, they will deeply resent that comment, because he has given this Bill and this issue an enormous amount of thought. He stood up at the committee stage for which the Member for Lac du Bonnet (Mr. Praznik) was not here. I forgive him but the fact is the statement was made in response to a question.

Unequivocally, this person, when and if acquitted in a court of law, should get their licence back. That is what was said, that is the proposal and that is fair. The fact is that if there are problems with plea bargaining and I do not deny that there are, if there are problems with technicalities, those are problems that are addressed through the police, through Criminal Prosecutions Branch, Crown attorneys. Those are in the control of this Minister. This Minister has control over technicalities and plea bargains in a court of law, and he should not be using them and pawning it off on police and Crowns who make mistakes. He should not be using that to stop this amendment which makes a lot of sense.

Mr. Albert Driedger: Question.

Mr. Chairman: All those in favour of the amendment that is set before us, please indicate by saying aye. All those against the amendment as set out before us, say nay. I believe the nays have it.

Mr. Edwards: A recorded vote.

Mr. Chairman: Recorded vote.

Please signify, all those in favour. Please raise your hand—three. All those opposed, please signify—five. Five against and three in favour. I declare the amendment defeated.

We are now at Subsection 263.1(7). Is it the will of the committee to pass—Mr. Edwards.

Mr. Edwards: I am going to move an amendment to Sub 7 to read as follows—

Mr. Chairman: Mr. Edwards, do you have a copy of it that could be distributed?

Mr. Edwards: Yes. Here it comes.

Mr. Chairman: Thank you.

Mr. Edwards: I am sorry, Mr. Chairman. We were on 263.1(7). Is that right?

Mr. Chairman: That is right.

Mr. Edwards: I apologize. I am sorry. I do not have an amendment to this.

Mr. Chairman: 263.1(7)—pass.

263.2(1), any amendments to that one—the Minister of Justice.

Mr. McCrae: I move

THAT the proposed new subsection 263.1(1) to The Highway Traffic Act, as set out in Section 9 of Bill 3 be amended by adding "under section 263.1" after "disqualification."

(French version)

Il est proposé que le nouveau paragraphe 263.2(1) du Code de la route, figurant a l'article 9 du projet de loi 3, soit amendé par insertion des termes "et visé a l'article 263.1" après "la perte d'un droit."

Mr. Chairman, I move this motion with respect to both the English and French texts.

Mr. Chairman: Minister of Justice, have you distributed copies of this to all Members.

Mr. McCrae: I believe we have.

Mr. Chairman, by adding, "under Section 263.1", this amendment ensures that the appeal process is strictly limited to this administrative suspension and not to all suspensions under The Highway Traffic Act.

Mr. Chairman: Is it the will of the committee to pass that amendment as presented? (Agreed)

263.2(2)—pass; 263.2(3)—pass; 263.2(4)—pass; 263.2(5)—pass.

263.2(6)—The Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new clause 263.2(6)(c) to The Highway Traffic Act as set out in section 9 of Bill 3 be struck out and the following substituted:

"(c) a copy of any certificate of analysis under section 258 of the Criminal Code without proof of the identity and official character of the person appearing to have signed the certificate or that the copy is a true copy; and".

(French Version)

Il est proposé que le nouvel alinéa 263.2(6)(c) du Code de la route, figurant a l'article 9 du projet de loi 3, soit supprimé et remplacé par ce qui suit:

(c) une copie de tout certificat d'analyse visé à l'article 258 du Code criminel et concernant le requérant, sans qu'il soit nécessaire de prouver la signature ou la qualité officielle du signataire ou que la copie est une copie conforme.

I move this motion with respect to both the English and French texts.

Mr. Chairman, the amendment is required because the original certificate is retained for court purposes. Consequently, the police can only forward a copy of this certificate and the hearing officer will only be able to have a copy of this certificate.

Mr. Chairman: Any objection to the amendment? Any discussion—pass.

263.2(7)—The Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new Clause 263.2(7)(b) to The Highway Traffic Act as set out in Section 9 of Bill 3, be amended by adding "or care and control" after "operation."

MOTION:

Il est proposé que le nouvel alinéa 263.2(7)(b)) du Code de la route, figurant à l'article 9 du projet de loi 3, soit amendé par insertion, après le terme "conduite", des termes "de la garde et du contrôle".

I move this motion with respect to both the English and French texts.

The amendment covers the driver snoozing behind the wheel rather than operating the car and parallels the provisions of the Criminal Code.

Mr. Chairman: Any discussion? Is it the will of the committee to pass that amendment? Okay. Any more discussion on 263.2(7)—Mr. Edwards.

Mr. Edwards: I would like to propose an amendment to sub (b) of this to read as follows:

I move

THAT clause 263.2(7)(b) in section 9 be amended by adding the following after "the person":

, without reasonable excuse.

MOTION:

Il est proposé que l'alinéa 263.2(7)(b) figurant à l'article 9 soit amendé par insertion, après les terms "que la personne a", de ce qui suit:

, sans excuse raisonnable,

I move this section with respect to both the English and French texts.

If I may make brief comment on that, Mr. Chairman, this section obviously deals with what is before the registrar in this hearing which occurs. Under (b), it is to be considered, again to the satisfaction of the registrar, which I personally find very distasteful because it is an entirely subjective standard. The fact is that (b) says, "where the registrar is satisfied that the person failed to refuse to comply with the demand made on him under Section 254 of the Criminal Code." So this section references the Criminal Code. There is no question about that. It is referenced in the Criminal Code. In the proposed Bill, the Criminal Code ia referenced, something that this Minister has chastised me at length for trying to do, but it does include that protection.

* (1210)

It seems to me that if you are referencing Section 254 of the Criminal Code already, you should, at the very least, allow the same defences to be used in front of the registrar that are used in a court of law. That is why I have imported the terms "without reasonable excuse." Without reasonable excuse is the bare minimum for indicating that even though you refuse to take the breathalyzer, you may have been in an accident, you may be in shock. Those things, they do not happen often, but they do happen.

Mr. Plohman: Do a compulsory blood test.

Mr. Edwards: The Member for Dauphin (Mr. Plohman) says compulsory blood test, and certainly that is available. The fact is this section deals with the breath test. Section 254 of the Criminal Code, we are talking about the refusal to blow in the breathalyzer. If you have a reasonable excuse, if you have been knocked out, it you are emphysemic, some people who have medical problems, they cannot blow. You cannot make that defence under this section.

I am importing the bare minimum of "without reasonable excuse" in order to deal with that. I think it is consistent with the citing of Section 254 that we also specifically indicate there are reasonable excuses for not blowing, albeit it is rare and I am the first to acknowledge that. It is very rare but the fact is it does occur.

Mr. Albert Driedger: Mr. Chairman, we find this amendment unacceptable. We believe that it would jeopardize the whole purpose of what we are trying to do. When we make provision for a reasonable excuse, everybody would start planning a reasonable excuse, and before you know it we get into that compromising position in this thing. This again refers to the Criminal Code. We are talking of a civil situation here. We cannot go along with the amendment.

Mr. Edwards: With respect to the latter complaint, the Minister it is just bizarre to me that he maintains that when the section itself mentions 254 of the Criminal Code. It is in there already. The standard is imported for whether or not you have refused to blow under Section 254 of the Criminal Code. It is already there.

With respect to his first concern that there are going to be all kinds of people who are going to raise excuses, let us be clear that this section under the Criminal Code, very few, very, very few people ever get off, have a reasonable excuse for not blowing. This is not a case where the floodgates argument is going to work. It is not going to work.

What we are doing is the truly innocent are allowed to make a reasonable excuse based on health, based on the fact that they had just been in an accident. I have mentioned a couple which have worked under the Criminal Code. Again, it is the bare minimum to make this section effective and to make it fair. It does not in any way compromise the effectiveness of this legislation. It, in fact, enhances it.

Mr. Chairman: Members of the committee, are you ready for the question? Mr. Plohman.

Mr. Plohman: Just one question of the Minister, just what provision would there be for a person who cannot take the breathalyzer, physically just cannot take it? What happens under those circumstances, just reason prevails or what?

Mr. McCrae: If the person who is the subject, the applicant to the registrar is able to make that case to the registrar, that is the defence that is there. I would assume that our police authorities in this province, my experience has been that they conduct themselves in a reasonable manner and if it is clear that someone is incapable of blowing in a machine there are other options available, such as blood tests, for example.

So a refusal, if a person is incapable and was not able to make a police officer believe that he or she was incapable, then they can tell it to the registrar. Other options are available, the other impaired driving tests, now getting over to the Criminal side again, are all there, the glassy eyes, the smell of alcohol, the unsteady gait, those matters are available to the police as well. That is the type of thing that could happen or blood tests could be made available, but you would have to tell this to the registrar.

Just very quickly, I think the words "without reasonable excuse" are the words used in the Criminal Code and, again, the Honourable Member says he is trying to help us, trying to strengthen this legislation and he is not strengthening it by trying to bring in criminal tests, because this is not a criminal proceeding.

Mr. Edwards: Again, how many times do I have to point out to the Ministers that their section says 254 of the Criminal Code, they have specifically referenced the Criminal Code. The standard, demand made on him or her under Section 254 of the Criminal Code, demand under the Criminal Code is very closely defined.

If the Minister would look at Section 254 he would see that. He would also see that courts have spent years defining that and it is a clear reference to the Criminal Code and the registrar is going to be called upon to look at Section 254 of the Criminal Code.

With respect to the question from the Member for Dauphin (Mr. Plohman) and whether or not the registrar can and will consider such excuses, it is my reading of this section that the registrar not only will not, cannot look at those excuses because if you read this section it says the only issues, the sole issue is whether or not the person failed or refused to comply with a demand made under Section 254 of the Criminal Code. Now if you look at Section 254 of the Criminal Code, it is divided into various subsections and one of them deals with demand. That is what this refers to, any ability to make the argument as the Member for Dauphin (Mr. Plohman) quite correctly asks about illness, about having been in an accident, about all of those very important protections for people. None of those, I submit, and I think a court may, and I am not saying they will but they may take my side and say none of those are available to the registrar. The registrar may say that and that would be dangerous.

The only thing I am asking is that seeing as they have got 254 in there already, and they do, that is their drafting, it only makes sense to make abundantly clear that all of Section 254 applies, not just the demand, because that is all, in my view, that the registrar is empowered to look at and I think the Member for Dauphin (Mr.Plohman) has raised a very valid point. The answer, I simply bring to his attention, from the Minister is not accurate.

Mr. McCrae: I agree that the Honourable Member for Dauphin (Mr. Plohman) has raised a valid point, a question that goes to the guilt or otherwise of the person. That matter is properly decided in the criminal court when the time comes to decide whether that person was guilty or not guilty of failing to blow in the machine. I have been reporting these cases as a court reporter for 18 of my working years, and daily almost, dealing with impaired driving, breathalyzer cases and refusals. Judges do find sometimes that people fail to blow for good and proper reasons. That does not mean administratively they should not have their licences suspended. That is the fine point. I respect the Honourable Member for Dauphin's question, but I do think it does get over into the criminal area where the Honourable Member for St. James (Mr. Edwards) keeps wanting to lead us. That is not where we are supposed to be when we are dealing with this Bill.

Mr. Edwards: If that is not where we are supposed to be, then why is Section 254 of the Criminal Code referenced in this very section, the Minister's section?

Secondly, let us be clear to the Member for Dauphin (Mr. Plohman). Let us be clear that the answer to his question as to what provision there is for a registrar to consider this, there is no provision. The Minister has just indicated that the registrar will not, indeed cannot consider that, so a person who has emphysema who cannot blow, who gets their licence suspended, loses it for three months regardless. That is the bottom line.

The Minister has indicated that is properly before a criminal court many months down the road. It is not a proper issue before the registrar. That defence cannot be made. That is a shame.

Mr. Chairman: Is the committee ready for the question? Mr. Plohman.

Mr. Plohman: It seems, if I am not mistaking this section, it defines the sole issue before the registrar, and so it would seem on that basis the registrar cannot consider other factors. It is precisely what is listed here. That is the sole issue before the registrar, as much as

he or she would like to use some reason or common sense. Is that correct or not or is there still room for some latitude? I see the registrar nodding, yes, that is the only thing he can consider. Under those circumstances then, is it not a fact that there could be circumstances where a person who is unable to provide a breathalyzer could, because there is no alternative to the registrar, be faced with suspension wrongly?

* (1220)

Mr. McCrae: If the person, the subject of this application, said I was unable, then the registrar tended to believe that. The registrar could say then you did not refuse, so therefore you should have your licence back. If you are unable, you are not refusing, you are unable. It is simple. That is the point. The Honourable Member for Dauphin (Mr. Plohman) is correct to raise it, but the fact is if you are unable, any registrar cannot say that is a refusal, so therefore in that circumstance I suggest the licence would be returned.

Mr. Edwards: Absolutely incorrect. The fact is that this Minister has made this up very shortly. I know he has made it up because he does not have many defences to this amendment. He has made this one up and he has run himself into a bit of a muck because the fact is he has imported Section 254 of the Criminal Code. If he looks at the Criminal Code, it is very clear that failure or refusal to comply with the demand—you do not consider the defences then, you just consider whether or not the person blew. That is all you consider. That is all that is being considered.

For the Member for Dauphin (Mr. Plohman), he has to be clear on that. That is all that is being considered. The section of the Criminal Code goes on to say in a different subsection, if you have a reasonable excuse. This does not. It is my interpretation of this, and I think the Member for Dauphin is correct in his reading of it, that there is no leeway in this, period.

Mr. Plohman: If Section 254 of the Criminal Code allows for that reasonable excuse, do not all of those portions of that section apply, since it is referenced here?

Mr. Albert Driedger: I will try and clarify it from a layman's point of view. The reference to Section 254 of the Criminal Code allows the provision to demand somebody to blow. That is why the reference is to the Criminal Code in there, so that they can ask somebody to blow. The aspect of whether he can blow for health reasons, or whatever the case may be, is a different portion of it. The reference here to Section 254 allows that demand to ask somebody to blow the breathalyzer, and that is why the reference is in there. That is the only aspect of it.

Mr. Plohman: Could the Minister explain the context of the two sections, the considerations of the registrar, 263.2(6), which outlines what the registrar shall consider, and then 263.2(7) says, sole issue before the registrar. How do they relate if one provides a number of considerations and then the other section says, the sole issue before the registrar deals with whether in fact the test was taken or whether the person refused the test?

Mr. McCrae: 263.2(6) deals with the facts of the matter; 263.2(7) deals with the issue to be decided. The issue to be decided is based on the facts. I suggest very strongly to Honourable Members that a registrar, based on facts such as that the applicant was unable due to a physical condition to blow into the machine, then could come to the conclusion under 263.2(7) on the sole issue to be decided, that person did not refuse and, therefore, return the licence.

Mr. Edwards: Again I have to take issue. 263.2(6) does set out what is before the registrar. Whatever comes before the registrar and does not deal directly with the issue in 263.2(7) cannot be considered by the registrar. The registrar, 263.2(7) is the key part of this whole thing. That is what the registrar has to decide, and that is all he can decide. The only thing he can decide under this section is whether or not a demand was made and whether or not the person blew. If a demand was made and the person did not blow, nothing else counts, and that is the fact. If the person has emphysema, and if the person is in shock after an accident, which have been used as reasonable excuses, too bad.

Mr. Chairman: Are you ready for the question?

An Honourable Member: No.

Mr. Plohman: Mr. Chairman, I believe that under the considerations section the registrar has the leeway to reach the decision and information that could be presented, evidence that could be presented. As well, we are prepared to allow the Minister the responsibility of putting in place this particular Act and will want to watch it very closely, to have a review in a short time, perhaps six months, to determine how it is working, whether there are aspects that should be changed at that particular time. You cannot do everything perfectly. I would submit that my question has been answered as I asked it, and I believe that other considerations can be taken by the registrar under the other section, so on that basis we are prepared to let this proceed.

Mr. Edwards: A final comment to the Member for Dauphin, obviously, if this is going to be reviewed, and I would hope that this amendment will come forward at a later date, I think he is giving up his right and obligation, which we all have, to improve this Bill now, because many heads are better than a few. We are all trying to improve this thing.

His initial reading of this section was correct. That is, the heading and the first line both say, the sole issue. That is it, decided on facts, and what facts have to be before the registrar is made clear in the prior section. Whatever facts do not deal with the sole issue are irrelevant. They are irrelevant. The fact is, sole issue means sole issue. When that is it, it is a done deal, it is over. Any defence, any defence under Section 254 of the Criminal Code is not only not going to be listened to, it is not allowed.

Mr. Plohman: Mr. Chairman, I just think that there may be some question there perhaps, but without reasonable

excuse is just simply too broad, and we could not support that kind of a broad amendment. It would just be a haven for lawyers to make an argument that somehow anything is a reasonable excuse. It is just too broad. Therefore, we cannot support the amendment that the Member is putting forward. We will go with the original text on that basis.

Mr. Edwards: Without reasonable excuse is wording that is in the Criminal Code now. Let us be clear, very few, very, very few people ever get off. "Reasonable excuse" is very clearly defined under the Criminal Code, and I am telling you, it is narrow.

So it is not a question of opening the floodgates. The floodgates argument does not work in this case. "Without reasonable excuse" has been limited to specific circumstances like health, like mental ability to understand the demand, like all kinds of things that are only proper.

The fact is that I think it is an abdication of the need to protect, at some very minimal level at least, those who are truly innocent. The fact is that we all agree we want to deal with this harshly and we are dealing with it harshly. Bare minimum fairness is the responsibility of the Minister of Justice (Mr. McCrae). I think it is an abdication, but obviously the will of the committee is not with me.

Mr. Chairman: On the proposed motion of Mr. Edwards to amend Clause 9, Section 263.2(7)(b), shall the motion pass? All those in favour say, aye. All those opposed say, nay. I believe the nays have it.

Mr. Edwards: Recorded vote.

Mr. Chairman: Recorded vote. Please signify all those in favour—raise your hand—three. All those opposed please signify—six.

I declare the proposed motion defeated. What would it be the will of the committee, to rise at this point in time?

Mr. McCrae: Mr. Chairman, if we were able, to sit for another half an hour or so.

Mr. Albert Driedger: Mr. Chairman, if I might, I know we are probably imposing on people's lunch hour to some degree. We have not that much in term of amendments. There is one coming up now. Could we try for half an hour? If it is the will of the committee to try for another half hour, let us see where we are at rather than sit again tonight or something like that.- (Interjection)- At 10 minutes to one, I will vacate this Chair.

Mr. McCrae: Mr. Chairman, I move

THAT the proposed new section 263.2 of The Highway Traffic Act as set out in Section 9 of Bill 3 be amended

(a) by adding the following after proposed new subsection 263.2(7):

Time of hearing

263.2(8) The registrar shall

(a) where no oral hearing is requested, consider the application within 15 days of compliance with clauses 263.2(1)(a), (b) and (d); and

(b) where an oral hearing is requested, hold the hearing within 30 days of compliance with subsection 263.2(1),

but the failure of the registrar to consider the applicaton or hold the hearing within the required time does not affect the jurisdiction of the registrar to consider or hear the application or to make a decision with respect to it";

(b) by renumbering subsections 263.2(8) to (11) as 263.2(9) to (12).

(French version)

Il est proposé que le nouvel article 263.2 du Code de la route, figurant à l'article 9 du projet de loi 3, soit amendé:

(a) par insertion, après le nouveau paragraphe 263.2(7), de ce quit suit:

Moment de l'audience

263.2(8) Le registraire:

a) ou bien examine la demande dans les 15 jours suivant l'observation des alinéas 263.2(1)a), b) et d), dans le cas où la tenue d'une audience n'est pas demandée;

b) ou bien tient l'audience demandée dans les 30 jours suivant l'observation du paragraphe 263.2(1).

Toutefois, l'omission par le registraire d'examiner la demande ou de tenir l'audience dans le délai prévu n'a pas pour effet de lui faire perdre compétence pour examiner ou entendre la demande ou pour rendre une décision à son égard.

(b) par substitution, aux actuels numéros de paragraphe 263.2(8) à (11), des numéros 263.2(9) à (12).

Mr. Chairman, I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice (Mr. McCrae)—

Mr. McCrae: Mr. Chairman, this substantive amendment requires a paper hearing to be held within 15 days of application and an oral hearing within 30 days.

The final part of the section is standard administrative law, for example, The Labour Relations Act, Section 125.3. It is necessary for those cases where it is impossible to respect the deadlines. For example, the applicant may have been sick on the day set for an oral hearing or the hearing officer may have been unable to get into Thompson, for example, because of a blizzard. As well, there may be cases where a paper hearing has been requested, but the hearing officer

has not received sufficient information. Obtaining that information could go beyond the 15 days.

* (1230)

This amendment too is a direct response to concerns raised by Members of the Opposition Parties, as well as was referred to on the day our visitors from Minnesota were here to make a presentation. In that spirit, this amendment is put forward.

Mr. Chairman: Any discusssion?

Mr. Edwards: Might I just ask why we were not able to shorten those days? I appreciate that it is important. It is important in my view to put in some time lines, and I appreciate the Minister's decision to adopt that. However, the State of Minnesota was able to have it within 15 days, it is my understanding. There are various other states, and I have the list here. Very few, if any of them, have to wait 30 days, and it does seem unduly long to me.

I simply bring to the Minister's attention, 30 days. Then it is my understanding that I think it has to be mailed out after the decision is made.- (Interjection)- Yes, I know. In his future amendments, it is going to be seven days, so that is 37. Then mailing, a minimum, say three days. You are at the 40th day. You are almost halfway through this by the time the hearing has run its course. That is a month and a half without a licence, with maybe no good reason not to have that licence—like, you got the wrong person, so it is close to six weeks without a licence. In this case I can say, for a totally innocent person, for a person who is going to win outright, they got the wrong person. You are still dealing with six weeks. To me, it is too long.

Mr. Albert Driedger: Mr. Chairman, these are the outside limits. We would hope that we could shorten that time period up, but we made provision for the outside limits.

Responding to the Minnesota situation, they accept only written appeals. We are making provision for oral appeals. If somebody from The Pas or Thompson or Churchill would want to have an oral appeal, that is why we have the outside limits to make that kind of a provision. If we just had to deal with written appeals, it could be done within a shorter period of time as Minnesota does. But we are making provision for an oral appeal and allowing us—so that we would not have to travel down, say, to Thompson or our people would not have to travel to Thompson twice a week to deal with some of these issues. That is why, under the oral appeal, we ask for the 30 days to do that. We feel that there is an advantage to having the oral application as well as the written application. Written application, you send it in, it can be dealt with.

Once again, I want to say these are the outside limits. We will try and have these things dealt with much faster than that, but we have to make provision for the unforeseen things that could be involved in this thing.

Mr. Edwards: It is my understanding that in the State of Minnesota it was an oral hearing. I recall talking to the gentleman from the Motor Vehicle Branch who said that he would be with the person there; no lawyers, I do not think, but the people are there.

There is a judicial hearing within 60 days and this Bill does not have any of that, no judicial hearing, but it was my understanding that the hearing within 15 days in the State of Minnesota did include the presence of the person. It was an oral hearing. That was the statement of the registrar from the State of Minnesota. I think it did include the presence of the person in an oral context, albeit it was a very cursory and a very quick review, but it was oral. Is that correct?

Mr. McCrae: We think this amendment does provide more than was provided before. Minnesota, I suggest, is not in the same category as Manitoba where you have far-flung and remote communities in Manitoba which you might not get so much of that in Minnesota. We think the 15-day paper hearing and the mailing provisions that are coming are quite reasonable. I suggest that no such guarantees exist in the most serious of criminal cases.

For example, if you were charged with murder and held in custody, there is no time limit set in the Criminal Code as to how long your liberty will be deprived you as you await your criminal trial. We are doing the best we can with this. We are sensitive to the Honourable Member's and other Honourable Members' request for some kind of tightening up in terms of the legislation, in terms of time lines. We think that we will do better than this, than what we are setting out for ourselves. But I think what we have come up with is something that is reasonable.

Mr. Edwards: I think the Minister is on thin ice in analogizing this to the criminal process given his prior comments today. With respect to the paper hearing now, where no oral hearing is requested, mail is another thing. Moving people can take time, that is true. Mail, and with the intergovernmental department mail service, which I understand is quite good, why is it taking 15 days? It seems to me that you get a temporary permit for seven and, if you are totally innocent, you want that paper hearing to occur. Why could it not occur within the seven days?

Mr. Albert Driedger: Mr. Chairman, various things could enter into this. The applicant could be sick, he might have delayed in writing in, and again I stress these are the outside limits. We will try and process these things as fast as possible, but we were trying to allow some cushion in there so that we do not get into technical problems.

Mr. Edwards: It may have been more advisable, I would suggest then, to have said what the Minister just said, and that is, put in that the hearing will occur, make it a shorter time, within 10 days, within seven days, within 15 days, and particularly a paper hearing, and then say, obviously, at the option of the applicant that can be extended, because this is all for the applicant. If the applicant is sick and cannot have it in that period of time, then obviously that hearing should occur later on.

Surely there should be some provision for responsibility on the branch to have this in a timely fashion. Fifteen days to get a piece of mail and hold a paper hearing without anybody present in my view is not reasonable.

Mr. McCrae: Very briefly, it could very easily be not the fault of the registrar or the system, but the fault of the applicant for being slow to apply, for being slow to get his papers or her papers together to bring to this hearing. All of those things had to be taken into account in setting a time limit. We felt that 10 days, as initially proposed by the Honourable Member, was not something that could reasonably be guaranteed on every occasion, remembering that people do get sick. Sometimes people have their own reasons for wanting to delay a hearing, and if that meant their licence would automatically be returned because of some circumstance that they themselves brought into being, hardly that is not very fair to the whole system either.

Mr. Edwards: I simply would suggest then that it might have been: "The registrar shall, where no oral hearing is requested, offer to consider the application within seven days or 10 days," and there—if the applicant has a reason, obviously this is for the applicant. If the applicant does not want it within seven or 15 days, that is fine. The issue is here, if they want it, can they get it? The answer is, I think that this Government is saying it cannot get the paper together for half a month. Meanwhile the person who may be totally innocent has already lost their licence for eight days.

In the case of an oral hearing, heaven forbid you should want one of those, because you have to wait 30 days, seven for the decision to go out, another three for it to get to you. You have 40 days, 33 days, over a month without a licence, and yet they may have the totally wrong person. This may be a totally innocent person.

It does not seem to me that the Government is working very hard at providing an efficient administration for this Act and, if you bring in an Act, you have a responsibility to make sure that the administration can handle it in an effective and an efficient manner.

Mr. Chairman: Is the committee ready for the question? Ms. Hemphill.

Ms. Hemphill: Thank you, Mr. Chairman. This is one amendment that we felt quite strongly about. I think it was clear from the presentation that was made that one of the reasons they believe they were successful in their court challenge is they were giving very quick treatment of the case as very judicial and quick treatment, and the timing was very important.

* (1240)

I believe that the 10 days suggestion by the Member for St. James (Mr. Edwards) is a little tight, and the one that is here is a little looser than we would have liked to have seen. We were hoping we might be able to come up with the 15 days that they had been able to handle. I think the combination of the paper and the oral hearing is a good combination. What I hope to see is that the limits, and what you say is the outer limit, do not become the practice, that the paper hearing will be done before the 15 days, and that the oral hearing will be done before the 30 days.

In the discussions with the Attorney General, we were admitting that this may require additional staff, some administration, and the ability to handle it administratively. This is probably one of the most important elements in terms of proper, fair, reasonable handling of these cases. It is important, as I said to him, that you put on additional staff. The expectation is there may be a large number of cases initially and if it follows their previous experience, it will taper off. If that is the case, you should be prepared to put on what additional staff is required to improve those outer limits, that you call them, that are there.

Having said that, we are hopeful that those are outer limits and that they are not the practice and that we will accept this amendment, and as we said in other areas, follow it very carefully and hope that the department is able to do better.

Mr. Edwards: I very much appreciate the comments of the Member for Logan. I would, therefore, like to move a subamendment to this amendment, wherein—

Mr. Chairman: Mr. Edwards, have you got it in writing?

Mr. Edwards: No, I do not have it in writing. I will be giving it orally and with writing to follow.

I move

THAT the amendment, as put forward by the Minister of Justice, be amended as follows:

That under Subsection (a), the No. 15 be struck out and the No. 10 be put in, and that under Subsection (b), the No. 30 be struck out and the No. 20 put in.

I think that those are in keeping with the Member for Logan's suggestion that we find a compromise here. I think, clearly, 10 days to hold a paper hearing is reasonable. It seems to me that an oral hearing—I have chosen between 10 and 30, and I think 20, is eminently reasonable. I hope that the Member for Logan will adopt and accept that compromised position on this, as she says, very important provision.

Mr. Albert Driedger: Mr. Chairman, we are not trying to be unreasonable. What we are asking is to be given a chance to implement this. Certainly some of these situations, as indicated by the Member for Logan, we will be monitoring it, all the Members will be monitoring it. If we can see that this can be brought down, certainly within a six-month period, we can look at bringing in some changes. We are asking for the outside limits in this thing just to get a feel for the situation, and we ask for your co-operation in this. It is not that we are trying to be difficult with the Member for St. James (Mr. Edwards).

There are areas where we will probably have to be looking at this thing once we have implemented it. We

heard from the people from Minnesota that once they had brought theirs in, they had to make various changes. We are trying to make it so that we do not run into difficulty. We certainly are prepared to look at making changes in the future on that. I ask for your co-operation in this.

Mr. Edwards: I want to co-operate and that is why I propose a compromised position—10 and 20 is an eminently reasonable—

Mr. Chairman: I will ask for the question, committee Members, on the amendment to the amendment—Ms. Hemphill.

Ms. Hemphill: Mr. Chairman, I guess in light of the points that were made, I have to ask the Ministers again whether or not they do not believe they can give a priority to this area and put on the additional staff that is required to meet those—I think that you intend to meet them, that you intend to set it up so that it will be done sooner. I am wondering if you cannot make that commitment now.

Mr. Albert Driedger: Mr. Chairman, in talking with the registrar, we will be redeploying staff. We will try and make this thing. We really want to make it work. By typing it up in the legislation right now we feel that we want to be given the chance and to give our staff the chance to work this thing as best they can.

Once again I repeat, and I hate to belabour that, but these are the outside limits that we allow. We would want to try and make this thing be very efficient and do it in a much shorter time. We will be moving with staff as best we can to try and get the system working the way everybody would like to have it work.

Mr. Edwards: Maybe I could just ask you, and I see the Minister has the registrar with him. Are the 10 and 20 unachievable? Is that what the Minister is saying?

Mr. Albert Driedger: We are not sure. Mr. Chairman, in talking with the registrar, this is the best guess we can give at this stage of the game because when we talk of the paper trail, the police officer has to send in his report. Until the hearing is held, the written application, we feel these figures are reasonable at this stage of the game. Once we have a feel for it and know exactly what is happening, we will have a better idea. For example, flights up North, many factors could enter into this thing in terms of having an oral hearing.

We are not trying to be difficult with this thing. We want to be fair. We want to make this thing as fair as possible, and by cutting down the time, what we are doing is possibly putting ourselves in a position of something that we are not totally sure about at this stage of the game. I would have no difficulty further down the line, once we have seen how this system works, to bring in more restrictive time limits on this.

Mr. Edwards: I just want to point out that we are talking about a very serious piece of legislation here which has serious consequences on individuals in this province. We welcome the initiative. Those serious consequences are defined in terms of time. When you are caught driving suspended or driving .08, you do lose your licence. You lose it right then and there. You get a temporary permit for seven days, that is clear, that is in here. After seven days, on the eighth day you lose your licence.

With power that the Government is going to be exerting over individuals comes responsibility. The Member for Logan (Ms. Hemphill) is quite correct in saying that this is an extremely important part of this Bill. It seems to me that the Government, at this point, should be able to commit itself to 10 days to hold what is getting paper together in front of a person and reviewing it and making a decision. The 20 days, almost three weeks, is enough time to allow someone to come in front of a registrar, again, and a very short hearing, that is three weeks. Surely, this Government can meet those and indeed better those standards. I think it is a bare minimum.

Ms. Hemphill: Mr. Chairman, we are taking time on this one because we obviously want to feel comfortable with the numbers that we finally end up with. One, that the numbers are as short as they can be in a way that will allow us realistically to have the applications processed but that do not go any longer than they need to go.

I had an explanation given to me and, if I understand it, the suggestion was that one of the major concerns for reducing the numbers was where there was an oral hearing, that if you had to go up to Thompson or somewhere throughout the province, the possibility of not being able to schedule that within that period of time, which would then have the person in the position of not having the registrar be able to deal with their case. Did I misunderstand the point that was made? Was that what I was told, and is that accurate?

Mr. McCrae: Mr. Chairman, as I understand the question, if you make that time period too short, you might physically not be able to get that hearing in some cases. Certainly in remote Manitoba, your licence has been taken away from you. You have been given your seven-day permit, you lose your licence after, you lose your rights after, your privilege after your seven days and you cannot get a hearing. This would be kind of frustrating for one who is waiting to get their hearing. There is no opportunity for that to happen within a short period of time.

* (1250)

By giving a reasonable period of time, then the registrar is able to find his or her way up to Churchill or Thompson or wherever it happens to be. As my colleague said, this is all we are trying to do, provide a reasonable kind of scenario here for Manitobans to deal with these matters.

The Honourable Member for St. James (Mr. Edwards) seems to suggest that no one should have their licence returned, or that there are a large, large number of people here who are going to get their licences returned. I suggest that it will not be very many. When we keep that in mind, these numbers are indeed outside

parameters. My feeling is that once this program is going, it will be quite easy to live within these parameters set for ourselves. We agree with the parameters. We think the concerns raised by the Honourable Member for Logan (Ms. Hemphill) and also by the Member for St. James (Mr. Edwards), but also discussed with us by Ms. Bode when she was here from Minnesota, that is why this amendment finds its way into this legislation. We suggest that Honourable Members should join with us in monitoring the process. What is here is a reasonable suggestion.

Mr. Edwards: A final, and I think this will be final, I want to address comments made by the Member for Logan because I think she has the same concerns that I do. I initiated this subamendment to address those concerns. The Minister says there will not be many who get it back. That is true. The people from Minnesota told us less than 1 percent. That is true. In my view, that is all the more reason to put in adequate protections, because there are not many people who are going to get it back. The fact is that we have to ensure those who truly are innocent do in fact have adequate provision to get it back. The fact that there are going to be very few who get it back, I believe, strengthens the argument for reducing these time limits.

Secondly, in my view, reading this section, there is no problem with an applicant who for their own reasons cannot make the hearing within that period of time. A person can always waive a right. This would be a right to have that hearing within a specified period of time. The person could waive that. All this is saying is that the Motor Vehicle Branch already has locations throughout this province, would be able to get someone to conduct the oral hearing within 20 days. That does not seem to me to be an unreasonable request. To get someone from the locations that the Motor Vehicle Branches are already in throughout Manitoba, and I presume they will be holding those rural hearings by and large in those centres, perhaps they will have to do some travelling, but the fact is the Motor Vehicle Branch already has centres around the province. Twenty days is, in my view, quite a long time to get someone out there to hold this hearing, not unreasonable at all.

Ms. Hemphill: I am not sure if this is appropriate, but I want to raise the point of whether or not we now believe we are going to get through. I think when we added the other half hour originally, we thought that we may get through the rest of these amendments. I suspect now that we are not. If that is the case, then I would actually like to leave on this one, so that I have an opportunity that I do not have because my colleagues were not expecting to be here and had other things they had to attend. I would like to leave it on this one since we do have to come back anyway.

Mr. McCrae: I understand from the Honourable Member for St. James (Mr. Edwards)—and the rest of our amendments I suggest will take a very, very short period of time. If the Honourable Member can agree to be patient for just a few more minutes, I suggest that we could get finished.

Mr. Chairman: Is that the will of the committee, to stay in session and deal with the Bill? Mr. Edwards.

Mr. Edwards: That is certainly my wish, and I appreciate that the Member for Logan would like a chance to discuss this. There was another Member here from the third Party. In any event, I would like to get on with it.

Ms. Hemphill: If we can agree. We do not have any problem with the other amendments either. If I can leave the committee to work on processing the other amendments and come back in three minutes, four minutes, I would prefer to do that. Can you just hold this one?

Mr. Chairman: Is that the will of the committee? (Agreed)

RECESS

Mr. Chairman: I call this committee back to order, please.

On the subamendment moved by Mr. Edwards, the amendment proposed Section 263.2(8) of Clause 9, and that would be in English and in French.

All those in favour of the amendment proposed by Mr. Edwards, say aye. This is a subamendment. All those in favour of a subamendment, say aye. All those opposing the subamendment, say nay. I would declare that the ayes have it—that is on the subamendment. Now on the—

Mr. McCrae: Mr. Chairman, I would like to have a recorded vote.

Mr. Chairman: Recorded vote. It has been requested—a recorded vote.

Mr. McCrae: I would like to have a recorded vote after we deal with the other amendments, Mr.Chairman.

Mr. Chairman: We will ask for the recorded vote at this point, right away, on this subamendment. All those in favour of this subamendment, raise your hands—four. All those opposing this subamendment, please raise your hands—three.

Now on the proposed motion of the Minister of Justice to amend Section 263.2 of Clause 9. All those in favour, please say aye. I would say that was unanimous.

Mr. McCrae: I move

THAT the proposed new subsection 263.2(11), now renumbered as subsection (12), be amended by striking out "provided to the appellant or, if he or she is not present, a copy shall be" and adding "within 7 days of the date the application was considered or the hearing was held by the registrar" after "sent".

(French version)

Il est proposé que le nouveau paragraphe 263.2(11) du Code de la route, devenu le paragraphe 263.2(12), soit amendé par suppression des termes "est fournie au requérant; toutefois, s'il n'est pas présent, la copie lui" et par insertion, après le terme "envoyée", de "au requérant, dans les sept jours suivant la date de

l'examen de la demande ou de la tenue de l'audience par le registraire."

I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice, amendment to 263.2, which is now (12).

Mr. McCrae: Mr. Chairman, this amendment requires a decision to be rendered within seven days of the hearing being held. This does not necessarily extend the total time. For example, the hearing could be held on the fifth day and then a decision would be required on the twelfth day.

Mr. Chairman: All those in favour of the proposed amendment to that section, would you please say aye? I would indicate that the ayes have it unanimously.

Mr. McCrae: I move that—oh, I guess we have to pass the section first.

Mr. Chairman: Now, I would like to ask the question of the committee on Clause 9, as amended, and all of the amendments. Would it pass—pass. Passed and so ordered.

Clause 10—Minister of Justice.

Mr. McCrae: I move

THAT the proposed new subsection 273(1) as set out in section 10 of Bill 3, be amended by striking out "the person's" and substituting "a person's" and by striking out "the person" wherever it occurs and substituting "a person".

(French version)

Il est proposé que le nouveau paragraphe 273(1) du Code de la route, figurant à l'article 10 du projet de loi 3, soit amendé par suppression du passage qui suit "immatriculé au nom" et son remplacement par ce qui suit:

d'une personne ou refuser d'immatriculer tout véhicule au nom d'une personne pour la période qu'il estime indiquée.

I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice. You would like to speak to the motion?

Mr. McCrae: Very simply, Mr. Chairman, this corrects a technical error.

Mr. Chairman: What is the committee's wish? To pass the motion as amended—passed and so ordered. That is Clause 10—yes, the Minister of Justice.

Mr. McCrae: I move

THAT the proposed new subsection 273(3) to The Highway Traffic Act as set out in section 10 of Bill 3, be amended by striking out everything after "maintained by the registrar" and substituting "and when sent to the person in that manner there shall be a rebuttable presumption that the notice was received by that person."

* (1310)

MOTION:

Il est proposé que le nouveau paragraphe 273(3) du Code la route, figurant à l'article 10 du projet de loi 3, soit amendé par suppression de la dernière phrase et son remplacement par "Il existe une présomption réfutable selon laquelle l'avis a été reçu par cette personne, lorsqu'il lui a été envoyé de cette façon".

I move this motion with respect to both the English and French texts.

Mr. Chairman: Moved by the Minister of Justice, any debate on it?

Mr. McCrae: In 1985, Manitoba courts held that "deemed receipt" was improper and a person had to be given the opportunity to show that they had not received notice. This amendment makes subsection 273(3) respect the law.

Mr. Chairman: Is it the will of the committee to pass that amendment—pass; Clause 10, as amended in both English and French—pass; Clause 11—pass; Clause 12—pass; Clause 13—pass; Clause 14—Minister of Justice.

Mr. McCrae: I move

THAT the proposed new clause 319(1)(uuu) to The Highway Traffic Act as set out in section 14 of Bill No. 3, be struck out and the following substituted:

> "(uuu) prescribing for the purposes of subsection 242.1(3) the costs and charges payable on account of the towing, transportation, care, storage, disposition and other related matters and the costs and charges on account of administration to be paid to the Minister of Finance upon the release of an impounded motor vehicle or the manner in which those costs or charges are to be determined and the persons who are authorized to receive the costs and charges on behalf of the Minister of Finance;"

MOTION:

Il est proposé que le nouvel alinéa 319(1)(uuu) du Code de la route, figurant à l'article 14 du projet de loi 3, soit supprimé et remplacé par ce qui suit:

> (uuu) pour prescrire pour l'application du paragraphe 242.1(3) les frais qui doivent être payés relativement aux véhicules automobiles, y compris les frais de transport, de remorquage, de garde, de remisage, de vente ou de destruction, et les frais administratifs qui doivent être versés au ministre de Finances dès la sortie d'un véhicule automobile mis en fourrière ou le mode de détermination de ces frais et désigner les personnes qui sont autorisées à en recevoir le paiement au nom de ministre des Finances;

I move this motion with respect to both the English and French texts.

Mr. Chairman, this amendment is complementary, as I said at the outset today, to the very first amendment we moved today.

Mr. Chairman: Is it the will of the committee to pass the amendment and Clause 14, as amended in English and French—pass; Clause 15—pass; Clause 16—Mr. Edwards.

Mr. Edwards: I just have a quick question, with respect of the coming into force of this Act.

Mr. Chairman: Mr. Edwards could you repeat that please.

Mr. Edwards: I just have a quick question with respect to the coming into force of the Act. The Section 9 and Section 8, what I consider to be obviously the two key sections—they are to come into force on a date fixed by proclamation. Is there any guideline or thinking that the Minister can give us on what that date might be?

Mr. Albert Driedger: We hope that we will have everything in place by October 1.

Mr. Chairman: Any more questions in regard to Clause 16(1)? 16(2) amendment—Minister of Justice.

Mr. McCrae: Mr. Chairman, I move

That subsection 16(2) of Bill 3 be amended by adding "1", after "sections."

MOTION:

Il est proposé que le paragraphe 16(2) du projet de loi 3 soit amendé par insertion du chiffre "1", après les termes "les articles."

Avant d'adopter le projet de loi no. 2, le Comité a proposé la motion suivante: que le conseiller législatrif soit autorisé à rénuméroter le présent projet de loi et à modifier les renvois de facon à ce que les amendements adoptée par le Comité soient insérés dans l'ordre approprié dans le projet de loi.

Le rapport vous est respectueusement soumis.

That motion is moved with respect to both the English and French texts. I understand from officials that this corrects a drafting slip.

Mr. Chairman: Any questions in regard to that amendment? Shall the amendment on 16(2) pass—pass; shall Clause 16 in its entirety in English and in French pass as amended—pass.

Mr. McCrae: I have one formal motion,

That the Legislative Counsel be authorized to renumber this Bill and to make any changes to cross-references necessary to insert in the Bill in proper sequence the amendments made in this committee. I move this in English and French.

Mr. Chairman: Moved by the Minister of Justice (Mr. McCrae). Committee in favour, so that motion shall pass—pass. Now shall the preamble be passed—pass; shall the title be passed—pass. Is it the will of the committee that I report the Bill as amended? (Agreed)

Committee rise.

COMMITTEE ROSE AT: 1:13 p.m.

SUBMISSION PRESENTED BUT NOT READ

MANITOBA ASSOCIATION FOR RIGHTS AND LIBERTIES

Clerk of the Legislative Assembly
Legislative Building
360 Broadway Avenue
Winnipeg, MB R3C 0V8

Dear Sir:

The Manitoba Association for Rights and Liberties (MARL) applauds the Government's intention to control drunk driving but has some serious concerns about Sections 236.1 and 236.2 of The Highway Traffic Amendment Act. We were unable to attend last Thursday, June 22, when this Act was discussed but submit to you our comments today.

Thank you for your consideration. Should you have any questions regarding this submission, please do not hesitate to contact the writer at 946-0213. Sincerely, Errol T. Lewis, President.

INTRODUCTION

The Manitoba Association for Rights and Liberties was incorporated in August, 1978. MARL seeks to promote respect for and observance of fundamental human rights and civil liberties and to defend, extend and foster the recognition of these rights and liberties in the Province of Manitoba.

The Manitoba Association for Rights and Liberties recognizes the risks to life which are created by impaired drivers, and we applaud the provincial Government's intention to enact strong measures to control drunken driving. All would agree that the phenomena of drunk driving demands effective attention. However, the urgent need to find an effective solution to a difficult problem does not justify means which seriously erode the fundamental rights of individuals in our society.

We share the concern of much of the legal community who have expressed severe doubts about the legality of provisions that legitimize the immediate suspension of drivers' licences and impounding of their motor vehicles prior to a court disposition.

Although the objectives of Bill No. 3, The Highway Traffic Amendment Act, are laudable, the means to achieve them do not in any way justify the consequential infringement of basic human rights and freedoms.

The punishment of those presumed innocent until an appropriate court disposition is made contravenes longly held principles of a free and democratic society. We know too well the consequences of such serious erosion, which, if permitted to stand, in due course makes the unthinkable, palatable.

The appropriate forum to remedy or prevent provisions that infringe basic human right as entrenched

in our Charter is the present legislative forum. A challenge to the proposed provisions could take years to work its way to the Supreme Court. The people of Manitoba must have confidence that the Government is taking all possible steps to protect basic human rights at first instance. Such is not the case in Bill No. 3.

THE PROBLEM

Sections 263.1 and 263.2 of The Highway Traffic Amendment Act authorize a peace officer to immediately suspend a driver's licence or permit and impound their vehicle without the presence of a hearing to determine the legitimacy of such measures. In fact, the effect of Sections 263.1 and 263.2 of The Highway Traffic Amendment Act is to punish the driver before it has been determined by an independent and impartial tribunal or court whether the suspension of the driver's licence and the impoundment of the car are warranted upon the facts.

Sections 263.1 and 263.2 presume a person guilty and enforce serious penalties upon them without first permitting the accused driver to provide full answer and defence. Such measures infringe the Presumption of Innocence as guaranteed in Section 11(d) of the Canadian Charter of Rights and Freedoms.

The suspension of a licence is not insignificant. The possible impounding of a driver's car will have effects not only upon the accused driver himself, but also upon other members in the driver's family whom may use that car to travel to work and perform necessary daily undertakings. There is no adequate compensation for the driver and his family when the driver is later found to be innocent of impaired driving charges.

The Constitutionality of Bill No. 3

When considering the constitutionality of Sections 263.1 and 263.2 the provision of the Charter that is relevant is Section 11(d) which provides as follows:

11.Any person charged with an offence has the right

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

While s.11(d) refers only to the presumption of innocence it has been held that this "fundamental principle of the Canadian criminal law" has two aspects: (1) that an accused stands innocent until proved guilty in accordance with established procedure and (2) that proof of guilt must be beyond a reasonable doubt.

Since The Highway Traffic Amendment Act involves a provincial offence it is important to note that s.11 applies to an "offence" and it has been established by our courts that offence includes provincial offences, in fact, any penal matter. As well, while the presumption of innocence has been considered a fundamental principle of "criminal law," there is support for the application of the reasonable doubt standard to provincial proceedings.

The right to full answer and defence as a principle of fundamental justice has long been recognized by the law as an essential ingredient of a fair trial. Section 7 of the Charter protects the right to "life, liberty and security of the person" and requires that no one be deprived thereof except "in accordance with the principles of fundamental justice," and s.11(d) stipulates that a person may be proven guilty only according to law in a "fair hearing." Obviously, an accused precluded from making full answer and defence is denied a fair hearing. The opportunity to adequately state one's case should come before the determination of innocence or guilt and the imposition of penalties.

The word "liberty" in s.7 of the Charter is not confined to freedom from bodily restraint but extends to the full range of conduct which the individual is free to pursue. Although "liberty" under the Charter cannot be taken to create an absolute right to drive, the argument has been made that once a licence is granted there becomes attached to it the general ability to employ one's ability to drive and such liberty constitutes a right under the Charter.

It is clear from the foregoing that Bill No. 3 is in violation of Sections 7 and 11 of the Charter.

The Administration of Justice

Section 263.1(1) provides that where a peace officer has reason to believe that a person has consumed alcohol in such quantity that the concentrations in his or her blood exceeds a level contrary to section 253(b) of the Criminal Code, or is satisfied that a person has failed or refused to comply with a breathalyzer demand made on that person under section 254 of the Criminal Code, and the charge is in relation to the care and control of a motor vehicle, the peace officer may issue a temporary permit for the duration of seven days and immediately suspend the person's licence or permit. Such suspension shall last three months from the effective date of the suspension, unless otherwise ordered in a review.

The first concern is as to what constitutes the officer's "reason to believe." The second concern is the time it takes to challenge such belief, since in the meantime the suspicion is in effect. As to the first concern, there are innumerable factors, many subjective, that are involved in the determination by a peace officer that the driver has violated the Criminal Code and that his or her licence should be suspended. For example, there is an entire body of jurisprudence as to what constitutes having the care and control of a vehicle. Also, the issue has arisen whether the Charter requires the prosecution as a matter of fairness or fundamental justice to, in some way, preserve the evidence of a breathalyzer for testing by an independent analysis.

To allow a peace officer's belief in the guilt or innocence of the driver and without question, to result in the imposition of penalties on the driver, before a proper disposition by the courts, would seriously undermine the administration of justice. The immediate suspension of a driver's licence without a fair hearing would tend to foster attitudes of distrust and antagonism towards the law and those who must enforce it. One of the foundations for respect for the law is that safeguards exist to ensure that one is presumed innocent until proven guilty and a determination of guilt is made only by those persons who have been given the appropriate authority and are independent, impartial, and unbiased.

Reversal of Onus

Under s.263.2 of The Highway Traffic Amendment Act the onus is upon the person whose licence has been suspended to apply for a review of a suspension. The person whose licence has been suspended must pay a fee, file an application for review with the registrar, and obtain a date and time for a hearing. This again potentially infringes the presumption of innocence guaranteed in s.11(d) of the Charter. Furthermore, the accused driver must prove his innocence, rather than be presumed innocent as our law has traditionally prescribed. Section 11(d) is further breached by s.263.24 in that even though an application for review is filed, the application does not stay the suspension.

Out-of-Province Drivers

Section 263.1(9) provides for the suspension of the licence of an out-of-province driver. The suspension of the licence of such a person would cause even more hardship for reasons which are obvious.

Balancing of Rights

Simply because other provincial legislation may similarly breach basic and fundamental rights does not in any way justify or rationalize Bill No. 3; two wrongs do not make a right. This is not a question of balancing rights of certain members of society as against others. This is strictly a question of the inappropriate and unjustified removal of basic fundamental rights which lie at the very core of our democratic society. Surely our Legislature can accomplish the desired objectives of Bill No. 3, as have other jurisdictions, without such clearly undesirable by-products. Finally, what is of great concern to MARL is that our Legislature should attempt to enact laws which are so clearly in breach of the Charter; it encourages disrespect and contempt for that precious law of our land. The consistent duty of our Legislature is to encourage respect for and support of our Charter of Rights and Freedoms, not undermine it.