LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Tuesday, October 17, 1989

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Harold Gilleshammer (Minnedosa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

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

Messrs. Doer, Edwards, Evans (Fort Garry), Gilleshammer, Ms. Hemphill, Messrs. Patterson, Plohman, Praznik

APPEARING: Mr. Greg Yost, Special Advisor to the Minister of Justice

Mr. Victor Toews, Director of Constitutional Law

Mr. Harvey Pollock, Q.C., Citizens Against Impaired Drivers (CAID)

MATTERS UNDER DISCUSSION:

The Highway Traffic Amendment Act (5)

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Clerk of Committees (Ms. Patricia Chaychuk-Fitzpatrick): Committee, please come to order.

We must proceed to elect a Chairperson for the Standing Committee on Industrial Relations, are they any nominations? Mr. Plohman? -(interjection)- Any other nominations? No. If there are no further nominations, will Mr. Gilleshammer please take the Chair?

Mr. Chairman: The Committee on Industrial Relations is called to order.

Bill No. 54 is to be considered today. It is our custom to hear briefs before consideration of Bills; however, I understand there have been no requests to make presentations to date. Should anyone wish to appear before this committee, please advise the Committee Clerk and your name will be added to our list.

I would like to call Mr. Harvey Pollock to the podium.

* (1005)

Mr. Harvey Pollock, Q.C. (Citizens Against Impaired Drivers—CAID): Mr. Chairman, ladies and gentlemen, with reference to the proposed amendments, I have had the opportunity to look at the proposed amendments in relationship to the proposed Act, and it seems to me that those amendments that are proposed are reasonable, given the circumstances of the legislation. I think the purpose is to clean up the legislation so that it does not provide for counsel representing people, who may become involved as a result of this Act, from seeking, obtaining court rulings as to the effectiveness of the legislation; that is, whether or not the proposed legislation in itself is clean enough and clear enough for the court to deal with it in terms of whether or not it is criminal or civil in nature.

I think my hope and the hope of the Citizens Against Impaired Drivers is that the Act has brought into being is brought into being as quickly as possible so that the law can be enforced and so that we can hopefully prevent ongoing carnage on the highways and injury and attending costs arising therefrom.

Basically, all I am here to say is to support the amendments as proposed, to urge that the legislation be brought into being in the manner suggested.

Mr. Chairman: What is the will of the committee? Thank you, Mr. Pollock, for your presentation. Shall we proceed? The Honourable Minister.

Hon. Albert Driedger (Minister of Highways and Transportation): Mr. Chairman, just before we go clause by clause, I want to reiterate what I indicated in second reading, the appreciation of Members of the Legislature in terms of moving the Bill through second reading to bring it to committee. As I indicated, we have a target date of proclamation of November 1. Hopefully we can go through the proposed amendments of the Bill today, partly because we need lead time to take and get our computers set up for the proclamation end of it.

Certainly some of the criticism that came forward during the second debate, I want to just repeat that within the 90 days since we initiated the program itself and during that time, during the 90 days, forms were designed, regulations were developed and adopted, and training sessions were held for designated magistrates and police officers throughout the province, Winnipeg, The Pas, Brandon. Those training sessions are what actually brought forward the majority of amendments that we have before us because we are breaking new ground. We anticipated some concerns and think that by going with the training sessions, then coming back with the amendments at this time, we have made the legislation as good as we can make it.

With those comments, Mr. Chairman, hopefully we can proceed on a clause-by-clause basis.

* (1010)

Ms. Maureen Hemphill (Logan): Mr. Chairman, I am pleased to -(inaudible)- for Mr. Pollock. I suppose it showed that even the delay of a couple of days that we had asked for to give anybody an opportunity that did want to make comment was useful.

I think that we are in general agreement with proceeding to approve these amendments but want to say that we are sorry that we have to do so. I mean, it seems to us that this is the second time that we have been brought here and sort of pressed against the wall to improve a lot of amendments in a short period of time because of pressures of the department to get it on computer or to get the program in place at a certain time.

I think with a populous Bill that is going to affect so many people, that this really should have been handled in a better way, that it should have had more care and more thought, and all these reasonable amendments should have been put in, in the first place. Most of them should have been picked up early on, and we should not have to be making changes now.-(interjection)- Yes, it is rushed and we are always pressed, because there is always a deadline that the department has, although the department has really had a lot of time to prepare the initial bill in the first place.

The reason that we were told we had to sort of rush it through is that they had taken all the time they needed, had taken extra time to make sure that it was going to be just right, as I recall, so just with feeling that we have to put on record our feelings that it has not been well prepared and it has not been well handled by the department and that some of these things should have been, can see some experience after a while showing that there should be some changes, but there are a few too many and too many of them are too routine and should have been picked up, I think, before this.

Having said that, it is not our intention to hold it up and we intend to, with a few questions, let it go through.

Mr. Chairman: The Bill will be considered clause by clause during the consideration of the Bill, the Title, and the Preamble, the first clause only if it contains a short title of the Bill are postponed until all other clauses have been considered in their proper order by the committee.

Clause 1—pass.

Clause 2—the Member for St. James.

Mr. Paul Edwards (St. James): Mr. Chairman, my only concern, having read the Hill case, with respect to this amendment and obviously the Hill case needs to be responded to and I think that it is appropriate that that is done in a timely fashion. At page 5 of that decision, the judge in this case, Judge Scott, indicates that, and I quote, although it will still leave the Act with other problems, because you have sections like 164.6 which poorly differentiate between the words. As a band-aid approach that might work if that is the intention of the Legislature, but in the long run the Act needs to be rationalized. I think that is an interesting point made by the judge. This is the band-aid approach that he spoke of, and clearly a quick response needs to have been forthcoming and that is what we have before us as I understand it. When is this rationalization going to take place given the very clear words from the Judge that that needs to be done?

* (1015)

Mr. Albert Driedger: Mr. Chairman, I am told that it is in the process right now, that The Highway Traffic Act is being rewritten. It is a massive document and we are looking at having it completed by next spring.

Mr. Edwards: I want to clarify. The Judge in this case was not talking, I do not think, about a rationalization of the whole Act. He was specific to the issue of the differentiation between the words which are used and of course the words he is speaking specifically of are suspended, disqualified, cancelled, prohibited. He is looking for a rationalization of those words and I will simply leave it at that if in fact those are going to be certainly considered and there is an overall amendment rationalization of this Act coming forward. That answers my question. Thank you, Mr. Chairman.

Mr. Chairman: Clause 2—pass; Clause 3—pass.

Clause 4—the Member for St. James.

Mr. Edwards: Mr. Chairman, this is the first of a number of sections that deal with the distinction between a person charged and the driver. As I read this Act, Clauses 4, 6, 7, 10, well, those sections deal specifically with that distinction. I wonder if we could get—and I appreciate that the Minister has given us some guidance on why that needs to be done. I would ask the Minister to perhaps make some comments on that distinction and how that is going to work out in the application of this initiative, and give us some guidance on why that distinction was not drawn early on.

Mr. Albert Driedger: Mr. Chairman, I will have to ask professional people here to give me the answer for that. I wonder is there an objection from the committee if Mr. Toews would answer that question.

Mr. Victor Toews (Director of Constitutional Law): The reason for those proposed amendments is to ensure that the police officer may serve the driver without the driver being charged. It depends on how the peace officer proceeds, by way of common offence notice which can be issued fairly summarily or in certain cases he is going to have to proceed by way of information which involves the swearing in front of the magistrate. If that is the case, the charge cannot be laid so you cannot serve the driver or the person charged.

Secondly, the reason is again to emphasize the civil nature of the proceeding as opposed to being tied up with the criminal nature. This is to remove the technical objections that the criminal process has not been complied with, and therefore, the civil process is without a valid statutory basis.

Mr. Edwards: Thank you, and I thank Mr. Toews for that.

This goes back to the distinction which is obviously sought to be drawn between a civil and a criminal proceeding, and clearly that is the intent of this is, as Mr. Toews has said, you do not need to lay a criminal charge to get the suspension. That is the bottom line in this Act.

In what circumstances, and I just ask this because by my reading of this Act there would be no circumstances in which you would have your licence suspended but not face a criminal charge given that the reasons you are going to have it suspended are, you fail to blow in a breathalyzer, or you are in fact driving over .08, both of which are criminal offences? In what possible circumstances would you be suspended but not criminally charged, if any?

* (1020)

Hon. James McCrae (Minister of Justice and Attorney General): Mr. Chairman, we cannot think of any circumstances that the Honourable Member has asked for. These amendments have to do with a time element as well and the time that it takes, some times a charge is not laid immediately. We do not foresee this applying to people who are not charged with the offence.

Mr. Chairman: Clause 4—pass; Clause 5—pass; Clause 6—pass; Clause 7—pass; Clause 8—pass; Clause 9—pass; Clause 10—pass.

Clause 11—the Member for St. James.

Mr. Edwards: You will appreciate the rush nature of the committee hearings, I did not get a chance to recently review Section 253 (b) of the Criminal Code. I wonder if we might have, and again I appreciate we had a brief explanation given. Why is that being deleted? Is there any defence included in Section 253 of the Criminal Code which is also being deleted? Perhaps we can ask Mr. Toews, if he knows this, to—

Mr. Toews: It is not the intention of this amendment to in fact delete any defence to the Criminal Code. That is certainly not the intention of deleting that phrase, but again the phrase is superfluous to the intent that the peace officer has to form in order to invoke this procedure. It is not necessary.

Mr. Edwards: I thank Mr. Toews for the first clarification on that. If it is superfluous, then that goes back to the idea that in fact the situation that would lead to the suspension would also lead to the charge, that is what you are saying, would also de facto lead to the charge under the Criminal Code.

Mr. Toews: I am sorry, I do not quite understand the question.

Mr. Edwards: If in fact the peace officer had enough evidence to suspend, as a matter of fact, he would also have enough evidence to charge under Section 253.

Mr. Toews: That is correct, Sir.

Mr. Chairman: Clause 11—pass; Clause 12—pass; Clause 13—pass; Clause 14—pass.

Clause 15—the Member for St. James.

Mr. Edwards: Mr. Chairman, I am not exactly clear on how I should do this, in terms of the procedure. I have an amendment here which I want to propose which will in fact replace Section 15, I think do a better job on Section 15 of this Act. Perhaps I can just ask your guidance. My motion is an amendment to subsection 263.26 of The Highway Traffic Act which in fact would totally replace what is in Section 15 now. Perhaps I can just ask your guidance on whether I should propose that amendment now?

Mr. Chairman: What is the will of the committee? Okay, we will pass it around then. The Member for St. James.

* (1025)

Mr. Edwards: I have just been advised that the amendment which had been drafted does not in fact completely do what I intended to do. It is going to take one minute. Would the committee be willing to go on and come back to this Section 15? I am advised that it will take about a minute.

Mr. Chairman: What is the will of the committee? We will proceed. Clause 16—pass; Clause 17—pass.

Clause 18—The Member for St. James.

Mr. Edwards: Mr. Chairman, I think this is the appropriate section to raise some questions about the forms which we were handed out, so I am going to do that.

I am going to start by referring to Sub (2) of this amendment, which talks about the costs and charges payable to the Minister of Finance (Mr. Manness) on account of the administration of this initiative. Can the Minister give us guidance on what those charges will be, given that back in June when we discussed this he was unable to do that? I would like to know precisely what those charges will be in the regulations.

Mr. McCrae: Mr. Chairman, I have the regulation that was registered on October 3 which deals with costs, and we will make copies of this regulation available to the Honourable Members.

For the purposes of applying for a hearing, the application fee to a justice is $35.00. That on a successful application is of course refundable. That is the application under the licence suspension provisions. I am sorry, this is in regard to the impoundment section of the legislation, $35 for an application to a justice for a hearing for the purposes of costs and charges payable on the account of administration to be paid to the garage keeper as authorized representative of the Minister of Finance upon release of an impounded vehicle, $50.00.

Mr. Albert Driedger: Mr. Chairman, the reinstatement of licence after suspension. The fee payable for obtaining a driver's licence by a person following the suspension is $40.00. The administrative licence suspension review fee, the fees payable for an administration review under Section 263(2) of the Act are $90 for a review with an oral hearing, or $45 for a review without oral hearing. If there is not an oral presentation made, then it is $45.00. If there is an oral hearing, then it is $90.00.

Mr. Edwards: Mr. Chairman, firstly, to the Minister of Justice (Mr. McCrae) on the impoundment fees, the $50 garage keeper fee, in the event that someone is successful in getting their car back and the $35 hearing fee would be refunded, would the $50 garage keeper fee also be refunded?

Mr. McCrae: No, Mr. Chairman.

* (1030)

Mr. Edwards: Going back to comments that were made in June, if someone has their car stolen by a person who is a suspended driver, that car is impounded as a stolen vehicle, the person would have to apply, go in front of a court quite likely hire a lawyer, and pay the extra $35 fee which he would get back if he was successful, but would be out-of-pocket the $50 for the garage keeper's fees having had his or her car stolen.

Mr. McCrae: The police, Mr. Chairman, will not be impounding stolen vehicles. I would like the Honourable Member and everyone to understand that. They will not be impounding stolen vehicles to be charged against registered owners.

Mr. Edwards: I think we had sort of gone through this and Mr. Pinx, I recall, raising this the last time we talked about this. How are the police going to know for sure whether or not a vehicle is stolen? I can envisage the circumstances where a person is stopped, the person is not the driver of the vehicle, perhaps the vehicle has just been stolen because it has been stolen fairly recently, that person is not going to say, this is a stolen vehicle, that person is the criminal. Meanwhile the car is going to get impounded right there and then. That $50 fee, as far as I read these forms and regulations, is going to be payable right there and then for the first month, or any part thereof. The Government is going to have to be willing to give the $50 back to the victim.

Mr. McCrae: Mr. Chairman, it is not the intention of the Government to put victims of car theft to these costs. As the Honourable Member would know, if his car were stolen, the police would have that car for the purposes of whatever evidentiary purposes are required, and he would make his application as he normally would today to get his car back as soon as possible, and he would get it back as soon as possible. We intend that same regime to be in effect as a result of these changes.

In other words, these changes will not impact an innocent owner of a stolen vehicle so that if there are charges, if your car is damaged for example by a car thief that has nothing to do with this, or if your car has been taken by a car thief that has nothing to do with this. A car thief who happens to be a suspended driver that has nothing to do with this. Your rights as an innocent owner of a stolen car are not affected by this legislation.

Mr. Edwards: I appreciate that statement as to the intention of the Government in this. I simply bring to their attention, and we have an assurance from the Minister, that a victim of a car theft will not be put out-of-pocket by this piece of legislation. That is appreciated.

I simply bring to his attention and his administration's attention that when a police officer stops the vehicle and the driver is suspended, the police officer will immediately impound that vehicle. It will not be determined that that vehicle is stolen for some time thereafter. At that point, the $50 has already become payable, therefore the Government will have to make arrangements to not charge the victim the $50.00.

Mr. McCrae: Mr. Chairman, we understand the Honourable Member's concern. Any vehicle impounded under this legislation in the circumstances the Honourable Member refers to, our department will ensure that the innocent owner of that vehicle does not come under this section in terms of an ex gratia payment to ensure that an innocent owner will not find himself put to expense as a result of this legislation.

There will be inconvenience as there is now. There will be claims to be filed with MPIC as there is now, but this legislation will not impact against an innocent owner of a vehicle that is driven by a car thief who happens to be suspended.

Mr. Albert Driedger: Mr. Chairman, we are sort of doing this in tandem, and I ask the indulgence, but normally the Canadian Police Information Centre has had information available the moment a car is reported. So there would be a span possibly between the time a vehicle is reported stolen. At the moment it is reported stolen it gets entered into the information and that is available to the police officers virtually immediately.

Mr. Edwards: Mr. Chairman, I am going to move on to the other fees with respect to the driver's licence suspension. On the impoundment issue—I think that has been answered save and except to point out to the Minister for Highways and Transportation (Mr. Albert Driedger) that quite often a car is stolen and the owner does not know it, because it is being driven around. That is simply the spectre which is quite common, and I think Mr. Pinx did indicate that.

We will move on to the fees for suspensions which cumulatively total $135, if you go through both. If you go through the written and the oral hearing you are looking at an initial fee of $45 and then an oral hearing fee of $90. I see the Minister discussing this with his advisers. Perhaps he can clarify that, if I am wrong.

Mr. McCrae: I will leave it for the Minister of Highways to respond, Mr. Chairman.

Mr. Albert Driedger: Mr. Chairman, it is my understanding that he can make only one application. He either makes a written application or he makes an oral application. He would not be doing both.

Mr. Edwards: It has been a few months and maybe I have forgotten that was the case from June. As I recall though, we did put in that you could have a written hearing within 10 days and then the oral hearing within 20 days. I do not recall it ever being stated, and again

I have not looked through this Act in detail, that you would be prohibited from applying for an oral hearing after your written hearing in the event that you lost. It is because it is 20 days from the date of the application. Perhaps the Minister can point me to the Section which does that.

Mr.McCrae: Just before the Minister of Highways answers I might just note that if you apply, Mr. Chairman, for an oral hearing, part and parcel of that oral hearing is a paper hearing. In that sense, you are getting both if you go for the oral hearing.

* (1040)

Mr. Edwards: Absolutely, and that is not my concern. My concern is that if, because you do not want to spend $90—maybe you only have $45—you go to the written hearing and you are unsuccessful, why would you be barred from applying at that point for an oral hearing 20 days from then?

Mr. McCrae: The reason I guess is the same reason that we do not have judges overruling themselves. The official who has made the decision on the paper hearing has finished his work. That is the simple answer.

Mr. Edwards: Well, to correct the Minister, we certainly do have judges overruling themselves. They do it everyday. It is called an appeal process.

Mr. McCrae: No, no, the same judge.

Mr. Edwards: Second, we have the same judge overruling another judge in the case of Provincial Court where highway traffic offences are done in a court without a court reporter and it is considered a lesser form of hearing. You can appeal from that for what is called a trial de novo, which is another complete trial in front of a judge of the same level. So that certainly is a common feature of our judicial system.

Mr. McCrae: There is no wish to get into a protracted discussion about legal matters with the Honourable Member. I recognize my position in that kind of a discussion. We all know there are appeals available to Members of the public, but not to the same judge. That is the point that I was making. Unless there is some specific statutory authority for that you do not go and appeal to the same judge who made the decision in the first place was the point I was making.

Mr. Edwards: To the extent that this is a substantively different hearing, if it was the same hearing, if it was another written hearing I could see the Minister's point. To the extent that it is a substantively different hearing, that being an oral hearing at which the police officer will be present and different evidence may come forward, what is the downside for this Government for not allowing you the opportunity to do both? What is the downside?

Mr. McCrae: I just bring to the attention, Mr. Chairman, of the Honourable Member, Bill 3, which became Chapter 4 of the statutes—Section 263.2(5): The registrar is not required to hold an oral hearing unless the appellant requests an oral hearing at the time of filing the application and pays the prescribed fees.

Mr. Edwards: I am reading what I take to be the same section. I do not understand how that precludes a person filing an application for an oral hearing after he has already had an written hearing. I do not see that it is mutually exclusive, certainly not by that wording, on my reading of it. Again, I ask the question, what is the downside for the Government, given that they are charging fees which ostensibly cover their costs? What is the downside for them of saying, we will allow you to take the first stage, and if you do not feel all the evidence has come forth, have the second stage and get the police officer there. Why not?

Mr. McCrae: It was the Honourable Member, Mr. Chairman, who brought in amendments at the first go-around with this legislation to provide for time limits and time limits is kind of thrown out the window if we were to, you know the Honourable Member is working against his own objective, the objective he brought forward and which ultimately the committee agreed to. So the time limits for the oral and the written applications are now there. If we were to build in some other process we would not be able to do it in the time limits that the committee agreed should happen last June.

Mr. Edwards: Mr. Chairman, I think this may be all academic anyway because in my reading of this Act nothing is there to preclude a person from doing both. So the intention of the Government may be totally frustrated by their inability to draft the Act to reflect that, but the fact is that the time limits are there, that is correct. You ask for a written hearing, you get it within 10 days, but if you want, after that, to go to the oral hearing, you wait another 20 days because it is 20 days, not from the date that your licence was taken away, but from the date that you apply. Therefore, that is the choice of the person who is applying to have it reviewed. It has nothing to do with the time limits, save and except that the Government is going to be required to go through two stages for which the person is going to cover their costs, and I think that is important to point out. We are not asking the Government to take a loss on new people for further appeal rights, the Government is charging what I consider to be a hefty fee, $90, for the oral hearing.

An Honourable Member: Travel costs.

Mr. Edwards: Well, the Minister says that includes travel costs. That is the actual cost. I do not think I disputed that. Apparently . . . .

Mr. McCrae: On a point of order, Mr. Chairman.

Mr. Chairman: On a point of order, the Honourable Minister of Justice.

Mr. McCrae: The fee is here to pay for the actual costs of running this business, but I say to the honourable Member that we should not be so concerned about

the hefty nature of the fee. If you are successful you get the fee back.

Mr. Chairman: A dispute of the facts is not a point of order. The Member for St. James.

Mr. Edwards: Mr. Chairman, when I reference the size of the fees it is understood that they reflect the actual costs. My point is, if they reflect the actual cost there is no downside for the Government, in saying that you can take the two stages. The two stages are in place. We have the framework there. We are covering our costs. Perhaps we can leave it at this. I will bring it to the Minister's attention that on my reading of this Act there is nothing to stop somebody from having both hearings and the Government should probably be prepared to adopt that strategy because I perceive that is in fact what the Act says, and perhaps at that we can leave it.

The cumulative cost—I go back to our initial point—is going to be $135 to have it heard.

* (1050)

Mr. John Plohman (Dauphin): Mr. Chairman, just on this last point. I think it is a question of how many levels of appeal you want to put into this process. If there is a level of appeal that should be sufficient. The person can choose, and as the Member says, I guess there is nothing precluding a person from going to both in the Act, if that is a fact, or in regulations there is nothing to preclude, then certain people will do that if they are advised to do so by their lawyers perhaps.

I do not know that it should be something that the Government should be promoting if we are trying to expedite this process and reduce the congestion that might be associated with this kind of a program. We have very strict time limits put in place by this committee, as the Minister said, and there is no downside in terms of the cost because it is fully cost-recoverable I understand, but there is a downside in terms of the time required for everyone involved. I think that it is reasonable if there is one appeal process. That is sufficient. The person can choose which process he wishes to take at the time that he is advised that he has an appeal process.

I wanted to ask, though, these fees, the $90, the question to the Minister is: is this for the Licence Suspension Appeal Board to hear, or is this the administrative fee by staff in the registrar's office?

Mr. Albert Driedger: Mr. Chairman, this is the Administrative Licence Suspension Review fee, the $90, and staff are the ones that do that. That includes if they travel up north, for example, some of our communities up there, the hotel bills, the travel costs, et cetera.

Mr. Plohman: Well, it is quite high at $90, just for the Administrative Review. I thought this involved the Licence Suspension Appeal Board. So what we have here is an average cost based on some volume, I would think, and based on a cross section of charges or problems from across the province, not just within the city. Is that how this is worked out?

Mr. Albert Driedger: That is correct.

Mr. Plohman: Is there another cost for the Licence Suspension Appeal Board to hear this. Would there be that level of appeal where the person could make a verbal request and presentation following this, if it was not successful?

Mr. Albert Driedger: Mr. Chairman, the licence suspension appeal fee, when you apply is not associated with this. Ironically it happens to be that the fee is the same price. If you apply to the Licence Suspension Appeal Board for a hearing you pay $90, but that is a different step than this one is here.

Mr. Plohman: So I ask the question, would the person be able to appeal first administratively and pay a $90 fee, and then appeal to the Licence Suspension Appeal Board for another appeal here?

Mr. Albert Driedger: No, Mr. Chairman, that is a separate process.

Mr. Plohman: So there is no appeal under this section to the Licence Suspension Appeal Board, period. It is just not related to this at all?

Mr. Albert Driedger: That is correct.

Mr. Plohman: Mr. Chairman, I just wanted to make a comment also about the issue of the impoundment fees. It seems that in the case where there is no report of a stolen vehicle to deal with the Member for St. James' (Mr. Edwards) concern. There will be instances where a police officer will stop a vehicle that has not been reported as stolen. Therefore, it will not be on their system and they will not immediately be able to determine that it is stolen. Under those instances there should be a waiver put in the regulations, a ministerial waiver, or delegated to the registrar that would allow the Government to waive the fee, the $50 charge. I ask the Minister whether in fact that has been put in, or will be put in, and whether we have an undertaking that that would be put in under those instances.

The Attorney General, or Justice Minister, has indicated it is not the intention of the Government to charge people who have been the victims of car theft. I would think they would have no problem in putting a provision in that would allow for such a waiver.

Mr. McCrae: I did respond on this a little while ago when I said that it indeed is not the intention that innocent owners of vehicles should be paying impoundment charges. Through the training sessions that Mr. Toews has been conducting with the police throughout the summer, this issue has been raised and discussed. The police, if there is evidence that a car is stolen it will not be impounded under these particular sections so that we will not be into that problem.

Now you are saying that the police will be finding a car that they do not know is stolen, so you are saying that it could be impounded under this section.

Mr. Plohman: Right.

Mr. McCrae: It is in that area where I discussed earlier an ex gratia payment. There has been an intention, Mr. Chairman, to make ex gratia payments to persons who find themselves in this situation on an administrative basis, but the Honourable Member's suggestion is a good one and supported by the Honourable Member for St. James (Mr. Edwards), I believe, to build into regulation this kind of protection so that Legislative Counsel is indeed looking at that very suggestion.

Mr. Plohman: I think it is important to do that so that the person would not actually have to pay the money out. In all these cases where there is a refund, it sounds like it is no hardship, but there are people who will find it very difficult to come up with the money initially. So wherever, especially when they are innocent, because innocent victims of theft, it would seem that we should be trying everything possible to ensure they do not have to put that money out at all, never mind paying it back by an ex gratia payment later.

Mr. McCrae: The Honourable Member's point is well taken and we will look carefully at the advice that he has given us.

Mr. Edwards: Mr. Chairman, I just want to respond to some of the comments by the Member for Dauphin in relation to the comments from the Government about this hearing process. In fact, it is very rare in administrative law that there is not some form of appeal, not just the court system there are appeals, there are appeals in administrative law. Throughout administrative law, to the labour board or whatever board is set up by the Government, the fact is that a one-stage "take it or leave it" is actually pretty rare. In this case, the two appeal processes that the Member for Dauphin indicates we should not be proliferating appeal processes, we have got two in place.

My point is we have two in place, we are covering our costs, why can they not be used by the same person? In my view, there is no downside to doing that. What it does is it allows the Government to say when someone gets through the appeal processes, we now have a better chance, a significantly better chance, that the person we are taking the licence away from, the person who is going to lose their job and maybe not be able to feed their family, that person is in fact guilty. If that is the case, then we all agree, let us take that person to the wall, let us get serious about drinking and driving, but let us also remember that innocent accused are also innocent victims, and over the course of 400 years our system has developed to protect the rights of the innocent accused.

* (1100)

It is important as legislators that we remember that they are also innocent victims of our system if you are charged and not guilty. We all know that if you go to the courts of our land you will see the rights of the accused, the innocent accused, borne out. The fact is very few people who are charged ever get off. We know from the Minnesota experience that less than 1 percent of the people who go through their hearing process actually get their licence back, less than 1 percent. We are not talking about letting people have their cars back en masse. We are not talking about that. We are talking about a very, very small fraction of people who in fact will be wrongly charged and have their licence taken away. It is for those people that we have to make sure we let them off. We must make sure that we do not punish the innocent. This is a very, very minor point on the scale of things, because the two systems are in place and the Government is covering its cost. All I am saying is make sure it is available.

Mr. Chairman: Shall the clause pass—the Member for Logan.

Ms. Hemphill: -(inaudible)- plus the $90 for the administrative hearing. I am in agreement, and I know we talked about the fact that you would not be trying to make money on this, you would just be determining your costs and charging the actual cost. I am a little surprised to find out that the actual costs of the hearing are going to be, for instance, there was somebody in the inner city who has a hearing who is carrying costs for hotels, meals and travel up north. It seems to me that is a very hefty fee, and if I understood what the Minister was saying, he was saying that the reason that it is $90 is that it includes travel, hotels, and northern hearings. So that somebody in the city whose own hearing would be costing much less than that would be carrying a very heavy fee I think to sort of cover the province.

I am wondering if those costs should not be covered some other way other than direct charges to people whose own hearings would not come to that cost. It is a very heavy fee for a lot of people living on or below the poverty line in the inner city. That is going to be a very big amount of money.

Mr. Albert Driedger: Mr. Chairman, I suppose it is a matter of opinion. If we want to take and give special consideration to the people living let us say in Winnipeg, why are we going to make it extra tough for the people living up north who would then have to carry the full brunt of it. We are now looking at meld in terms of what the costs recoveries are. If we applied that principle then we would have to have for example people in Thompson paying a horrendous cost for the appeal. That is why we have sort of used the blend. We feel that it is very hard to differentiate and start breaking out, saying, well, if you are 50 miles from the city it is going to cost you a little bit more, if you are 500 miles away it is going to cost you substantially more, and if you are fortunate enough to live in the city that is going to be a fraction of the cost.

That is part of the problem that we have had and that is why there has been a blend price established based on cost-recovery. The intention has always been that there will be not a cost to the taxpayers in terms of the people that are involved in these kinds of activities.

Mr. Edwards: Mr. Chairman, on the issue of the forms, I wonder if I might refer the Minister to specifically—

and I have a number of forms here which have been handed to me and I thank him for letting me have a copy of them—the form which is 00741, Acknowledgment of Seizure and Impoundment of a Motor Vehicle. A simple question, the $50 fee, that I gather is per month for any part of a month, is that right? If it is one day, it is the full $50.00?

Mr. McCrae: One seizure, one $50 fee.

Mr. Edwards: One $50 fee and then the $50 fee has to be paid for the next month as well, because I notice that it says, provincial administration fee is to be forwarded monthly. Does that mean that what ever length of time, it is just a single $50.00?

Mr. Greg Yost (Special Advisor to the Minister of Justice): No, there are actually towing fees which are a schedule to this and a daily impoundment fee payable to the garage keeper. Therefore, if you leave it for 45 days you have to pay the garage keeper more in order to get it out from his compound, to pay his costs. The $50 is just the Government's cost. There is a $45 in the City of Winnipeg and the City of Brandon towing charge, $35 plus $1.50 per loaded kilometre outside of those two cities, and the storage is $5 a day in Winnipeg and $3 a day outside of Winnipeg and Brandon.

Mr. Edwards: So just for clarification, Mr. Chairman, if your car is impounded you are going to owe the garage keeper separately. That is what you are saying. You are going to owe that garage keeper for whatever his or her rates happen to be.

Mr. Yost: His or her rates are established by regulation, and, yes, you will owe that. The garage keeper is required to collect, in addition to his fees, our $50 administration fee and remit to us the $50 fee and a complete report on when it was disposed of, et cetera.

Mr. Edwards: Mr. Chairman, what are the regulated impoundment fees going to be per day?

Mr. Yost: The regulated impoundment fees in Winnipeg and Brandon is $5 per day. Outside of those two communities it is $3 per day, and above that is the towing charge to get it to the compound.

Mr. Edwards: In the case of a normal impoundment for 30 days, you are going to be looking at $150 fees, plus the $50, plus the towing charge.

Mr. Yost: Two hundred and forty-five dollars would be the standard charge in Winnipeg, if you are caught.

Mr. Edwards: I notice that on the back of the notice it says notice to garage keeper, and then at the bottom there is a notice to the registered owner of an issue to be determined at a hearing. There is information there to the owner of the vehicle about his ability to apply, and say I did not know that the person who was suspended was driving my car, et cetera. My car was stolen, whatever.

Mr. Chairman, that does not mention any time limits for the holding of that hearing. Is that something which has been left out by any chance or perhaps I can just ask Mr. Yost that?

Mr. Yost: That is not a problem. We have established designated magistrates. We anticipate all hearings will be held within three days of application.

Mr. Edwards: On the form, and it does not have a number on it, it is a request and order for release of motor vehicle. That is the heading of it. My question is: do you have to go to a police officer with this form? Can you not leave it in the hands of the garage keepers? I notice that you are asking the person to go to the police officer.

Mr. Toews: The form was designed for the convenience of the user more than anything. It is not required by the law, but the portion at the end there is required by statute. There has to be some written request to the peace officer that the 30 days have now expired, and then the peace officer can then check back with his impoundment form to in fact ensure that the 30 days have expired. Then he writes the order saying, here, and he takes it down to the garage keeper. The garage keeper then is legally bound to release the car upon the payment of the appropriate fees. That is a safeguard to prevent any abuse to ensure that motor vehicles are kept for the 30-day period.

* (1110)

Mr. Edwards: The person whose car has been impounded, if I can get this straight, goes after the 30 days, on day 31, to the police officer. Presumably it does not have to be the same police officer, it can be any police officer.

Mr. Toews: Any police officer in the detachment that impounded the motor vehicle because they are the ones, for example, who would know who would have the records.

In the City of Winnipeg, as I understand it, the way the Winnipeg City Police are arranging it is that there will be one central location so a citizen does not have to run around throughout the City of Winnipeg but can go to one central location where those things are going to be kept.

In the rural areas and other urban centres in Manitoba, for example, the Brandon City Police similarly will have a central location where the individual goes to. The rural detachments of the RCMP will maintain their own records which will be near then to where the car has been impounded, the garage keeper that they employ for those purposes. You will have to go to a police officer in that detachment who will then ensure that the 30 days have in fact expired.

Mr. Edwards: With respect to the form "Application for a Hearing to a Justice," is this in fact going to be handed out at the same time as the owner is notified that his or her car has been impounded?

Mr. Toews: It is not the intention to hand it out at that time. The back of the owner's form gives information—

I am afraid you are looking at the license suspension line. If you look at the one, the acknowledgment of impoundment and seizure of motor vehicle, it advises the registered owner that he may apply to a designated justice, and those application forms will be with a designated justice at every court office in the Province of Manitoba, so that there is equal access throughout the province.

Mr. Edwards: Going on then to the form about notice and order of suspension disqualification, I note that on the back of it, the copy that goes to the person who has had their driver's licence suspended, there is some talk of the administrative review. The administrative review information does not mention the cost nor does it mention the time limits. It does go on to talk about the merits. It says in capital letters the issue of hardship caused by the suspension will not be considered. Would it not also be advisable perhaps even to get into the merits of why you might get your driver's licence back? Would it not be advisable to simply give that section some more detail and say if you can show XXX, then this is what, in those circumstances, you will get it back. Here are the fees and here you will get a written hearing within 10 days and an oral one within 20.

Mr. Albert Driedger: The reason why we do not have the fees in there is because those fees could change from time to time and then we would have to redo all the forms. The fees are set by regulation and that is why we do not have them included, because it could be two years from now or a year from now when we feel that we want to either increase or decrease the fees. We would have to go through the whole form process again.

Mr. Edwards: I appreciate that, and with respect to that let me just say that perhaps you could say a fee will be charged without specifying what the fee will be. Secondly, perhaps the Minister could respond to my suggestion that there be some recounting of the instances in which you are likely to get your licence back, so you are not wasting people's time. You have told them you are not going to get it back for hardship. Why do you not put in there, if you can show XXX, then those are the grounds upon which you would get it back. Would it not make more sense to give people this notice up front that the chances of getting their licence back really are not that great? This is not the trial. This is going to be a very detailed specific look at certain factors. I think some people may be misled by this and think this is my trial. They should know it is not.

Mr. Albert Driedger: Mr. Chairman, I am informed that it is all in the application form when an individual gets notified that he can appeal it, he can go down to the appropriate office, and on the application form all this information is available, what his options are, and the grounds.

Mr. Edwards: Okay, I appreciate that. I will leave it at that.

I personally would prefer it be on the document which is taken to the person's house so they know, and if they know they do not have a right of appeal, they are not going to waste their time and the Government's time going down and asking questions and filling out an application for a hearing.

Let me just, on that vein, ask if the Government has considered setting up some form of a central information line while this program gets going and the public, police and everybody get educated about it. Is there going to be a central line which is known, advertised, perhaps put on these forms that you can call and get some information about this very, very detailed intricate and new process? People will not understand this process, and I venture to say that police will take a certain period of time to get accustomed to it, as well as garage keepers and registered owners for those impoundments.

Mr. Albert Driedger: Mr. Chairman, we are having an awareness program that is going to indicate to the general public what is going to be happening. Also, on the pamphlets there is going to be a telephone number for information purposes so anybody who has a question about it can phone down and get the information they require.

Further to that, I understand the training program that went through with the police officers, they also will be making that information available.

Mr. Edwards: If you had the information line available, and I appreciate the awareness program will take place for the public, the awareness program will not get into the details, which a person may find themselves ravelled in in this type of situation, the specifics. You never become totally interested in hanging on every word until you are personally involved.

What I think the indication from the Government has been is we would like as much as possible to keep the lawyers out. That is what the Government has consistently maintained, is that we are offering a very limited appeal process, we do not see that a lot of lawyers will be involved—I see the Minister shrugging, perhaps I am reading too much into that.

However, let me suggest that a person who wants to take advantage of these appeal procedures, given the very narrow focus in most cases, will not need a lawyer. It is not going to be a big question as to whether or not the three conditions have been met. There is not going to be a full-blown trial or cross examination of police officers. None of that is going to take place.

My fear is that someone will look at this and be facing serious punishment, in fact losing their licence, perhaps losing their job, especially in rural Manitoba. Not being able to keep a job if you do not have the ability to drive a car, they will call their lawyers about this because this is serious stuff.

This in fact will have a great impact on their lives. Whether you call it punishment or what, it is going to have a serious impact on their lives, their ability to make a living.

A central information line, if there is a phone number already there, why do you not make it available? Why

do you not tell people, when they get their suspension, you have questions, call this number?

Mr. McCrae: I should tell the Honourable Member there is an information line to call the police and any information the police do not have, the police have an information line that they can get to, to get the information for people, the 9th floor of the Woodsworth Building, the fellow there with respect to impoundment control who will have all the answers for police officials who cannot answer the questions correctly. So, in effect, there is that line the Honourable Member is talking about. He would like to see a number perhaps publicized on all the pamphlets or television or whatever so that anybody can call this number, but the fact is the information is available to the person who needs it.

Mr. Edwards: I just want to pick up on the fact that it was indicated in the pamphlet there will be a number to call. Why not make that number available in these forms? The only people who are going to get these forms, the only people who are going to get the forms are people who are actually going to be suffering, the people who are losing their cars or losing their licence. Therefore, it is not going to be people in society simply harassing the Government by calling this line. This line is going to be used by people who really need the information.

* (1120)

I simply raise for the Minister, when people are charged by the police and losing their licence, they do not tend to call the police for advice. They tend to call their lawyer and if an information line is available through, albeit it is still the Government, but it is not the police, it seems to me that information line would be very, very well used and very important in this brand new initiative. Let us face it, this province is entering an area that no one else in this country has, and I think the public have to be spoken to and their lack of information about the details of this initiative have to be met. I think an information line would significantly help the Government in that effort.

Mr. Albert Driedger: Mr. Chairman, it is my understanding that when the police apprehend somebody that they are, and the training program that they have gone through, will be giving this information to the individual as to what they can, you know the phone number as well as the information that is required. The other thing is also that they will be notified where they can pick up an application form through one of our offices and the phone number will be on that application form. So they will be given this information. That is part of the training program so that these people get this information, some of it through the police officers and the other information subsequent to that will be coming through our offices, where they will be directed to be able to pick up that information.

Mr. Edwards: I will leave it at this. I do appreciate that the police officers will give out the phone numbers. When they go to the police station the phone numbers will be presumably given to them in some form or another, in a pamphlet or on an application form. Given that, there is no reason for that information line not to be on these forms. These forms are going to be the thing that we know will get into the hands of the people who are going to suffer from losing their car or losing their licence. Again, I say again, the Government has nothing to lose, there is no down side to this. The line is already there. You are just publicizing it so that people who are to be affected will be able to use it. That is all, and I will leave that on the record as my suggestion. It is obviously not going to be taken. I think the Government will regret not putting that number on these forms.

Mr. Plohman: Yes, I have been determined to get into this discussion for some time. Communication process is very important on this whole law, not only after the fact but before the fact, and we make tough new laws to act as a deterrent, and losing the licence is one of the deterrents. But if you look through the costs here it is important that people know ahead of time what the cost implications are going to be for them when they get involved in drinking and driving and get caught doing it. The way I have it figured out here, $35 impoundment charge, $50 for garage keepers fee, up to $150 for 30 days times five for impoundment of the vehicle, that is $150 for 30 days impoundment, $40 for the reinstatement after suspension, and up to $135 for a hearing. That comes to $410.00. That is the minimum cost a person is going to have to put out. He may get some of it back, but that is the cost they are going to have to put out if they get involved in this kind of situation. That has nothing to do with the criminal side of it and the fines that they may face as well for drinking and driving.

So that is an enormous cost, and I think that in addition to saying "drinking and driving is wrong, don't do it," and so on, with the campaign that the Justice Minister (Mr. McCrae) has been involved with and others, there should be a communication of that figure and some details of these new laws in addition.

There are two communication processes necessary, and I think the Member for St. James (Mr. Edwards) had a good point in terms of a phone-in line. There should be pamphlets. There should be information on the form when a person is caught; that is when he is going to want that information specifically as to details.

I think the suggestion of the phone number on the forms in as many places as possible is a good idea. It would only be helpful to those people to let them know where they have to go to get information, so advertise that phone number, have a central phone number that is going to have all the information. They do not get shuffled from one place to another to get information and have that available in as many places as possible for those people after the fact, but do not forget that this is a deterrent, this law. There is a financial deterrent here as well as losing the licence and that is the part that has to be advertised to keep people out of this mess in the first place.

I think we have to do more there, and as I was saying when the Justice Minister (Mr. McCrae) was discussing this issue, not to simply say "drinking and driving is wrong, don't do it" and so on, that is important, but

it is also important to give some of the details as to the impact this is going to have on a family at very low income. They are going to have a heck of a time with this. They better realize that ahead of time.

Mr. Albert Driedger: Mr. Chairman, I appreciate the comments made by the Member for Dauphin (Mr. Plohman). I think the communication aspect of it, that a lot of time has been spent at developing it.

First of all, for people who do get caught so that they do not get the runaround, that they have the information available to them, how to get the forms, and subsequent information there as well as the pamphlet program, I think the media itself has been highlighting the implementation of this program. As I indicated, there is an awareness out there right now. We are breaking new ground with this legislation that it is the toughest drinking and driving legislation in Canada, as far as I know.

The awareness is out there right now from the general public. There might be people who say, well, I did not know this was going to happen. I dare say, Mr. Chairman, that the majority of people realize this province is going to come down very hard on this. However, we will take and make sure that we have our awareness program going forward in the best way that we can.

The point is well taken by the critics, both of them, by indicating that we want to also make sure we protect the innocent and that we have a process in place for those people who feel they want to justify in appealing. Like I said before, a lot of time has been spent trying to set it up so that nobody will be in the position where they cannot avail themselves of further information.

Ms. Hemphill: Just to follow a bit, you said you spent quite a bit of time on the communication program, the awareness program. When we were hearing about the experiences, learning from the experience they had had setting up the program and going through the program, one of the things I asked is whether or not their PR was just done through what I call the traditional media, by using sort of television, big newspapers, perhaps radio programs, or whether they had made any effort to use other media networks. I am thinking particularly of things like the ethnic press. They said that they had not, but they recognized and found after that it was a deficiency and that they were looking at going back and expanding their media program.

We have a good system here that the Government knows about and has information in communication services about who those media outlets are. We also have experience in other programs that shows us that they do not, many people, immigrants, English as a second language, get a lot of their information through the traditional media. I would suggest that the Government look very clearly at having a parallel communication program go into ethnic radio, television and newspapers.

* (1130)

Mr. Albert Driedger: Mr. Chairman, I am informed that we have a media proposal coming forward by late this week. Once we have that we are prepared to share that information with the Members. It is being developed.

Mr. Chairman: Clause 18—pass. Can we revert at this time to Clause 15? Is it the will of the committee to revert back to Clause 15? (Agreed) On the proposed amendment, the Member for St. James.

Mr. Edwards: I am going to move the amendment and then speak very briefly to it, if that meets with your approval.

I move that Clause No. 15 be amended by being struck out and the following substituted:

15 Clause 263.2(6)(d) is amended by striking out "the evidence" and substituting "any relevant evidence".

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

(French version)

Il est proposé que l'article 15 du projet de loi soit supprimé et remplacé par ce qui suit:

15 L'alinéa 263.2(6)(d) est modifié par remplacement de "les témoignages produits" par "tout témoignage pertinent produit".

Mr. Chairman, if I can briefly tell the committee what this amendment does, there is an amendment proposed in Section 15 which has the effect of saying at the administrative hearing into this matter, the registrar who conducts the hearing, it presently states, he shall consider certain things. This amendment proposes to take the "shall" out and put in that the registrar may consider those certain things. Then it goes down and says, "any relevant sworn or affirmed evidence which comes before the registrar", that would be primarily for the purposes of the written hearing; (b) and (c) are fairly self-explanatory, (b) is the report of the police officer and (c) is the certificate of analysis, then (d) specific to an oral hearing the evidence and information given or representations made at the hearing.

I think what the Government was trying to do here is ensure that things that were not relevant did not have to be considered, and my amendment I believe addresses that concern.

Where it is superior to the amendment put forward by the Government is that the Government in taking out the "shall," that means the registrar does not have to consider the report of the police officer and the Certificate of Analysis.

I want to keep that in there. I want to maintain that the registrar has to consider any relevant evidence: the report of the peace officer, the Certificate of Analysis, and what I am saying is when an oral hearing is held, any relevant evidence which corresponds with any relevant evidence at the written hearing, relevant is therefore the key. Clearly the registrar should not have to consider things that are not relevant, but in order to achieve that goal, what the Government has seen fit to do is say, the registrar does not have to consider

any of this. That is wrong. The registrar should have to consider relevant evidence and should have to consider the report of the peace officer and the Certificate of Analysis.

Perhaps I have been too convoluted in my explanation, and I certainly will want to respond to any questions that are put forward by any Members of this committee, because certainly in speaking with the officials who are responsible for this amendment Act, what they sought to achieve I think is achieved by my amendment, yet there is no downside to my amendment. My amendment does not weaken the overall impact of this section which the amendment put forward by the Government does.

Mr. Chairman: On the proposed motion of Mr. Edwards, that Section 15 of the Bill be struck out and the following substituted: 15. Clause 263.2(6)(d) is amended by striking out "the evidence" and substituting "any relevant evidence".

On the proposed motion of the Member for St. James (Mr. Edwards) to amend Clause 15 with respect to both the English and French text, shall the motion pass—the Minister of Highways.

Mr. Albert Driedger: Mr. Chairman, I wonder if we could just have a few moments of patience until we have some direction as to what our position would be on that. I am not a lawyer and I have to rely on advice from professional people on this, including the Minister of Justice (Mr. McCrae).

Mr. Plohman: Mr. Chairman, I would just like to ask why the Government would still want to have the registrar "may" instead of "shall" with regard to the other aspects because relative to this amendment, because what the Member for St. James (Mr. Edwards) is suggesting that Section 15 be struck completely, and that it shall still be binding upon the registrar to consider (a),(b) and (c), but he would qualify (d) somewhat, that it would only be relevant to evidence.

Now my question is why—I do not know that the Government, according to the Justice Minister's private discussion, would have any problem with the amendment that the Member is making insofar as the words for (d), but he has some concerns about removing the amendment, making it less binding for the registrar with regard to the one that is put in there at the present time it would make it "may" instead of "shall." So I am wondering why the Government would just soften it up that the registrar could perhaps not consider these other points (a), (b), and (c).

Mr. Toews: The word "may" in this context is used quite often in the sense of empowering an official to consider something rather than permitting him to ignore other things. I think that this is the more appropriate word in this context "may," it empowers. It does not in any way entitle him to ignore relevant evidence that is before him. If the registrar ignores relevant evidence that is before him, he may be quashed on a certiorari before the Court of Queen's Bench.

So the fact is "may" is the proper usage of the word in that context, it is empowering. I know examples in labour relations cases for example where Labour Boards have purported to ignore relevant evidence even where there is a permissive thing, a permissive word like this. The courts have said, no, you shall consider relevant evidence whether that word is seemingly permissive or not. It is used in an empowering sense so that is the reason why the "may" as opposed to "shall."

Mr. Plohman: Well, since the courts would determine that the registrar shall determine, why would we not just say that as has been said in the Act? Why is it that we want to soften it now from what was in there before? What problems would that cause? I do not see that they are mutually exclusive here.

Mr. Toews: In a list of statements like this, this is not necessarily conclusive of everything that a registrar may consider. What this does in listing it this way is demonstrate clearly that the registrar may consider this because it is relevant, but he may also consider other evidence.

* (1140)

I think if you want to put the word "shall" in there, there should also be some kind of an additional clause to allow him to consider "other" without limiting the generality of the foregoing he may consider. It is that problem that I am trying to address. I do not want to restrict the registrar to some kind of a legal technical thing that misses the substance of the issue.

Mr. Plohman: That is a good point. Then what the Government is doing by bringing in this amendment is in fact correcting something and causing another problem, and what they should do is correct the problem that they have. That is, adding that additional clause that allows the registrar to consider other information that may be relevant, not limiting it to the foregoing. I do not see a problem with the amendment, and I cannot understand why the Government would be so concerned about having "shall" removed there.

Mr. Toews: The one additional concern that I would have is that it says, "any relevant, sworn or solemnly affirmed statements or other information accompanying the application," so what that implies is that the registrar may only consider relevant information that accompanies the application in a written hearing. Now that gives a concern.

Therefore, by broadening it first of all to "may", then it becomes empowering rather than restrictive; and secondly, the very important part of this amendment is to clarify that it is in a review under this section. That is absolutely essential to ensure that the registrar, in considering these matters, it is a review under this section. It is limited to this section, that is, these types of proposals so that type of thing has to be there.

I would say that if you want to leave the word "shall" in, there is another way of doing it to address the concerns that the Government has indicated. But it will have to be, for example, the deletion of the word "accompanying the application," that phrase. So you

could then say, "in a review under this section, the registrar shall consider any relevant, sworn or solemnly affirmed statements or other information." You could do it that way.

Mr. Plohman: Just on a final point, would it not be that the Clause (d) would accomplish that by saying, any relevant information; or since that only applies to the oral hearing, we have a problem?

Mr. Toews: That is right. When you are having an oral hearing, the way this entire thing has been structured is that you are really getting two hearings in one. You are getting all the written material as well, plus additional oral representations, but it is limited, as you have correctly pointed out, to that oral hearing. That is why the first sub (a) would probably have to be amended to exclude those words accompanying the application.

Mr. Plohman: Mr. Chairman, I would suggest that the Minister and his staff may want to recommend the wording that could accomplish that in this Section (a).

Ms. Hemphill: I was just going to say the same thing. I think there seems to be a growing consensus that we want to say they shall review those elements that are listed, because we believe that they should be taken into consideration. Then we are prepared to say: and any other relevant information that should be considered.

Your problem is that every time you have got relevant, even any relevant evidence that Paul is putting in, it is related to either the affidavit or the oral hearing. All you need is some way—and it should be fairly simple to say: that the registrar shall consider, and then find some other place to put: and any other relevant information.

Mr. Yost: Reliving briefly my days as a legislative drafter, how about if we put: "at a hearing, under this section, the registrar shall consider all relevant evidence including (a), (b), (c), (d)"; put it right at the top. All relevant evidence, and then (a), (b), (c), (d).

Could we propose, in the drafter's panic, for five or ten minutes and come back. I think if we start throwing them back and forth across here we will not come up with the best. Could we have a few minutes to do this? It is the last thing, I am afraid. Could we have that?

Mr. Edwards: That is certainly fine with me. This is for the purpose of the Government coming up with another motion to address the concern that I have raised?

An Honourable Member: Yes, that is correct.

Mr. Chairman: What is the will of the committee?

An Honourable Member: Come back at 12.

Mr. Chairman: We will recess until 11:55.

An Honourable Member: Make it twelve o'clock, Mr. Chairman.

Mr. Chairman: Twelve o'clock. We will recess then till twelve o'clock.

RECESS

* (1200)

Mr. Chairman: I call the committee back to order. The Member for St. James.

Mr. Edwards: Given the written draft of the amendment which I understand the Government will be bringing forward right away, I would withdraw my motion, given that I perceive that this amendment does meet the concern I expressed. We will certainly agree to pass this, assuming it will be proposed by the Government.

Mr. McCrae: The following proposed amendment will be moved to be effective in both English and French and the amendment has been worked out in consultation with the Members of the Opposition.

I move that section 15 be struck out and the following substituted:

15 Subsection 263.2(6) is amended

(a) by adding "In a review under this section," before "the registrar";

(b) in clause (a), by striking out "or other information accompanying the application" and substituting "and any other relevant information"; and

(c) in clause (d), by striking out "the evidence" and substituting "in addition to matters referred to in clauses (a), (b) and (c), any relevant evidence."

As I say, I move this in both English and French.

(French version)

Il est proposé que l'article 15 soit supprimé et remplacé par ce qui suit:

15 Le paragraphe 263.2(6) est modifié:

(a) par remplacement de "Le registraire" par "Dans le cadre de la révision prévue au présent article, le registraire";

(b) à l'alinéa a), par suppression de "les renseignements joints à la demande, notamment" et par adjonction, après "solennelle", de "et les autres renseignements pertinents";

(c) à l'alinéa d), par remplacement de "les témoignages produits" par "en plus des affaires visées aux alinéas a), b) et c), les témoignages pertinents".

Mr. Chairman: On the withdrawn motion of the Member for St. James (Mr. Edwards), we will now consider the motion put by the Attorney General (Mr. McCrae). Motion that Section 15 be struck out and the following substituted: 15—dispense.

On the proposed motion of the Attorney General (Mr. McCrae) to amend Clause 15, with respect to both English and French texts, shall the motion pass—pass; Clause 19—pass; preamble—pass; Title—pass; Bill as amended—pass. Bill be reported.

Committee rise.

COMMITTEE ROSE AT: 12 p.m.