Third Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

39-40 Elizabeth II

Chairperson
Mrs. Louise Dacquay
Constituency of Seine River

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 18, 1992

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mrs. Louise Dacquay (Seine River)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. McCrae

Mr. Chomiak, Mrs. Dacquay, Messrs. Edwards, Lamoureux, McAlpine, Reimer, Mrs. Render, Messrs. Rose, Sveinson, Ms. Wasylycia-Leis

APPEARING:

Joan MacPhail - Director, Family Law, Department of Justice

WITNESSES:

Bill 47–The Petty Trespasses Amendment Act

David Kovnats - Baker, Zivot & Company

Bill 74–The Law Society Amendment Act

Gordon Gillespie - Private Citizen

Bill 89–The Family Maintenance Amendment Act

Gordon Gillespie - Private Citizen

Bill 88–The Homesteads, Marital Property Amendment and Consequential Amendments Act

Jack King - Private Citizen

MATTERS UNDER DISCUSSION:

Bill 47–The Petty Trespasses Amendment Act

Bill 72–The Law Reform (Miscellaneous Amendments) Act

Bill 74–The Law Society Amendment Act

Bill 88–The Homesteads, Marital Property Amendment and Consequential Amendments Act

Bill 89–The Family Maintenance Amendment Act

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Madam Chairperson: Order, please. Will the Standing Committee on Law Amendments please come to order. This morning the committee will be considering five bills: Bill 47, The Petty Trespasses Amendment Act; Bill 72, The Law Reform (Miscellaneous Amendments) Act; Bill 74, The Law Society Amendment Act; Bill 88, The Homesteads, Marital Property Amendment and Consequential Amendments Act; and Bill 89, The Family Maintenance Amendment Act.

It is our custom to hear briefs before the consideration of bills. What is the will of the committee? Agreed.

To date, we have had four presenters registered to speak to the bills. I will read the names aloud and, accordingly, the bill number that they have registered to speak to:

Bill 47, The Petty Trespasses Amendment Act, Mr. David Kovnats, Baker, Zivot & Company.

Bill 74, The Law Society Amendment Act, Mr. Gordon Gillespie, Private Citizen.

Bill 88, The Homesteads, Marital Property Amendment and Consequential Amendments Act, Mr. Jack King, Private Citizen.

Bill 89, The Family Maintenance Amendment Act, Mr. Gordon Gillespie, Private Citizen.

I would also ask at this time if there are any other members in the audience that wish to make presentation on any of the five bills being given consideration this morning if they would so notify the Clerk of Committees so their name could be added to the list.

I would also request that anyone who has a prepared brief, if you require photocopies, to so indicate to the Clerk of Committees.

Does the committee wish to impose time limits? No.

Bill 47–The Petty Trespasses Amendment Act

Madam Chairperson: I will now ask Mr. David Kovnats from Baker, Zivot & Company to please come forward to make a presentation on Bill 47.

Good morning, Mr. Kovnats. Do you have copies of your presentation for members of the committee?

Mr. David Kovnats (Baker, Zivot & Company): No. My presentation will be very brief.

Madam Chairperson: Okay, thank you very much. Please proceed.

Mr. Kovnats: Madam Chairperson, thank you very much.

The committee has before it the amendments that were prepared in co-operation with the Department of Justice and the Legislative Counsel. The reason that our clients requested assistance was that these amendments are to deal with outsiders, not colony residents or problems. This is just to deal with outside people who come onto the colony, who are not ordinarily resident on the colony, who might cause some problems. If they have been invited on by one person within the community, that person may not be a person in authority, and it creates a problem as to who has the right to invite people on, et cetera.

It was to have the community as a whole be able to designate who would be allowed to invite people on in order to keep the peace and keep things going in a smooth and orderly fashion. That is what has been done. It certainly does not affect–as I understood, there was a question raised concerning whether it would affect people who were living on the colony who were having difficulties with administration, and Section 1(3) certainly does specifically exclude those people.

If there were any question of us as to what else we wanted, I would be more than happy to answer.

Madam Chairperson: Thank you for your presentation, Mr. Kovnats. There may be questions by committee members.

Mr. Dave Chomiak (Kildonan): Mr. Kovnats, with respect to the particular colony you are representing, pursuant to Section 1(5) of the amendment, who would be the particular individual or individuals who would be in authority? How would it be determined in the particular instance of the group that you represent?

Mr. Kovnats: Well–[interjection] Yes, Madam Chairperson, am I to answer?

Madam Chairperson: Oh, excuse me. I will just explain the process. We have simultaneous translation and you should go through the Chair so I can identify who will be speaking.

Mr. Kovnats: Okay, thank you, Madam Chairperson.

Madam Chairperson: Please proceed.

* (1010)

Mr. Kovnats: Basically, there would be a meeting of the community. They have a community meeting, and I would imagine it would normally be the president, who is probably the minister, the vice-president and the secretary. Those are usually the people. However, it may be another elder who someone is designating. It would be by consensus an election, for want of a better expression.

Mr. Chomiak: I thank you for that response. I think that my next question in this regard will be for departmental officials, because I want to clarify, based on what Mr. Kovnats just said, how a determination will be under the act of a person in authority.

He has indicated that in this case, it would be the president, vice-president and a secretary who normally would be considered persons in authority under the articles of incorporation. He also indicated, and I do not want to misquote him, that there might be others designated as persons in authority. Is that correct, Mr. Kovnats?

Mr. Kovnats: Yes, Madam Chairperson. If the community so chose, they would amend their articles to include that type of a person. It is not limited to that. It would depend on the articles of association in each community.

Mr. Paul Edwards (St. James): Mr. Kovnats, can you indicate the pattern of ownership which colonies have over the properties? It is my understanding these are communally-owned colonies to the extent that either corporations are set up that own them, then the people on them, the members of the colony, are shareholders in the corporation. How does ownership of these colonies work? It strikes me that your right to enforce who comes onto property and who does not come onto property is a question of ownership. is this communal property or not?

Mr. Kovnats: My understanding of the situation is that there are two types of ownership at the moment:

One is through mutual corporations that were set up by provincial legislative statute, and the other is by corporations set up under The Corporations Act as holding companies.

The shareholdings of these corporations on The Corporations Act ones are held for the community by two or three people in the community who hold them as trustees for the community as a whole pursuant to the articles of association, and there are articles of association for each community.

Mr. Edwards: The articles of association impose the obligations of a trustee on the named shareholders.

Mr. Kovnats: I do not know whether the articles of association do. The trust declaration does. There is a trust declaration executed by each of these individuals when they take the share as a trustee for the community. I do not know whether it is actually contained in the articles of association, I am afraid. I have not looked at that portion of it. I have looked at the trust declarations. There is a trust declaration signed each time.

Mr. Edwards: I have not taken the time to reread the Hofer decision, which dealt with ownership of property by individual Hutterites on colonies. Can you enlighten me on the status of that action, whether or not the decision, the adjudication on ownership has gone to the Supreme Court? Has it been adjudicated upon? What was the rationale of the Court of Appeal here in Manitoba on an individual Hutterite's ownership rights within a colony?

Mr. Kovnats: Madam Chairperson, I am not the person handling that. Our firm is handling that matter. I am not the person handling that particular case. I do not believe the issue of "ownership" has been litigated in that case at all. I believe the only issue in that case is membership and the right to membership.

The issue of ownership I believe was addressed by the Supreme Court of Canada in the Interlake case some years ago, and I believe there was a decision by Mr. Justice Dickson concerning that, but that is not before the courts at this point in that Lakeside case.

Mr. Edwards: Can you tell us, in that Lakeside case, what Mr. Justice Dickson said with respect to an individual's rights vis-a-vis the colony over the assets of the colony?

Mr. Kovnats: Madam Chairperson, I believe it was the Interlake case, not the Lakeside case. I apologize if I twisted my tongue there. I cannot tell you the full details, but it is communal property for the community as a whole.

Mr. Edwards: I have to tell you, Mr. Kovnats, the problem I have with this is that the individual Hutterites who reside on a colony, it strikes me that is there home; that is where they live; that is where they make their living; that is where they raise their families.

Each of us in society has the right to invite whomever we want into our homes and onto our property. The fact that the Hutterite colony is a communal organization which organizes itself communally does detract from an individual's rights. Clearly, when you join a communal environment, you sacrifice some of your individual rights. How many of them you sacrifice, it seems to me, is for determination as between you and the community.

An individual can sacrifice an enormous number or a small number of communal rights when they join a community. For the state to become involved in that type of a relationship and, essentially, saying that where the majority—and I assume it is democratically done—at a meeting designate a certain individual as being the person who is allowed or who was given the power and authority to designate who comes onto the colony and who does not, for that to completely erode an individual's rights on their own to invite others into their home, onto the community, seems to me a high level of incursion into an individual's rights which we protect as a society.

I have problems with legislating the community's right, the majority's right to essentially do away with the minority's right, the individual's right to determine who comes onto the property and who does not. If it is truly communal property, it strikes me that everything belongs to everyone, that is, the assumption would be that it is ownership by all of everything and, therefore, there is an assumption that anyone can invite whomever he or she wishes onto the communal property.

I have a problem with doing away with an individual's rights essentially to do what we all accept as pretty basic, which is to invite whomever you want onto your property. Do you have any comments on that concern?

Mr. Kovnats: No, I am not going to debate whether communal property is communal property. I came here to explain, we have specifically protected the people who are ordinarily resident on the community, pursuant to Clause 1(3).

Mr. Edwards: Just to clarify, what that means is that those people obviously are entitled to stay.

Mr. Kovnats: No question.

Mr. Edwards: What I am suggesting is that those people may well not be able to invite whomever they so choose to meet with into their homes and onto their property.

Mr. Kovnats: I believe if you read the entirety of Section 1(5), it covers that situation. It is only if those people are causing disorderly conduct, loitering or other nuisances.

Mr. Edwards: The person who would determine whether or not the conduct was disorderly, whether loitering was occurring–and loitering, of course, just means hanging around–and nuisances would be the designated individual responsible for making that decision for the colony.

Mr. Kovnats: Madam Chairperson, I believe that would be correct. We have responsible people in charge of responsible communities, and this is to take care of outsiders. It is not to take care of internal problems.

Mr. Edwards: But it is to take care of outsiders, even outsiders invited in by individuals in the community.

Mr. Kovnats: Madam Chairperson, I guess it becomes a matter of degree. I cannot comment any further, obviously. If someone is causing a problem, if they are racing their car around late at night, racing their engine, if they are throwing garbage around, those sorts of things, then yes, it would include anyone, whether they were invited by someone who was at loggerheads with the colony at the moment or one of the young children who had invited the school kids from down the road or the next-door farmer's kids who have come over to visit.

* (1020)

This is a situation where they need control within their community, and they have come to the government asking for help in that regard. The previous statute was not clear, and this has clarified the situation.

Mr. Edwards: What has the previous experience been? Can you give us some incidents that led to the need to request this legislation?

Mr. Kovnats: Madam Chairperson, there was a situation in Steinbach. This is how this whole thing arose a year and a half, two years ago. I forget exactly when we went in to see the Department of Justice. What had happened was, a young man who had lived on a community who knew the families there, et cetera, left the community. He was living in the city.

He garnered some assets, he had a car. He wanted to visit one of the young ladies and he went out to visit her. Her parents were not home. He was asked at 11:30 at night to leave. He declined to leave. He brought alcohol onto the community with him. He was showing off his motor vehicle, and it created quite a stir. It woke everybody up, and people wanted him to go.

The police were called. The police attended. He was taken to task on it and asked to leave. He was charged pursuant to The Petty Trespass Act. He went to court in Steinbach, and what happened was, the judge said, well, he was invited by the young lady, and she is an occupier. Therefore, there is nothing the community can do.

That led to our contacting the Department of Justice and meeting with them and saying, look, this is a problem that we really do not want to have. How can we work it out? The Department of Justice was extremely sensitive to the other situations which you are sensitive to, and we spent a great deal of time with Mr. Berg of the Department of Justice going over wording. Then again, it went to the Legislative Counsel to go over wording to make sure that this was used in a proper and appropriate fashion.

Mr. Edwards: Just using that example, in circumstances where people behave inappropriately within a colony, against the tenets of the majority by doing such things as you mentioned, carousing, drinking alcohol, those types of things, disturbing others, it is the right of the community to deal with the members, as they have done on occasion, by dealing with them internally in forms of punishment up to and including essentially, as with Mr. Hofer, revoking membership in the community.

That is an avenue of recourse as against individuals in a community that cause a nuisance or misbehave or do not meet with what the community deems acceptable. Is that correct?

Mr. Kovnats: I am not here to debate the Hofer case. I am not here to discuss the internal workings of the colony. This is to deal with outsiders, not members of the community. We are talking about outsiders here. We are talking about if Mr. Edwards went this evening invited to a function at a colony and then became loud, aggressive and started creating problems in the community. The degree of tolerance would go on quite late but, if you then decided to drive your car around at excessive speeds, stirring up gravel, if you decided to honk your horn, if you started to do whatever, the community would walk over and ask you to leave.

The person who invited you may not even be home anymore. Their parents might not be home. All of a sudden, we are in a situation where we have Mr. Edwards standing on the community, he has been invited, he came as a welcome party but, unfortunately, in the course of his conduct, he became an unwelcome party.

So the community, because of the old legislation, the way it was worded, because he was invited on originally and in an appropriate fashion, there was nothing that could be done.

Now we have a situation, if this legislation is passed, that the community will be able to call the police and say, look, we have asked Mr. Edwards to leave nicely. We have asked him not to throw beer bottles. We have asked him not to be so aggressive, and he is causing us a problem; please get him out of here, and the police can do that.

Mr. Edwards: I take your point. My only comment and question to you is, first of all–and maybe you can tell us about the Steinbach case–it is my understanding that certainly being invited at the first instance onto property is one thing but, if someone starts behaving in a disruptive way, you are entitled to revoke the invitation. Someone is entitled to say, you are no longer welcome.

I assume that in the Steinbach case, the gentleman who was causing the disruption was still there by the acceptance of at least one person on the colony, but that is beside the point.

My question to you is that in terms of the individual who invites someone and maintains the invitation to the disruption of the rest of the community, that person, in fact, can be dealt with internally in terms of having caused the disruption by inviting the disruptive person on. In fact, these colonies do exercise authority over their members for disruptive behaviour, do they not?

Mr. Kovnats: Madam Chairperson, I believe the legislation only applies to outsiders. What happens internally is dealt with on the colony level.

Mr. Edwards: I appreciate that, and I am only asking that because, of course, dealing with people internally who invite disruptive people on is another way of dealing with outsiders invited on. That is, someone who invites a disruptive person on may well be dealt with that in that girl who invited the disruptive gentleman on may–another way of dealing with that may well have been to deal with her, who invited this person on and maintained the invitation.

What this bill does is, of course, allow the authority to supersede her right to invite someone onto the property. That is really what the bill does.

Mr. Kovnats: Mr. Edwards is saying that we are superseding people's rights. I do not view it that way. I believe that what we are doing is enforcing the rights of people to peace and quiet and the proper conduct of community.

Mr. Edwards: Well, if the individual on the colony, adult individual, let us assume, wants someone to stay, this bill would allow the designated person to override that invitation. That is correct, is it not?

Mr. Kovnats: I would imagine it could in some fashion, but we are talking about a problem not just of staying. We are talking about causing nuisance, causing a problem and that sort of thing. We are not talking about just staying on the property.

Mr. Edwards, I had heard specifically that you had raised this issue before, and I am not here to debate the entire Tatarian philosophy. What I am here to do on behalf of the Tatarian community is come forward and say, look, we have a problem, we are not asking you to deal with our internal problems. We have a problem with outsiders. The court has dealt with us this way, and so the RCMP no longer feel they can come and help us out when we need it. Will you please help us?

The Department of Justice has worked with us in trying to obtain a satisfactory wording, which I think has been done to the best of human capability, and time will tell if it is correct. I guess if it is incorrect, someone can amend it again, or if it is being abused, I guess that could happen.

This is not set out to get rid of Danny Hofer. If it was as simple as that, I guess we would have come here many years ago. I was not there at the time, but I am sure other people would have come to the Legislature years ago to deal with that particular issue.

Mr. Edwards: I know it is not set out to deal with Danny Hofer. He has been dealt with. It is certainly here to deal with people whom Danny Hofer might have invited onto the colony.

Following from your suggestion that what this legislation is about, would you be amenable to an amendment taking out the word "loitering"? Loitering seems to me to be different and connotes someone who is not necessarily being a nuisance, not necessarily conducting themselves in a disorderly fashion, but simply being there, simply being on the property.

Well, the member for St. Vital (Mrs. Render) says, unwanted, by the designated authority certainly; by the individual who invited them on, the member of the colony, not necessarily. That is what this legislation is about. It is about the rights of the majority over the rights of the minority.

My question to the presenter is: Would he be amenable, then, to an amendment deleting the word "loitering," leaving the two he has mentioned, "disorderly conduct" and "nuisance"?

Mr. Kovnats: Madam Chairperson, I would not, and I would like to give you an example of why not. On a community of that size, for example, we had a situation at one of the communities, and I am not sure whether it was Rock Lake or Concord, recently where some people were just standing around and did not seem to be causing any problem. The farm boss went out in the fields with the other people, the mechanic was busy taking care of mechanical items, and no one can prove it, but suddenly there was an entire tanker of gas gone.

* (1030)

There is a great deal of property that is on a Hutterite colony. It is kept in various forms, and fairly well, I do not want to say liberally exposed, but they certainly do not have burglar alarms and all that sort of thing the way people in Winnipeg have had to go. If someone is sort of standing around and you want to go out and do your work, you cannot do your work and just leave them and leave all of your property exposed.

If I walked onto a colony this afternoon, I could probably hop on any one of four or five different farm vehicles and drive off with it because the keys are left in the vehicles. If I wanted to fill up my car with gas and be a thief, I could put the gas in my car because the pump is there and it is for everybody. Everybody just drives up to the pump, fills the vehicle they are going to drive and goes.

If I wanted to go into the chicken barn, I can walk in. Now, there is a sign saying, do not enter, for health reasons. Only certain people are supposed to go. When you go in, you are supposed to wear boots and all that sort of thing. When I go in, that is what I do. If I wanted to, and no one was around, and I was just hanging around there, I could wander on down there, walk in and disrupt the chicken barn or the hog barn or any other of the facilities out there. So I think loitering is an important aspect, because we do not want to have a situation with guarding property.

We have a situation now where if a stranger is there that we do not want there, someone goes up and says, hey, what are you doing here? Why are you here? Do not be here. Oh, I am waiting to see so and so, and he is not here right now. Well, then, please wait over in the community hall. That is why the word "loitering" is contained in there, and from our position.

Mr. Edwards: No one here is questioning that presently, without this bill, if there is unanimity in the community that someone should not be there, they cannot be there. There is no question that that is the present state of the law, is there?

Mr. Kovnats: You know, I do not want to presume how a court is going to make a decision. I was absolutely flabbergasted when I heard of the Steinbach decision. When you can go to court, as you are well aware, Mr. Edwards, and have one judge say one thing, then go up to another five judges and have three say one thing and two another, so now you have three and three, and then you go to the Supreme Court and you have a bench where they divide. David Kovnats is not about to stand here and presume to tell you I know all about the law of petty trespass.

The request we came forward with was to control outsiders and that is exactly what we are asking. Mr. Edwards, I cannot debate with you the entire situation. I am sorry. I am not as capable a debater

as you. You know I am more of a commercial guy and want to deal with this thing.

Mr. Edwards: I doubt that you are not as capable as I, Mr. Kovnats, and I do not mean to engage you in debate. I do want to flesh out exactly what is being asked for here. It is a specific concern that has come forward from a specific community. I do not think we as legislators want to rush into making law for any specific community without considering the implications on the community as a whole and on the rights we hold dear, which are the rights of every individual to invite and decide who is on their property and who is not.

When you say it is to control outsiders only, my suggestion to you is that someone is only on property and allowed to stay if they are invited by someone, and that is clear today, and I do not think the judge in Steinbach said anything differently. What he seemed to say, from what you tell me, is that if someone on the property invites you on, then you are entitled to stay. To that extent, this legislation also controls people inside the colony, not just people outside the colony. I do not know if you want to comment on that, but that is certainly my assessment of this.

The member for St. Vital (Mrs. Render) takes a different tack, but I ask you perhaps to clarify it for her. The only reason the case in Steinbach arose and the person was acquitted was that there was someone on the colony who had invited and maintained an invitation for him to be there.

Mr. Kovnats: Madam Chairperson, I think I have answered as much as I can. One thing I would point out to you, there is no haste in this legislation. We approached the Minister of Justice's department over two years ago.

We came when that decision in Steinbach originally came out, and I cannot tell you the exact date, but it was over two years ago. We had meetings starting two years ago in the summer. We have had numerous discussions. The concern that was raised by Mr. Edwards today was certainly considered very carefully by the department. They went very cautiously.

Mr. Berg was extremely conscientious in dealing with this situation. He went out to visit a colony to find out exactly what went on and how and why. He came up with wording. We reviewed the wording. Mr. Berg and I are old classmates. Aaron said, David, I want to make sure that there is no question that this thing will not be misused, and he drafted what I believe to be a good piece of legislation for which we thank him.

All we are asking today is, we have come forward more to answer questions, not to debate the Hofer case or some other case. I do not know that there is anything else constructive I can say. We can go around this more and more, but I do not know where I am going. Madam Chairperson, I am not trying to cut off Mr. Edwards in asking me questions, but I just do not know what to say any more. I apologize.

Madam Chairperson: Thank you for your presentation, Mr. Kovnats.

Mr. Kovnats: Does that conclude matters for me, Madam Chairperson?

Madam Chairperson: Yes, thank you.

Mr. Kovnats: Thank you very much.

Bill 74–The Law Society Amendment Act

Madam Chairperson: Mr. Gordon Gillespie, private citizen, to make representation on Bill 74. Do you have prepared copies of your presentation for committee members?

Mr. Gordon Gillespie (Private Citizen): Yes, I do. The Clerk is passing them out now.

Madam Chairperson: We will just wait momentarily so that members receive their copies.

You may proceed, Mr. Gillespie.

Mr. Gillespie: For the record, Madam Chairperson, my name is Gordon Gillespie. I am a professionally qualified self-employed accountant. Prior to that, I was a senior corporation income tax auditor with the Department of National Revenue, Taxation for 14 years. Prior to that, I was in private industry with BACM Industries, a division of Genstar. I was also, during my term of service with the federal public service, the first full-time paid national president of the 13,000-member Union of Taxation Employees, which is a division of the Public Service Alliance of Canada.

Having said that, the members of the committee should have before them four documents. One is addressed to the Law Amendments committee re Bill 74, The Law Society Amendment Act. Another one is a complaint to The Law Society of Manitoba with respect to Mr. Peter Kremer.

Perhaps I will wait until all the papers have been passed out before I proceed, Madam Chairman. Do you prefer Madam Chairperson, or does it matter?

Madam Chairperson: I am sorry?

Mr. Gillespie: Do you prefer Madam Chairperson, or does it matter? I keep using Chairman.

Madam Chairperson: It does not matter.

Mr. Gillespie: Old habits die hard, I guess.

Madam Chairperson: It does not matter. I have been called worse. Please proceed.

Mr. Gillespie: Do members of the committee now have all the documents? All right, then I would ask you to label the complaint concerning Mr. Peter Kremer as Appendix A–I did not have the opportunity to label them before I got down here–and the complaint concerning Mr. Frayer, Appendix B; and the letter from the chairperson of Legal Aid Manitoba, Ms. S. Jane Evans, Appendix C. They are referred to in the text of my presentation, which I will now proceed with.

Madam Chairperson: Thank you for that clarification.

Mr. Gillespie: This presentation is dated June 17, 1992, and I might point out that is the 20th anniversary of Watergate, addressed to The Law Amendments Committee, Manitoba Legislative Assembly, Legislative Building, Winnipeg, re Bill 74, The Law Society Amendment Act.

I urge the committee to reject that part of subsection 49(10) which empowers the governing body or committee of the Law Society of Manitoba to determine what represents the public interest in deciding whether or not an inquiry shall be open to the public. That decision should be made by representatives of the public elected by the public to represent that public interest, not by a private, nonelected vested self-interest group over which the public has no control.

The final arbiter of what constitutes the public interest must be those elected to represent that public interest, in this case, you the members of the Manitoba Legislative Assembly. They are the ultimate guardians of the public interest. If they fail to protect it, they can be removed from public office by the electorate. They are accountable to the public. The members of the Law Society of Manitoba are not.

* (1040)

The public interest must be defined by the Manitoba Legislative Assembly, MLA for short, or a committee of the MLA, not by the members of a private club whose self-interest may and often does come before the public interest. There is a decided conflict of interest between the private and public interest.

In a reference to "The Self-governing Professions", Professor John Crispo, the first Dean of the Faculty of Management Studies at the University of Toronto, made the following statement, quote: Today, there is a widespread realization that what is actually a matter of private interest can often be cloaked in what is alleged to be the public interest.

That statement was made some 17 years ago. Crispo goes on to refer to remarks made by former Chief Justice of the Ontario High Court, J.C. McRuer, to an annual convention of the Institute of Accredited Public Accountants. McRuer was also Vice-Chairman of the Ontario Law Reform Commission.

Some of his comments respecting the self-governing professions are as follows, and there are a series of four quotes:

It is essential in all cases, where the Legislature has conferred on a body power of self-government, that some measure of state control be retained if the public interest is to be adequately protected.

For a Legislature to delegate powers over the affairs of others, without giving the governed a right to elect those who govern them, is a denial of the principle of democratic government.

The power to discipline is a grave one and involves setting standards and ethics over which the public has no control.

The powers of a professional organization may be exercised for the public good, but human nature being what it is, they are far more likely to be exercised for the good of those to whom the powers have been delegated.

That is from a distinguished jurist and a lawyer.

The worst of Mr. McRuer's fears are confirmed by two complaints I filed with the Law Society of Manitoba, which rejected them on the ground they lacked jurisdiction. Both complaints concerned federal Crown prosecutors.

One complaint involved David Frayer, Q.C., a life bencher with the Law Society of Manitoba and a

member of the society's judicial council, which disciplines other lawyers for misconduct.

The other involved Peter Kremer, Q.C., a former senior criminal prosecutor in the Manitoba federal Justice Department, MFJD for short. Frayer was general counsel and head of the Manitoba federal Justice Department. Kremer was his subordinate.

Shortly after the incident involving Kremer and the RCMP, he was transferred to Ottawa, appointed a Wartime Crimes Prosecutor and appointed Q.C. by federal Justice Minister Kim Campbell. Copies of the complaints are attached as Appendices A and B.

In Kremer's case, put simply, he looked the other way when presented with evidence that senior officials of Revenue Canada had committed in one case repeated criminal violations of the confidentiality provisions of the Income Tax Act, ITA. In legal jargon, this is known as willful blindness.

The same complaints to Parliament's appointed privacy watchdog, the Privacy Commissioner of Canada, at the time Mr. John Grace, were upheld. Appeals by the Minister of National Revenue, Otto Jelinek, were dismissed by the privacy commissioner. Mulroney subsequently, incidentally, dismissed the privacy commissioner. The privacy commissioner upheld four complaints involving four separate unrelated incidents involving my income tax return and related confidential tax data.

The Director of the Winnipeg District Taxation Office, John Purda, chartered accountant, was named as an offender in all four incidents. He was communicating and providing my personal and confidential income tax information as well as my estranged wife's, in one instance, to others in an attempt to discredit me personally as well as in my capacity as local union president. In one incident he included the information in a letter to a superior recommending my discharge after 14 years in the public service.

Such use was clearly prohibited under the Income Tax Act and by decisions of the Supreme Court of Canada, the Federal Court Trial Division, and the federal Court of Appeal, which made it clear that information provided for the administration and enforcement of the Income Tax Act was not available for the personnel purposes Purda and other revenue officials had used it.

In spite of these legal decisions, Kremer advised the RCMP, Inspector Moorlag, Officer-in-Charge, Commercial Crime Branch, "D" Division–he concurred with Kremer–that the Income Tax Act did not apply within Revenue Canada to management types like Purda. Although I provided the relevant case references and a copy of the Federal Court decision which involved a Revenue Canada employee, Kremer and the RCMP refused to change their position.

The same evidence in case law references were then provided to the privacy commissioner, who found against Revenue Canada and Purda on all four charges. The Supreme Court decision was delivered by Chief Justice Bora Laskin on behalf of a full panel of the court and was unanimous, 9-0, a situation which Deputy Attorney General Graeme Garson recently stated was unusual.

The Federal Court Trial Division decision was upheld approvingly by a unanimous decision of the Federal Court of Appeal delivered from the bench. Neither Revenue Canada nor the Attorney General of Canada, who was represented by F. Jacobucci, Q.C., Deputy Attorney General for Canada, now a Supreme Court Judge, sought leave to appeal to the Supreme Court of Canada.

The first of my four complaints to the RCMP was filed on February 22, 1988. It was dismissed on March 8, 1988, on the grounds that the law did not apply within Revenue Canada. The Federal Court Trial Division decision involving the Revenue Canada employee was handed down November 26, 1986, approximately a year and a half prior to that. The Appeal Court decision was handed down May 26, 1987.

The Supreme Court decision was handed down December 17, 1981. It said that confidential information provided for the purposes of the administration or enforcement of the Income Tax Act could only be used for that purpose or for one of the stated statutory exceptions.

The Federal Court decision made it clear that personnel purposes fit neither category. It was clear from the evidence, internally generated Revenue Canada documents obtained pursuant to a privacy act request, that Purda in particular had provided and communicated my confidential tax information for purposes not authorized by law and that he had acted knowingly, recklessly and maliciously.

It is completely inexcusable and unacceptable for a federal senior criminal prosecutor, who had been practising law for 14 years at that point, to refuse to acknowledge or to be bound by decisions of the Federal and Supreme Courts of Canada. The case references are included with the complaints in Appendices A and B.

In the case of Frayer, Kremer's former boss, Frayer wrote and had a letter hand delivered to me in a public place by a private investigator escorted by two policemen. Prior to that I had never had any dealings with either Frayer or the police with respect to the contents of the letter.

The letter contained false and misleading statements, inference and innuendo indicating that I had been attending Revenue Canada premises at 391 York and 269 Main, creating disturbances and threatening two particular employees for one and a half years–that is before they took any action, so they sent me a letter–that I had been warned previously about this by Revenue Canada–not true–and then since it had not stopped, it was necessary for Frayer to write the letter which instructed me not to enter either place without prior written permission and threatened me with a defamation suit on behalf of those two employees.

The judge refused to uphold that requirement that I obtain written prior permission. There was no reason for it.

The letter was self-serving hype and rubbish. It heralded the beginning of a series of legal actions against myself which were initiated by the federal Justice Department, FJD for short. Shortly after, Canada's Privacy Commissioner, John Grace, dismissed Jelinek's appeals of the findings in my favour, and I called on Mulroney to appoint a special prosecutor. Mulroney's only response was to appoint Bruce Phillips, Canada's first and only Assistant Privacy Commissioner and appoint Phillips Privacy Commissioner after failing to renew Grace's appointment, which expired May 31, 1990. I might point out, no one was appointed to replace Phillips as Canada's Assistant Privacy Commissioner. That position, the last time I checked, was vacant.

The legal actions against myself were initiated virtually simultaneously with the appointment of Phillips as Assistant Privacy Commissioner. In his first annual report, Phillips covered up for Revenue Canada. I have overwhelming, irrefutable documentary evidence of that.

Over two years after the federal Justice Department initiated the legal actions, none of their allegations have even been put to the test of a trial to be proven. They are afraid to because they cannot. The actions of the federal Justice Department were intended to discredit me publicly and to intimidate, harass and silence me.

* (1050)

The facts are that I have attended both premises on numerous occasions, have never created a disturbance at either place–a host of witnesses will attest to that–never had my conduct questioned or taken exception to by any Revenue Canada official at any time at either premise and have never been questioned by the police with respect to my conduct to the time when Frayer wrote his letter, nor, I might add, since.

Be that as it may, Frayer took it upon himself to send copies of his letter to the Criminal Investigation division of the Winnipeg Police Department and to Bruce Miller, Director of Winnipeg Prosecutions, Manitoba Justice Department. This is in spite of the fact I had never been questioned by the police with respect to any "crimes", let alone charged with anything, and had no prior record. Frayer's letter was clearly a blatant abuse of authority, misuse of his office and decidedly unprofessional misconduct.

Frayer's letter and the subsequent legal actions he initiated against me in the name of the Attorney General of Canada led to two criminal charges against myself and one arrest.

On the first charge I pleaded not guilty. The charge was criminal trespass in a public place. I showed up for the previously scheduled trial with counsel, but nobody else did. The provincial Crown attorney claimed he had "misplaced" the file and stayed the charge; no evidence was led, no witnesses were called.

However, the false statements to police by a Revenue Canada official which led to the charge remained on their records, the police records. This information combined with Frayer's letter and other false and misleading documents–they were in the form of affidavits–filed by the federal Justice Department in the Manitoba Court of Queen's Bench led to my arrest, Pollock style–they did not ask for my side of the story first–and the second

criminal charge at the request of the federal Justice Department.

The Manitoba Justice Department had this charge remanded without plea in Manitoba Provincial Court for almost a year, when the Manitoba Justice Department stayed the charge at the request of the federal Justice Department. They were operating in tandem.

In summary: one aborted trial, one arrest and two stayed criminal charges without a scrap of evidence led or one Revenue Canada official setting foot in court to give testimony under oath, a classic case of blackballing someone by levelling charges which they could not substantiate.

The charges did not stick, but the dirt did. Both charges were made by the same Revenue Canada employee. Court documents show clearly to me that she was coached by the federal Justice Department, which had filed a defamation suit on behalf of her and the other Revenue Canada employee referred to in Frayer's letter to me.

I might add that the Law Reform Commission of Canada before, and I want to get rid of it, commented on the section of the Criminal Code called Defamatory Libel and pointed out that it was the only private and personal section of the Criminal Code. In other words, the federal Justice Department had no business filing a defamation suit. There was subterfuge behind that. It was the only way they could obtain an injunction with respect to some other things.

Before the federal Justice Department filed the suit on her behalf, I had supplied them with a substantial amount of documentary evidence that that individual, a personnel manager, had lied repeatedly about my work, my behaviour and my union activity. In one instance, I backed up what I said with a tape recording, which put the lie to some documents that management had generated.

Recently an Ontario senior Crown prosecutor and an Ontario judge were quoted separately in "The Lawyer's Weekly" stating that charges should be stayed only in the clearest of cases, which of course is what happened in my case.

What Frayer did was set me up. He abused his authority and his public office, aided and abetted by the personnel manager. He helped to mislead the police into laying the two stayed criminal charges against me and was partly responsible for my arrest. If that is not criminal misconduct, let alone professional misconduct, I do not know what is.

For the Law Society of Manitoba to reject both of these complaints against Frayer and against Kremer on the grounds they lacked jurisdiction simply boggles the mind, particularly in light of the number of authorities, judicial, academic and practising lawyers, who clearly indicate otherwise. The response of the Law Society was irresponsible and an abdication of their delegated responsibilities under the law and their obligation to the public and to the public interest.

Both Frayer and Kremer are Crown prosecutors and public servants. The Code of Professional Conduct of the Canadian Bar Association, adopted by the Law Society of Manitoba, devotes a separate chapter to "The Lawyer in Public Office," which makes it clear that they are expected to, quote, adhere to standards of conduct as high as those which this code requires of a lawyer in the practice of law, in reference to the private lawyers.

In the Dewar review of Ticketgate, the Honourable A.S. Dewar, Q.C., former Chief Justice of the Manitoba Court of Queen's Bench, when discussing the role of the Crown prosecutor, made it clear time and time again by repeated references to the code that he considered Crown prosecutors to be bound by it legally, morally and ethically.

The Dewar review is 81 pages long. Attached to it is a 17-page appendix devoted entirely to the subject of prosecutorial discretion. There is no doubt where he stands. For example, and these are direct quotes: Any use and application of the unfettered right to institute proceedings–lay charges–is guided by the courts and other factual, moral or ethical considerations.

Noting a requirement pursuant to subsection 3(1) of The Crown Attorneys Act and Section 2 of the Criminal Code, the Crown attorneys must be barristers and solicitors in good standing within the province. They must also conduct themselves within and are subject to the Code of Professional Conduct as applied and interpreted by The Law Society of Manitoba.

Associate Chief Justice of the Manitoba Court of Queen's Bench Alvin Hamilton and Associate Chief Judge Murray Sinclair of the Manitoba Provincial Court in the report of the Aboriginal Justice Inquiry, quote: There are no matters of greater importance to the legal profession than the ethics and conduct

of its members. The same issues are of equal importance to the public, which must repose its trust regularly in the integrity of lawyers. We are satisfied that it has been the purview of the inquiry to examine the conduct of the lawyers who played so prominent a part in the investigation and prosecution of those involved in the murder of Betty Osborne.

The conduct of lawyers is regulated by the Code of Professional Conduct of the Canadian Bar Association, the Code of Ethics and by case law. The Code of Ethics states as its primary concern the protection of the public interest.

The views of Dewar, Hamilton and Sinclair are supported by distinguished academics writing in The Law Society of Manitoba, 1877 to 1977, edited by Cameron Harvey, the Associate Dean of the Faculty of Law, University of Manitoba.

For example, Chapter 1, The Legal Profession and the Public Interest, by D. Trevor Anderson, a Rhodes Scholar, former Associate Dean, Manitoba Faculty of Law, Director of Legal Studies for the Law Society of Manitoba and, once again, I believe at the present time a member of the Manitoba Law Faculty.

Chapter 6, The Discipline and Judicial Committees, was by Martin H. Freedman, a sessional lecturer of the Faculty of Law, Chairman of the Discipline Committee, former Vice-President of the Law Society and a partner with Aikins, MacAulay since 1969.

In his address to the 1991 Bar admission class, the Honourable Mr. Justice G.J. Kroft made direct references to the public interest, professional responsibility and the Code of Professional Conduct.

Ms. S. Jane Evans, that is the Appendix C that you have, a practising lawyer with Aikins, MacAulay and the Chairperson of the Board of Directors of Legal Aid Manitoba, was provided with a copy of the Kremer complaint to The Law Society. In a letter to myself, she pronounced it, " . . . entirely within the mandate of The Law Society of Manitoba." A copy of her letter is attached as Appendix C.

The above examples are only a sampling of the views of the judiciary, legal academics and practising lawyers on the subject of jurisdiction. In my view, they make it clear beyond a reasonable doubt that The Law Society of Manitoba had jurisdiction over my complaints against Frayer and Kremer. They simply did not want to deal with them because of who and what is involved.

That being the case, Professor Crispo, whom I referred to earlier, suggests, quote: Where the track record of the profession fails to reflect a minimum acceptable level of responsiveness to legitimate public complaints or demands, this again should act as a disqualification, at least for the time being, from self-governing privileges. I would stress the word "privileges" although, under law, I suppose it is a right. I regard it as a privilege.

Crispo states, quote: The self-governing professions are no longer above reproach. He goes on to warn: Indeed, unless it can be demonstrated conclusively that they are serving the public interests more than their own self-interests, they are likely to lose most if not all of their self-governing powers.

In that light and in light of the society's refusal to deal with my complaints, I strongly recommend that the Manitoba Legislative Assembly or a committee of the Assembly temporarily at least abrogate the self-governing privileges of the Law Society and assume responsibility for the public interest which the society has failed to protect.

It should not be left to a private citizen like myself to protect the public interest at private expense. In essence, this is what the Law Society told me to do when it rejected the Kremer complaint and suggested I retain a lawyer and sue. A copy of that letter is attached to each of the complaints.

* (1100)

Sue for what? I asked them for the name of a lawyer who would accept such a case on a contingency-fee basis, and they never responded.

The problem is not unique to Canada. As Crispo notes: On a broader plane, a former U.S. Supreme Court Justice, Tom C. Clark, has chastised his profession for its general reluctance to discipline unethical lawyers.

Clark was the author of a hard hitting 1970 American Bar Association report which termed lawyer disciplinary procedures in most states scandalous. I see little difference in the current situation in Manitoba.

In view of all of the above and in view of the fact that Justice minister McCrae was provided with a copy of the Kremer complaint, I fail to understand why he would introduce a bill which gives the appearances of greater public participation or access to the disciplinary process while, at the same time, allowing the Law Society of Manitoba to retain

complete and absolute control over determining what constitutes the public interest.

This bill is cosmetic. There is a slight improvement insofar as it makes some inquiries open to the public, and I stress "some" inquiries. However, that remains at the sole discretion of the society, a private self-interest club.

This bill is deceptive. While appearing to liberalize the process, subject at all times, of course, to the absolute and sole authority and discretion of the society, it actually tightens the society's control over publication and broadcast of any information respecting an inquiry by imposing severe criminal sanctions for violation of the "Ban on publication and broadcast" imposed by subsection 49(12) of the bill. Subsections 49(12.1) "Offence and penalty" and 49(12.2) "Offence by officer, employee of corporation" impose a fine of up to $2,000, six months in jail or both for any individual, officer, director, employee or agent of the corporation who commits an offence and, in the case of a corporation, a fine of up to $10,000.

The present act does not contain those sanctions. It merely makes it an offence for any bencher or member of the society to disclose or publish information without authority. The proposed amendments will shut everybody up, including the media, whom I presume that amendment is aimed at.

The society is thus the sole arbiter in deciding what constitutes the public interest, what the public is allowed to hear and what gets published. Big brother, the Law Society of Manitoba, knows what is best for the public. They are a law unto themselves.

Why McCrae, the chief law enforcement officer of the Crown and the people's elected representative charged with the responsibility of guarding the public interest concerning the administration and enforcement of the law, would introduce a bill giving a small, private self-interest group such complete and absolute control over the disciplining of a profession which exercises so much power and influence and impacts so significantly on so many matters affecting the public and the public interest is incomprehensible, especially when the society refuses to deal with serious legitimate complaints against the members it is supposed to regulate and apparently is prepared to practise selective discipline depending on the status of the individual member within the legal community.

If the Law Society is simply going to tell members of the public like myself to get a lawyer–that is good business, that is good for business, more business for their members–at my own expense and police the profession myself, who needs the Law Society?

More importantly, perhaps, who is regulating the self-regulating profession and who is looking out for the public interest? As Juvenal, the Roman rhetorician and satirical poet, said: Who will watch the watchers?

If the Law Society of Manitoba refuses to accept jurisdiction over complaints against Crown prosecutors, what protection does the public have against Crown prosecutors with an attitude like that of Serge Kujawa, the former senior prosecutor in Saskatchewan, or against an abuse of authority in office like that by David Frayer?

Crown prosecutors are agents of the Attorney General. If the Law Society will not exercise its delegated responsibility, that leaves the control of the actions of the Crown prosecutors and, hence, control of the charging process exclusively in the hands of the Attorney General, a politician.

That is, deciding on what charges are laid, if they are to be laid and, in the case of charges laid by the police or a private prosecutor, whether the charges are to be proceeded with or stayed, as they were recently with respect to a private prosecution against an assistant deputy minister of Revenue Canada, Customs and Excise. The charge was stayed by Bruce Miller, as a matter of fact.

Before it was recently abolished by Mulroney, the Law Reform Commission of Canada warned of the dangers of this in publications entitled, Controlling Criminal Prosecutions, the Attorney General and the Crown Prosecutor, also referred to as Working Paper No. 62; and Private Prosecutions, that is Working Paper No. 52. The commission warned about the conflict of interest facing a politician who is also the Justice minister as well as the Attorney General, the chief law officer of the Crown.

It is fitting on this 20th anniversary of Watergate to relate a quote attributed to E. Howard Hunt, a former top aide to former President Richard Nixon. Hunt spent 33 months in prison for his role in Watergate. The quote is taken from an article entitled, Watergate plotters unrepentent, which appeared in the June 16, 1992, Winnipeg Sun:

Who is to say it is illegal if it is directed by the chief law enforcement officer of the land, Hunt said. Legality and illegality were never discussed.

Hunt expressed astonishment at the Iran-Contra hearings and stated: Again, we have a situation in which men of assumed probity and character were acting on what they believed to be the desires of the Commander in Chief.

In this case, the commander in chief would be the Manitoba Justice minister, James McCrae.

It was Hunt's view that the United States had learned little from Watergate, and I suggest, neither has Canada. The Law Reform Commission of Canada stressed the importance of private prosecutions in the criminal justice system, especially in situations where a public official declines, falls, or refuses to do his public duty. In fact, the commission recommended enshrinement of the rights of the private prosecutor in the Criminal Code. I do not think that was ever done.

Private prosecutions are an important safeguard against this. However, Justice minister James McCrae, acting in concert with the Chief Judge of the Manitoba Provincial Court, Kris Stefanson, the brother of Eric Stefanson, Minister of Industry, Trade and Tourism, and their other brother Tom, Chairman of MTS, have repeatedly prevented me from laying private prosecutions even though I or anyone else clearly have that right in law. This has gone on since last summer.

In view of the actions of McCrae, who has control over the Crown prosecutors, and the lack of action by The Law Society of Manitoba with respect to Crown prosecutors, I strongly recommend that the Manitoba Legislative Assembly or an all-party committee thereof take control of the situation. I strongly recommend that the Law Amendments committee reject those parts of the bill referred to above, the specific subsections I referred to earlier. The public interest demands no less.

You, the members of the committee and the elected representatives of the people, must decide which interest is paramount, the private interest of The Law Society of Manitoba or the public interest of the people of Manitoba.

Before I conclude, I would like to refer to one passage from the book I quoted earlier by Professor Crispo. It is called, The Public Right to Know–Accountability and the Secretive Society. Here is what Professor Crispo has to say in the introduction to the self-governing professions. Incidentally, he spared no one, including his own discipline:

Equally discerning has become the public attitude toward the traditional and the many new self-governing professional bodies. There was a time when the public believed that doctors and lawyers and others like them were only in the business of self-regulation to better serve the public interest. In the past, there may even have been cases where this was the truth. There may actually be some instances where this is still the case, or largely so.

The author, like many others, is a little more skeptical and for this reason has watched with interest the decline in public awe and reverence for those who were for so long perceived to be in such exalted positions. Today, there is a widespread realization that what is actually a matter of private interest can often be cloaked in what is alleged to be in the public interest.

Consequently, like so many other organized groups, the self-governing professions are no longer above reproach. Indeed, unless it can be demonstrated conclusively that they are serving the public interests more than their own self-interests, they are likely to lose most, if not all, of their self-governing powers.

That is respectively submitted, Gordon Gillespie.

If you want copies of any of the documents I have referred to either in the text of my brief or Appendices A, B and C, I am more than glad to provide them. Just notify the Clerk of Committees and I will provide them for you. I guess I am open to questions.

Madam Chairperson: Thank you for your presentation, Mr. Gillespie. There may be questions from the committee members.

* (1110)

Mr. Dave Chomiak (Kildonan): Thank you for your presentation, Mr. Gillespie. I listened and read along as you made your presentation, and I just want to understand clearly what you are recommending.

In the larger sense, you are suggesting that we as legislators should be the determinants of what is or what is not in the public interest with respect to decisions made by The Law Society, in terms of the larger question but, specifically, with respect to this

bill that is before us today, your major concern is with Section 49(10) and the discretion that is given to the Law Society by that amendment. Is my conclusion generally correct?

Mr. Gillespie: Insofar as it respects the public interest, yes.

Mr. Chomiak: Thank you.

Mr. Gillespie: I am also concerned, of course, with 49(12), 49(12.1) and 49(12.2), the "Ban on publication and broadcast" and the new "Offence and penalty" provisions of this amendment.

Madam Chairperson: Are there further questions?

Thank you for your presentation, Mr. Gillespie.

Mr. Gillespie: You are very welcome. Thank you for your time.

Bill 88–The Homesteads, Marital Property Amendment and Consequential Amendments Act

Madam Chairperson: Mr. Jack King to make representation on Bill 88, The Homesteads, Marital Property Amendment and Consequential Amendments Act. Do you have a prepared text for members of the committee, Mr. King?

Mr. Jack King (Private Citizen): No, I do not. These are just my notes to aid my little speech.

Madam Chairperson: Okay, thank you very much. You may proceed.

Mr. King: Thank you, Madam Chairperson, members. I am here as a supporter of the bill. I should tell you that I am a practising lawyer. I am a partner with the law firm of Thompson, Dorfman, Sweatman, and my practice is exclusively family law, hence the interest in this legislation.

It has been obvious not just to myself, but to most lawyers in this field that The Dower Act has long needed reform. It makes sense that the property division upon death should essentially be the same that would occur if a marriage had ended by the decision of the parties made whilst both were alive.

The changes to the legislation proposed by this bill are such that people are going to have a much greater ability to quantify before death their expectations following death of the other party. The Dower Act, as it stands at the moment, is and has become apparently so outmoded and inflexible legislation of a complexity that does not allow an easy ascertainment of expectations.

So speaking as a practitioner, speaking in a private capacity, I am delighted to see this proposal to bring the legislation into a comprehensive model that applies both before and after death.

Having said that, though, there are two specific concerns I have. Firstly, Section 27(3), which is the "Effect of spousal agreements on equalization", the last part of that section says, " . . . unless the surviving spouse specifically waived or released his or her rights under The Dower Act or this Part in the spousal agreement." Of course, what we are talking about in that section are agreements that were made in the past.

Some agreements dating years back will not have, though they should have, a specific release under The Dower Act. That will be because either the lawyer who drew up the agreement did not turn his or her mind to the matter or because the spousal agreement was drawn up by the parties themselves without the benefit of legal advice.

The potential then exists that there are agreements out there which, when made, were made by the parties with a clear intention of closing forever the door upon any further claims. However, the wording of this section allows that door to again be opened.

I would suggest that there should be after the words "The Dower Act", the words "and/or to the other's estate".

If people have signed a separation agreement which clearly releases any rights to the other party's estate, then they should not be entitled to come back just because there is a lacuna in this legislation. That lacuna can easily be cured. If it is not, I would suggest that it is going to be an invitation to litigation which, as a lawyer, of course, I am always glad to know that, but it is not in the public interest that there should be that invitation to further litigation when it is not necessary.

The second problem that I have with the bill as presently worded is Section 28(1), which says that a surviving spouse may make an application, but the personal representative of a deceased spouse may not make such an application. Now, it seems to me that the right to make the application must come into existence upon the death of the other spouse, and I wonder why it should cease to exist because the

surviving spouse dies before he or she has had a chance to bring the application.

The legislation, of course, is an addition to the existing Marital Property Act. The Marital Property Act presently has, and it is not amended by this bill, in its Preamble, these words: "WHEREAS it is advisable to provide for a presumption, in the event of the breakdown of the marriage, of equal sharing of the family and commercial assets of the parties of the marriage acquired by them during the marriage;"

The effect of that Preamble would not necessarily apply if Section 28(1) is not changed. As long as Section 28(1) says the personal representative may not bring the application, then that Preamble provision is meaningless in its application through Part 2.

That concludes all I wish to say. Thank you, Madam Chairperson.

Madam Chairperson: Thank you, Mr. King. I believe there may be some questions.

Hon. James McCrae (Minister of Justice and Attorney General): Thank you, Mr. King, for your presentation today. Are you the same Mr. King who is the former chair of the family law subsection of the Manitoba division of the Canadian Bar Association?

Mr. King: I am.

Mr. McCrae: You are. Are you also the same Mr. King who participated in the work of a subcommittee in 1987 dealing with these matters?

Mr. King: I am.

Mr. McCrae: I just wanted to clear for the record that Mr. King has long been involved with these matters and has long been a person who has been involved in consultations with these matters, Madam Chairperson.

Mr. Paul Edwards (St. James): Madam Chairperson, firstly, I want to thank Mr. King for his efforts in the past and his efforts today in coming to this committee and giving us the benefit of his advice. We have had it in the past and appreciate it today.

Do I understand, Mr. King, that your suggestion with respect to subsection 28(1) is simply to delete the last part, which says: " . . . but the personal representative of a decreased spouse may not make such an application." Is that specifically what you are suggesting?

Mr. King: Delete or change the words so it says that the personal representative may make such an application.

Mr. Edwards: Okay. With respect to your first suggestion, do you have a detailed suggestion for amendment?

Mr. King: I think that these words after "The Dower Act"–this is 27(3)–the words "and/or to the other's estate".

Mr. Edwards: I am sorry. Subsection 27(3) at page 24 of the bill you are at?

Mr. King: Yes.

Mr. Edwards: You are suggesting after the words "The Dower Act" at the end of that section?

Mr. King: That is correct.

Mr. Edwards: Tell us again what you would suggest be put in. I am sorry. I missed exactly what you wanted put in.

Mr. King: So that that sentence would read "rights under The Dower Act and/or to the other's estate or this Part in the spousal agreement."

Mr. Edwards: Thank you, Mr. King.

* (1120)

Madam Chairperson: Are there further questions of Mr. King? If not, I would like to thank you for your presentation, Mr. King.

Bill 89–The Family Maintenance Amendment Act

Madam Chairperson: Mr. Gordon Gillespie to make representation on Bill 89, The Family Maintenance Amendment Act. We do have copies that are being distributed momentarily.

You may proceed, Mr. Gillespie.

Mr. Gordon Gillespie (Private Citizen): Madam Chairperson and members of the committee, this bill really concerns me. It appears to me that this is legislation for the sake of legislation and political posturing by the Filmon government and, in particular, by the Justice minister, the Honourable James McCrae, who has a lot of sympathy for women who find themselves in this kind of a situation but never any money it seems other than for inquests, inquiries and throwing men in the slammer.

I have a vested interest in this subject matter. I have two grown daughters. One is 29 and one is 24 and, of course, I am concerned about their

relationships with men as well. I do not want to see them abused, and I am totally opposed to any form of abuse.

I think when you introduce legislation it should be aimed at achieving some specific purpose. I may be missing something, but I cannot see what this legislation is going to achieve that cannot already be achieved through other avenues.

You all have a copy now of my submission to the Law Amendments committee re Bill 89, The Family Maintenance Amendment Act.

This is a bad bill, and I urge, I strongly urge the committee to reject it. It is redundant. It is a denial of the right to be presumed innocent until proven guilty through due process, i.e., to be heard before judicial action is taken and a protective order is issued. It is wide open to abuse because of its unilateral nature, which will probably only inflame an already volatile situation because of its one-sidedness. It may impose an unnecessary hardship on a defendant by forcing him to hire a lawyer, to quash or vary the order. In the final analysis, it will offer no real protection, as experience has clearly shown in some cases.

Now I understand that one gentleman, reading Mike Ward's column in the Free Press, had an order against him. There was a great deal of injustice involved, but he did not have the $700 required just to go and vary the order. It had something to do with paying maintenance where he is no longer obligated to do so by law, but he had to go to court and get the order varied. Those are the kinds of things that I do not think the originator of this bill gave much thought to.

If the need for an order is that urgent, then the best real protection is a shelter. If it is not, then the existing legislation is adequate. The woman can apply for an order in Manitoba Court of Queen's Bench, Family Division or for a peace bond in Manitoba Provincial Court. In the latter case I believe there is no cost involved, and both parties are required to appear before a magistrate who listens to both sides before issuing an order.

Please refer to the attached copy of a letter to the editor of the Winnipeg Free Press dated June 7, 1992, regarding this bill. It expresses my concerns in detail.

Also attached is a copy of page 3 of a similar letter to the editor of the Winnipeg Sun. The only difference in the letters is that the one to the Sun excludes the references to Mr. Chomiak, the Free Press editorial and Mrs. Carstairs' remarks. Paragraph 2 and paragraph 3 refer to the $10-million Canadian Panel on Violence Against Women and suggest that it is a waste of money.

Women's lives are literally at stake. What is needed is prompt, effective action, not more crass politics, words and useless legislation.

My letter to the editor is attached to that covering letter of mine, and it reads as follows: To the editor of the Winnipeg Free Press re: Abusers will get rough ride, McCrae says, Winnipeg Free Press, June 7, 1992.

Whatever happened to the presumption of innocence until proven guilty, the basic premise of our justice system? Allowing one party to obtain an order without notice to the other flies directly in the face of that premise and is wide open to abuse. In effect, the absent party is convicted without trial or a hearing, is publicly labelled, and is then free to prove his innocence.

Further, courts are supposed to adjudicate differences between parties, not in effect to become an advocate for one party while presuming the absent party to be guilty until such time as he can prove himself innocent.

What about false charges? There have been several false charges of sexual assault recently. What a wonderful weapon for a woman bent on revenge. All she has to do is appear before a magistrate.

What of the magistrates? What special qualifications and training have they got to determine if the woman is telling the truth? According to a report of the Manitoba Law Reform Commission released last fall, over half of them have a high school diploma or less, 21 percent have some university, and 22 percent have other postsecondary education. According to that same report, the magistrates do not even receive formal training before commencing their present functions. These are political patronage appointments.

Are McCrae and the Filmon government going to provide additional funds and time to properly train the magistrates? Not likely. The Dewar review of Ticketgate—and I have a great deal of respect for that man—commissioned by McCrae in the summer of 1988 and released in the fall of 1988, recommended training for magistrates.

McCrae solemnly accepted all of Dewar's recommendations. That was in 1988. Three years later, the Manitoba Law Reform Commission reports that a survey of magistrates–70 percent of 261 responded–revealed a desire for training, including initial training as a prerequisite–this was a quote from the report–as a prerequisite to acting in an official capacity. It would appear that they are appointed and just shoved straight into the job, the jobs they are doing now without the additional responsibilities that would be imposed by this bill.

There is already adequate legislation in the Criminal Code wherein any person who fears for their personal safety may appear before a magistrate to obtain a peace bond. Now bear in mind, I am a layperson. I am giving my layperson's observation on the code. The magistrate then summons the other party to hear their side of the story before taking action. That seems fair to me. Another section of the present Criminal Code already provides for up to two years imprisonment for breaching a court order. So what do we need another bill for?

McCrae's proposed legislation is redundant and will provide no more "protection" than existing orders, which experience has shown is none at all, in some cases. In fact, by excluding a man from the process altogether, it may serve to simply inflame an already volatile situation by forcing him to prove his innocence. According to studies of angry men, some of the anger stems from feelings of inadequacy and impotence in the form of helplessness. The legislation will only make matters worse.

The most likely impact will be to give the woman a false sense of security and to make the man even angrier than he already is by excluding him from the process, initially at least. If he already felt the system was against him before the order was issued, now he will know it for sure.

The real problem is that society is being called upon to solve a problem which Ann Landers correctly pointed out recently in one of her columns has been around since the dawn of mankind–violence between mates. It takes two to tango. The police and the courts are being called upon to do the impossible–regulate and control individual, private relationships between male and female.

Increased fines and jails are not the answer. In the case of the former, a fine may simply exacerbate existing problems stemming, in part, from poverty or difficult economic circumstances. I do not think that is any secret.

Poverty is a breeding place for crime and problems. In the latter case, jail is only a temporary solution which may only make matters worse. If the guy had a job before he went in, he probably will not when he gets out. If the woman was relying on him for support, she will lose that. He will come out madder than before he went in and society will end up supporting both of them, so what was gained?

Further, McCrae's proposed legislation could conceivably result in a woman obtaining an order, accusing a man of violating it, and having him on his way to jail before he has been able to prove his innocence in the first instance. That is a little unjust and one-sided.

In light of the above, it is difficult to understand why NDP Justice critic Dave Chomiak liked the changes–that is a quote from the Winnipeg Free Press, June 6–and is quoted as saying: Anything that helps women victims is going in the right direction.

Chomiak's comments are all the more mystifying since he is a qualified lawyer, unlike McCrae, who should know better. Fifty percent of the voters are males who are also entitled to their rights, especially to the right to equality before the law and the right to be presumed innocent until proven guilty through due process. Mr. Chomiak appears to be more interested in being politically correct than he is in fair play and justice for all. I am sorry, Mr. Chomiak, but somebody has got to stick up for us guys.

The get-tough approach advocated by lawyers like Dorothy Pedlar, earning an average of $91,000 a year–1988 Revenue Canada Statistics–or politically posturing politicians like McCrae is not the answer.

* (1130)

The answers are contained in a lead editorial in the October 22, 1991, Winnipeg Free Press entitled "The need is for shelter" and in the comments of Liberal Leader Sharon Carstairs in the October 30, 1991, edition of the Winnipeg Free Press: Words are wonderful, but action frequently requires new resources. And: If there is no money for prevention programs, prevention will not happen.

Wise words indeed. As it stands, apparently it is easier to get into prison than it is to get into a counselling program. Prison solves nothing.

Counselling, according to the abusers, helps significantly. Counselling works; jail does not.

Why is it then that there is no more money for counselling, yet there is a seemingly unlimited amount of money for unending inquiries, inquests and incarcerations?

McCrae's proposed legislation offers women no protection, only the illusion. Women in danger do not need more useless, self-serving legislation and unenforceable orders. They need adequately funded shelters and counselling programs for angry men.

If the need for a protective order is immediate, the best real protection is a shelter; if it is not, the existing legislation is adequate.

I would like to read you the two paragraphs that are different in my letter to the Winnipeg Sun in which I make some references to the panel on violence:

The get-tough approach advocated by lawyers like Dorothy Pedlar earning an average of $91,000 a year–1988 Revenue Canada statistics–or politically posturing politicians like McCrae, is not the answer. The answer lies not in yet another study by well-off, middle-class persons like Pedlar or Mulroney's $10-million road show called the Canadian Panel on Violence Against Women, a public relations exercise and cynical political gambit designed to placate the women's groups and learn about a problem that has been around since the dawn of mankind and has been studied to death while women continue to go to theirs at the hands of violent men.

I might add, when I phoned the PC Party headquarters here in Manitoba to get the information on the panel, they were exceedingly defensive about that $10 million. Without being asked–I just wanted some information–they immediately commenced to defend this as if every penny was worth it. For what it is worth, I pass it on to you.

The Panel on Violence Against Women is not going to discover anything we do not already know. What is needed and needed now is action, not more words and more study of the obvious. Two of the most effective and practical means of protection and prevention of violence against women have proven to be shelters and counselling for men. Yet, these have consistently been underfunded by governments, particularly the Filmon government. The $10 million would have been much more wisely and effectively used for these purposes, rather than being wasted as it is.

Respectfully submitted, Gordon Gillespie.

Madam Chairperson: Thank you, Mr. Gillespie. Are there questions of the gentleman? If not, I would like to thank you for your presentation.

Mr. Gillespie: Thank you, Madam Chairperson, members of the committee.

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Madam Chairperson: At this time I will canvass the audience one more time to see if there are further persons wishing to make presentation.

Does the committee wish to commence consideration of the bills clause by clause? Agreed. Is it the will of the committee to consider the bills in numerical sequence? Agreed. We will commence then with consideration of Bill 47, The Petty Trespasses Amendment Act. Is it the will of the committee that I group the clauses, barring no amendments?

Mr. Paul Edwards (St. James): What do you mean by group the clauses? You are talking about all of Clause 1 and all of Clause 2. Is that what you are talking about?

Madam Chairperson: Just to expedite the process, if there are no amendments in some committees, there has to be the will of the committee for me to, as an example, on this bill on the first page, say, shall Clauses 1 and 2 pass, if there are no members. Otherwise then I will have to call each clause individually and get agreement on each individual clause.

What is the will of the committee?

Mr. Edwards: I think on this bill, we should go clause by clause, Madam Chairperson. That may not be the case for others, but I think this one is a relatively short bill.

Madam Chairperson: Thank you. I appreciate the advice of the committee. Does the honourable minister wish to make an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): Yes, Madam Chairperson, I am going to make a request. The honourable member for St. James raised a concern a little earlier, and we are working on some way to address the concern raised by the honourable member.

It would be my request that we move to the next bill, Bill 72, The Law Reform Act, and perhaps by the time we have done that bill or the one after it we would be prepared to address the issue raised by the honourable member. Would that be satisfactory to the members of the committee?

Madam Chairperson: Is that the will of the committee, that we defer dealing with Bill 47 until such time as the amendments have been finalized? Agreed.

Bill 72–The Law Reform (Miscellaneous Amendments) Act

Madam Chairperson: We will then proceed to consider Bill 72, The Law Reform (Miscellaneous Amendments) Act. What is the will of the committee as to the process for dealing with this bill? Is it the will of the committee to group the clauses? Thank you. Agreed. Does the honourable minister wish to make any opening statements?

Hon. James McCrae (Minister of Justice and Attorney General): Madam Chairperson, I have no opening statements. If honourable members have any concerns, I would deal with those.

Mr. Dave Chomiak (Kildonan): My opening statement will be simply confined to Section 9 of the act. We did express as a party and put on the record some of our concerns with respect to the repeal of this section from The Liquor Control Act. I want to inform the committee that the minister did send to me some documentation which convinced me that perhaps it was appropriate that this section be deleted from The Liquor Control Act based on the legal arguments put forward in the correspondence that I received from the minister, which was, I believe, a recommendation based on some case law to or from the Law Reform Commission many years ago, in fact, which indicated this section was redundant.

So we will not be opposed to that aspect. I want to thank the minister for forwarding that information for me and also to put on the record that, nonetheless, my concerns about the symbolic nature still remain, though I recognize the legal ramifications of maintaining that particular subsection of The Liquor Control Act.

Those conclude my remarks on this bill.

Madam Chairperson: Okay, we will now proceed.

Clauses 1, 2, 3 and 4–pass; Clauses 5 and 6–pass; Clause 7–pass; Clauses 8(1), 8(2) and 8(3)–(pass); Clauses 8(4), 9 and 10–(pass); Clause 11–(pass); Clause 12–(pass); Preamble–(pass); Title–(pass). Bill be reported.

Bill 74–The Law Society Amendment Act

Madam Chairperson: We will now proceed to consider Bill 74, The Law Society Amendment Act. What is the will of the committee with respect to consideration of the clauses? Clause by clause? Does the honourable minister have an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): No, Madam Chairperson.

Mr. Dave Chomiak (Kildonan): I have a brief opening statement with respect to The Law Society Amendment Act. Basically, we had a fairly lengthy discussion in terms of our caucus in terms of this particular act, and I am sure it can be noted that in the debate in the Legislature with respect to second reading of this bill that the wide range of opinion is evident.

We are not entirely happy with this particular amendment. We think the amendment can go much further. We are concerned about certain sections, and Mr. Gillespie, in his presentation, the private citizen who made his presentation, actually touched upon some of the points and some of the concerns that we have with respect to this amendment act and the general concerns that we have with respect to some of the difficulties and problems encountered by self-governing professions.

* (1140)

Nonetheless, it is our opinion in general that this bill is certainly an improvement over the present situation, particularly in the area of opening hearings to the public and, because of that, we are prepared to support this particular legislation, and we will not be amending it at this time.

Mr. Paul Edwards (St. James): I welcome this legislation. I think it is important to recognize that the Law Society has had a significant debate over the conduct of these hearings and has I think quite happily come to the conclusion that they should be open to the public.

I think that there is an exception in this legislation, in Section 49(10)(b), which would allow the society to hold these matters in camera on a motion from within. It is a broad granting section. I think the Law

Society is aware that the public will be, and in particular legislators in the Chamber here, watching to see how the Law Society interprets that.

I look forward to the Law Society taking the approach that I think the legislation speaks to, which is that the presumption is that it is public and it will only be in rare circumstances that it would not be public. Of course, everyone can imagine cases where the need to hold it in camera to protect someone would be necessary.

With those comments, I generally want to indicate that I am pleased that the Law Society has gone through this process and come up with this conclusion, that the assumption should be that they be public with rare exceptions.

Madam Chairperson: We shall proceed to consider the bill clause by clause.

Clause 1–pass; Clause 2(1)–pass; Clause 2(2)–pass; Clause 2(3)–pass; Clause 2(4)–pass; Clause 3–pass; Clause 4–pass; Preamble–pass; Title–pass. Bill be reported.

Bill 88–The Homesteads, Marital Property Amendment and Consequential Amendments Act

Madam Chairperson: We will now consider Bill 88 clause by clause, The Homesteads, Marital Property Amendment and Consequential Amendments Act. What is the will of the committee with relation to consideration of this bill?

The Clerk has suggested that it might be appropriate to do it by sections, clauses contained within each of the sections. Does the honourable minister have an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): No, Madam Chairperson.

Mr. Dave Chomiak (Kildonan): Our only statement with regard to this bill is that it is fairly lengthy and complicated and we will have several questions as we go through the bill.

Mr. Paul Edwards (St. James): No comment.

Madam Chairperson: We will then proceed to consider the clauses.

Clauses 1 to 3–(pass); Clauses 4 to 6 inclusive–pass.

Clauses 7, 8(1) and 8(2).

Mr. Chomiak: Madam Chairperson, I have fallen into the trap that I was afraid I might fall into with respect to going through–I want to indicate to the minister, and I thank him, he provided us yesterday with copies of the spreadsheets with respect to this legislation. That is what I am attempting to go through now as we go through the bill. The spreadsheet indicates that a condominium is now for the first time deemed to be a homestead. Is that correct?

Mr. McCrae: Yes.

Mr. Chomiak: So previously, The Dower Act did not apply to a condominium residence?

Mr. McCrae: It was a matter that was open to question, I understand.

Madam Chairperson: Clauses 7, 8(1) and 8(2)–pass;

Clauses 8(3), 8(4), 8(5) and 8(6).

Mr. Chomiak: Madam Chairperson, the spreadsheet provided by the minister with respect to the amendments indicates that, basically, until one comes down to 8(6), there is really no change in policy with respect to consents.

Then when we get down to 8(6), I wonder if the minister might explain for me what the change is that is commented as new in his spreadsheet. That is under 8(6), it indicates elections may be removed from titles if a discharge is filed. The spouse has consented to the disposition of all the owner's interest in the property, dispenses with [inaudible] spousal consent to disposition, provides clear direction to Land Titles Office.

I do not quite understand what the amendment is doing.

Mr. McCrae: This is something that the Land Titles Office had concerns about in the past and they, in the consultation process, made known their concerns about when they, as a land titles registration authority, would be entitled to remove the election. This sets out under what circumstances elections can be removed from title.

Mr. Chomiak: That has been clarified for me.

Madam Chairperson: Clauses 8(3), 8(4), 8(5) and 8(6)–pass.

Clauses 9(1), 9(2), 9(3), 9(4), 9(5), 9(6).

Mr. Chomiak: Madam Chairperson, my concern in this matter, again referencing the minister's spreadsheet, is 9(4). Can it perhaps be clarified for me as to what–it says, no change in fundamental policy, but it does provide for a new

acknowledgement form? Do I understand that correctly?

* (1150)

Mr. McCrae: This amendment I believe creates more of a certainty, clarifies in writing the situation. It all comes onto one form now. The spouse signing the consent must sign it, and it is on the same document that the person authorized to take affidavits under The Manitoba Evidence Act also has to [interjection] Okay.

We have Ms. Joan MacPhail with us and, on some of these technical things, I would be quite happy to have her answer directly since she is helping me through this as well. Joan MacPhail is the Director of our Family Law division and, perhaps on questions of this nature, I would defer to her and let her answer because she is much closer to this.

Madam Chairperson: Is that the will of the committee? Agreed.

Ms. Joan MacPhail (Director, Family Law, Department of Justice): Currently under The Dower Act there are essentially two parts to the consent. The consent itself is signed by the spouse before a person who is authorized under The Evidence Act to take affidavits. That person who takes the consent then goes on to sign the acknowledgement acknowledging that the spouse is aware of his or her rights under the act and so on.

After discussions with Land Titles officials and after consideration of the existing provisions in the Law Reform Commission Report, it was proposed that the forms be changed so that the spouse was signing one form which consisted of a consent as well as an acknowledgement.

This acknowledgement in 9(4)(a) through 9(4)(c) sets forth what it is that is being given up by executing the consent. For that reason, it was felt that the spouse would have a clearer understanding of what their rights were rather than having this third party sign the form indicating that the spouse was aware.

Mr. Chomiak: Madam Chairperson, that clarifies it for me. Just for my own understanding, in one sense it could be argued that by having the spouse acknowledge those rights that the spouse is giving up, we can ensure that in fact they have been told of that, rather than the previous situation where a person who swore the affidavit said, I swore that I had informed the spouse of these specific rights, essentially.

I guess it could be argued in one sense that in fact this is a step forward because the spouses themselves are now acknowledging that they are aware of those specific points, that is (a) to (c).

Ms. MacPhail: That is correct. The form will specifically reference Clauses (a) to (c), which specifically for the first time talk about what these rights are in a very general way that are being affected and how they are being affected.

Mr. Chomiak: Who can take these affidavits under The Manitoba Evidence Act?

Ms. MacPhail: Well, for example, someone who is a commissioner for oaths or a notary public or a barrister and solicitor for the province of Manitoba. Generally speaking, in a real estate transaction such as this, it would be a lawyer who would be taking it for the most part.

Mr. Chomiak: One of my concerns about this bill, but in reading the spreadsheet it appears that this is not a change from previous policy so I have not made a major point of it, is that I was under the impression, and it could be because I am relatively far removed from the situation and I also studied property law in Saskatchewan, that it had to be a lawyer who indicated these rights to the individual. I am assuming that Manitoba law does not require a lawyer to inform a person of those rights. Is that correct?

Ms. MacPhail: If you will just wait one second, I can actually look at the existing acknowledgement. Currently it can be a commissioner for oaths, for example, which means it does not have to be a lawyer. The current form, the certificate of acknowledgement by wife, which is what it states on the current form to consent, release or power of attorney as the case may be, is a document that is signed by an individual entitled to take affidavits under The Manitoba Evidence Act indicating that first of all the consent or whatever it is we are talking about was executed separate and apart from the individual's husband, was voluntarily executed without compulsion on the part of their spouse and further that the person has acknowledged she is aware of the nature and effect of same.

It is a very, very general statement. It does not indicate, for example, what the person is aware their rights are. That is one of the major changes with this. Also, because the spouse will have to execute this document himself or herself, they will read it and they will at least have that flagged.

There was some concern that in many cases this certificate of acknowledgment may be executed by the person who can take affidavits and in fact the spouse may not have been aware of what their rights were under The Dower Act at all.

Mr. Chomiak: Thank you for those comments. That is why I am a little bit schizophrenic on this issue. I think having the spouse actually read and acknowledge that is a step forward.

On the other hand, we all know from everyday life and practice that sometimes forms are signed without due care and attention being paid to the particular forms. I just had a concern in the initial reading of the bill, and I actually did refer back to The Dower Act to see, which is why I did not make a major issue out of it. I now recall I noted that it was previous practice that the person could swear it in front of a commissioner of oaths.

It just struck me that we might want to go a little further ensuring–but then one does not want to complicate a lot of the matters–that the person is actually aware of their rights when they do execute these consents.

By way of an example, if it was a situation where the person did a real estate deal and did not go to a lawyer and went to a commissioner of oaths in a real estate office, for example, and signed it and was not really aware that they had given up their rights–on the other hand, I think the bill, by having the spouse acknowledge in the form that the spouse is aware of those rights I think goes some way toward solving that.

I am not going to make a major issue of it other than the fact that it–I red-flagged it as a concern with respect to rights.

Madam Chairperson: Clauses 9(1), 9(2), 9(3), 9(4), 9(5), and 9(6)–pass.

Ms. Judy Wasylycia-Leis (St. Johns): Could I just ask some general questions in terms of The Dower Act, or I guess the defunct Dower Act.

Mr. McCrae: I think if we did that, we might be able to proceed more quickly through the clauses, if we dealt with the general discussion and got that over with.

Ms. Wasylycia-Leis: Am I to understand, and forgive these questions if they appear to be somewhat naive, but am I to understand from this legislation that it does away with The Dower Act, it replaces The Dower Act.

* (1200)

Mr. McCrae: Yes, and the new act would be called The Homesteads Act. The part dealing with the homestead is going to be dealt with under the new Homesteads Act, and the division of the estate and so on would be under The Marital Property Act. We are making a new act, getting rid of the anachronistic Dower Act, replacing parts of it with The Homesteads Act, and then other aspects of it are going into the amended Marital Property Act.

Ms. Wasylycia-Leis: Were the changes proposed in Bill 49 of last session–was it last session or the session before?–which were then withdrawn, are they incorporated in this bill?

Mr. McCrae: This bill, the honourable member will recall, it was several sessions ago actually, where the bill dealing with The Dower Act was withdrawn from discussion. That bill dealt with a very small part of it. This is a total rewrite.

The honourable member will recall there were lots of complaints about how anachronistic this law was, how sexist it was in its language throughout, and it was a great big complicated thing, and still is, I think. I believe we have got rid of the anachronistic and sexist language, so sort of the commitment that had been made for a number of years, actually, is now being carried out by the rewrite by the major change to The Dower Act. In fact, we are getting rid of that word too and calling it homesteads. This is the project that has been going since 1984, since the Law Reform Commission made its report.

Madam Chairperson: I have to now determine the will of the committee. It is my understanding that there was an agreement that this committee would sit until 12 noon. What is the will of the committee? To continue? Thank you.

Ms. Wasylycia-Leis: Let me just ask then a few questions in terms of some of the concerns raised in the past around The Dower Act since I do not have the ability to figure out if these concerns are addressed in this bill, just because of the length and complication of it.

The minister will recall a number of concerns raised in the 1989 session by the Charter of Rights Coalition, Manitoba. A couple of their concerns had to do with the then provision which allowed a testator to make a limited bequest just providing an annual income of $15,000 for life. I will go on to quote from their document. If a testator includes one of the exemptions in his/her will, the surviving spouse has

no right to choose to take a fixed share of one-half of the net estate under The Dower Act.

I am wondering if that concern has been addressed and if there is anything else we have to raise in terms of that whole area.

Mr. McCrae: Madam Chairperson, there is no similar language like the old Section 16 in this legislation. I think what I will do is just say a few words which might answer some of the questions that are in the honourable member's mind.

What this bill does, the honourable member referred to a 15 percent share or some such thing. That is all changed around. What we have here is rather than a fixed share on the death of a spouse, we are dealing with a deferred share. That, then, makes the rules the same as the rules under The Marital Property Act, which are the rules upon separation, so that the homestead is there for the spouse for life. It becomes part of a life estate.

Then the rest of the estate would be dealt with on death under these amendments in the same way that the estate would be dealt with on separation, in other words by means of a deferred share, which is the assets attained during the course of the marriage.

I will also read into the record a couple of other points. The provisions of The Dower Act now found in The Homesteads Act have been updated and have incorporated new, important provisions such as the fraudulent disposition by an owner of homestead property and the clarification that the owner will now be liable to his or her spouse for damages. This is a strengthening of the rights of spouses and protection against a spouse who would somehow divest him or herself of assets in order to keep assets away from the other spouse. This has to do with the marital home.

Then The Homesteads Act will also revise the current provision of requiring a spouse to verbally indicate acknowledgement of the terms of disposition of homestead property to a person authorized under The Evidence Act by now requiring the spouse to sign that acknowledgement. That is what Ms. MacPhail discussed this with the member for Kildonan a few minutes ago.

The Marital Property Amendment will allow for a deferred property-sharing scheme instead of the fixed share of property in The Dower Act. The definition of property in The Dower Act in regard to this provision is confusing and results in inequity when determining the share of the surviving spouse.

Under the present Dower Act, if a surviving spouse was left certain minimum bequests under the will, he or she would have no rights under the act. Hence the new provision found in The Marital Property Act provides greater flexibility on the part of the surviving spouse as he or she can opt to take under the will or apply for an accounting under the act.

Further, the scheme will account for all assets and debts of the spouses at the time of death and divide them into two equal shares, unlike the uncertainty of the fixed share under the old legislation.

Generally this legislation will bring the concept of dower rights into the '90s; continued provision of a life interest in homestead property; the entitlement to damages for fraudulent disposition of homestead property; and the option of claiming a one-half share in the marital property of the parties instead of taking under the will or provisions under The Intestate Succession Act. All of which is to say, we are dealing with very complicated legislation and modernizing it in many ways.

There was one other point. And in all of this, it is important to remember that the assets and debts we are talking about are those that accrued during the course of a marriage.

Those general comments might help get the discussion moving along.

Ms. Wasylycia-Leis: Madam Chairperson, I thank the minister for that explanation. It certainly has helped clarify many of my questions.

Because it is such a complex piece of legislation, and we have not had the proper amount of time to thoroughly review every aspect of it and discuss with concerned groups the proposed provisions, I am wondering if the minister could indicate for us to the best of his ability if he feels that the principle behind the concerns raised previously, in previous discussions and dialogue around property rights and marital property issues, the concerns of the Charter of Rights Coalition of Manitoba have been adequately addressed in this new legislation.

Mr. McCrae: The position of the CORC and the MAWL last time in 1989 was that they favoured a fixed share as opposed to the deferred-share regime that is in this legislation. However, the CORC and the MAWL did not respond to the issues paper which was distributed last summer. We know

they are aware of the position the government is taking. I do not know if they are happy with the decision to go with the deferred share as opposed to the fixed share; in fact, they may not be.

The point is, I believe there is some satisfaction that we are finally getting this whole area of the law clarified. I cannot speak for them, but I assume they would prefer the fixed-share scheme rather than the deferred-share scheme. As far as I know, that is the major issue that they would have in their minds.

There again, I cannot speak for them, but they are not here and have not made any concerns known to us in the last number of months. As I say, they did not respond to the issues paper that we put out last summer.

Ms. Wasylycia-Leis: Could the minister indicate, and this is a big question, it could require a lengthy answer but, in brief form, could he indicate why he rejected the concept of the fixed share of property?

* (1210)

Mr. McCrae: The government supports the deferred-share scheme as opposed to the fixed-share scheme because we believe that it is the more equitable scheme. It treats surviving spouse the same upon the death of a spouse as it would in the case of a separation situation.

That was a decision the government took after much consultation. This is the recommendation of the Law Reform Commission, as well. We have the agreement of the Manitoba Family Law subsection of the Manitoba Bar Association dating back to 1987.

It was felt that, ultimately, you have to make a decision and that is what happened. The decision flows, as I say, from the Law Reform Commission recommendation, and the Law Reform Commission, in doing its work, consults people as well. There has been oodles of consultation about this and, ultimately, a decision has to get made and the decision of the government is that we support the deferred-share scheme.

Madam Chairperson: Clauses 10(1), 10(2), 10(3), 11(1), 11(2) and 11(3)–pass; Clause 11(4), 12, 13, 14(1), 14(2) and 15–pass; Clauses 16(1), 16(2), 16(3), 16(4), 16(5), 17 and 18–pass; Clauses 19(1), 19(2), 20(1) and 20(2)–pass; Clauses 23 and 21(1)–pass; Clauses 21(2), 22(1), 22(2), 23(1), 23(2) and 23(3)–pass; Clauses 23(4), 23(5), 24, 25 and 26(1)–pass;

Clauses 26(2), 27, 28, 29, 31, 32, 33, 30(1), 30(2) and 30(3).

Ms. Wasylycia-Leis: Just a question, I do not think it fits here, but I am wondering where–Mr. King, the presenter, had suggested a change [interjection] That is coming up?

Mr. McCrae: That is the one we are dealing with, The Marital Property Act. We are still on homesteads.

Madam Chairperson: Clauses 26(2), 27, 28, 29, 30(1), 30(2), 30(3)–pass; Clauses 30(4), 31, 32, 33, 34, 35 and 36–pass; Clauses 37(1), 37(2), 37(3), 37(4), 37(5) and 37(6)–pass; Clauses 38, 39(1), 39(2), 40, 41, 42 and 43–pass; Clauses 44, 45, 46 and 47–pass; Clauses 48 and 49–pass; Clauses 50–pass;

Clause 51.

Mr. Edwards: Madam Chairperson, this is where Mr. King's comments become applicable and relevant. He commented on, and I questioned him on specific suggestions with respect to the new proposed Section 27(3) and 28(1). I wonder if the minister can respond to Mr. King's suggestions.

Mr. McCrae: I have asked Ms. MacPhail to prepare some notes that I could use in responding to Mr. King's suggestions.

With respect to Section 27(3), Mr. King suggested that spouses who have waived or given up their rights to the other's estate should not be able to apply for a division of property on death currently. Under The Dower Act, courts have stated that rights are only lost if the agreement specifically refers to giving up rights under the act. The provision is consistent with the current law. To change it, as Mr. King suggests, would change the current law.

This provision limits the rights of surviving spouses, but only if they have specifically given rights up. Mr. King's amendment would cause more surviving spouses to lose their rights. That is not what we are here to do.

Mr. Edwards: Madam Chairperson, I appreciate that comment in respect to the proposal on Section 21.

Mr. McCrae: That was with respect to 27(3), my comments.

Mr. Edwards: Okay, the 27(3), Effect of spousal agreement on equalization, as I understand Mr. King's suggestion, it was to allow the right of a surviving spouse to an accounting and equalization

of assets unless the surviving spouse specifically waived the rights under The Dower Act or to the other person's estate. That is, that an agreement was reached without specifically indicating The Dower Act. His suggestion was that there are many, many agreements out there which do not specifically name The Dower Act.

They certainly will not name this part, because this part we are putting into effect now, it is simply making it clear that where release has been given to the other person's estate, in effect, it is the same thing, and that those should not be rendered questionable as to their validity simply because at the time they did not specifically mention The Dower Act. If in effect they achieved the same thing, it is clearly intended to do the same thing.

We should put in a specific statement to that effect and indicate that where the person has waived rights to the other person's estate, which is essentially the same thing, subsumes a waiver to The Dower Act, that that person should be taken under this section to have given up the right to equalization.

Mr. McCrae: This is a matter, Madam Chairperson, that we have discussed with Mr. King previous to today. There is another area where we have found ourselves not to be in agreement with him. With respect to any technical parts of it, I am happy to ask Ms. MacPhail to help. In our consultation process, this has been discussed, and we have not agreed with Mr. King.

Mr. Edwards: Well, maybe I can just ask Ms. MacPhail then. Does she not perceive, or does the department not see a problem in terms of agreements done in the past which do not specifically name The Dower Act, but where the intention is clear to achieve the same thing?

* (1220)

Ms. MacPhail: Potentially, in terms of the people who drafted those agreements, because right now the case law is such that unless the agreement specifically refers to waiving rights under The Dower Act, you do not lose your Dower Act rights. If spouses have executed an agreement in which they have agreed not to claim against the other's estate, they are not precluded from making a Dower Act application.

If we did what Mr. King is suggesting, and this provision was amended to include a general statement such as he has proposed be included in 27(3), then we would be changing the way in which those agreements have been interpreted and are interpreted right now to preclude more spouses from making application. We are simply suggesting or, in this legislation, proposing that the manner in which those types of agreements would be interpreted under The Marital Property Act will be the same manner in which they would be interpreted under The Dower Act.

We are not going to suddenly close the door to people who from 1979 or 1965 or whatever until the present day have been able to make Dower Act applications and say, no, you cannot make a Part 4 Marital Property Act application, we will not let you do that. We did not think that would be fair and equitable to do.

Mr. Edwards: Is it the advice of Ms. MacPhail that in fact that state of the law has existed for some time, that is, that if you do not specifically say The Dower Act, you do not forfeit your rights? Has that been the state of the law for some time? I do not know. I do not do a lot of this work.

Ms. MacPhail: That is the existing case law at present. It has been for some time. I cannot give you a specific year and specific case names at this point.

Mr. Edwards: With respect to Section 28(1), if I can just briefly examine Mr. King's logic, I believe he was saying that a surviving spouse should be able to make an application under this part for an accounting and equalization of assets, including the personal representative of a deceased spouse.

What he is presumably talking about there, and I think he mentioned it, is, if two spouses are involved in a car accident, for instance, one dies immediately in the accident, the other dies 14 days later, what happens? Is it not the case that the personal representative of the spouse who survived for those 14 days would be allowed to make this application? What happens in that scenario?

Ms. MacPhail: Under these provisions, an estate representative is only going to be authorized to continue an application for an accounting and equalization which was commenced before the individual's death. A surviving spouse can initiate an application after the death of the spouse; an estate representative cannot.

There are a number of reasons why this is so. It was a strong recommendation of the Manitoba Law Reform Commission that this be the case. First of

all, we are including it in The Marital Property Act, which is an act which affects personal rights between two spouses. If it is extended so that you have the opportunity for two estates to make application when both spouses are dead, you are getting into a situation where the act is really governing third-party rights, the rights of all the beneficiaries under each of the spouses' respective wills or who will benefit under The Intestate Succession Act, as the case may be.

Our goal under this legislation is to provide a means for a surviving spouse to receive a fair and equitable portion of the deceased spouse's estate. It is not to ensure that an estate can initiate an application and require a surviving spouse to pay the estate an equalization payment, as the case may be. It may be that the surviving spouse, for example, may have more in the way of marital property but, unless an application was initiated by the deceased spouse in his or her lifetime, we did not feel or recommend that it was equitable for the estate to be able to make application for an equalization and an accounting which might require the surviving spouse, who may have dependent children to support, may need those funds to support himself or herself, to make an equalization payment to the estate.

It was felt to be fairer to leave it that only the surviving spouse would have the right to initiate an application after death.

Mr. Edwards: I think I am grasping your point but, in the scenario that I spoke of, if in fact the surviving spouse was left with dependents and deceased some short period, maybe very short, after the first spouse had died, in that situation that spouse who survived for that brief period, if the application was not made in that brief period, that person would have no call on the estate of the spouse who died first for equalization. That is essentially what is being achieved here. Is that correct?

Ms. MacPhail: That would be the case, yes, but we are not really talking about that person having a claim; that person is dead. Both spouses in your scenario are dead. It is whether it is fair and equitable to have a situation where you are going to have two estates essentially battling it out in a marital property accounting situation. You would get into all sorts of difficulties perhaps with evidence, in terms of what assets were worth what, at what period of time, if the parties had separated before the death, when that had taken place, and so on.

As far as the dependent children go, that would depend on their rights, and what they would receive would depend on what the deceased spouses had both done in their wills. If there was not adequate support for the children left in either parent's will, it is not really the accounting that would fix that. It would be an application under The Dependants Relief Act for the children that would look after that.

Presumably, one or other of the parents would have left the children something in their will, although not necessarily. If they were dependent, I would assume that would be the case.

Madam Chairperson: Clause 51.

Mr. Edwards: Madam Chairperson, just in closing, I am not going to propose amendments at this point. I am somewhat satisfied in terms of my concern by Ms. MacPhail's answer. I am not completely satisfied, but maybe that is because I have not taken the time and have not had the time to digest her responses completely.

I would simply put on the record that I share Mr. King's concerns to some extent and look forward perhaps in the next session of the Legislature to raising this again with the minister.

Generally, I must say, and it is clear from my lack of objection on most of this legislation, I am glad to see these moves come forward. It has been a long time in the waiting, and we are pleased to see some of the major obstacles toward clarifying this area and giving adequate rights to spouses dealt with.

Mr. McCrae: With respect to Section 28(1), I just say to the honourable member that this conforms with the Law Reform Commission report. This is a very important piece of legislation, and it contains many, many aspects. While I agree with Mr. King with respect to the major issue respecting the fixed share versus the deferred share, we are not going to agree on everything. It would be nice if we could, but that is not the way the world works.

This is a very big project and the department has done an excellent job in going over all of the issues raised during the extensive consultations and coming down on the side of what we believe to be the right thing to do and to provide in a fair and balanced way the best possible protection for surviving spouses.

Mr. Chomiak: Madam Chairperson, I have a query on Section 30.

* (1230)

Madam Chairperson: Mr. Chomiak, just for clarification, are you making reference to Section 30 under Clause 51?

Mr. Chomiak: Under Clause 51, under the amended act on page 25.

Madam Chairperson: Please proceed.

Mr. Chomiak: I wonder if the minister or if Ms. MacPhail can–this is a new section–give me an example of what this new section is trying to effect.

Ms. MacPhail: This section deals with the ability of a surviving spouse to ask the court to essentially direct a person who is holding an asset that is described in subsection 35(1) to direct that that particular asset be held so that, in other words, it is preserved pending satisfaction of a claim to the surviving spouse of their equalization payment.

The assets that are referred to in subsection 35(1) are essentially what 35(1) is intended to be, a type of antiavoidance provision. What happens in this particular situation is that assets which would not technically in law be considered to be part of the deceased's estate once he or she dies are included, and he or she is required or their estate is required to account for same in the accounting process.

For example, if the deceased had held property in joint tenancy with another individual, that property can conceivably be traced to the other individual to the extent of the deceased's interest in the property in order to satisfy a payment in favour of the surviving spouse.

The intention is that where you have specific assets which essentially are avoidance mechanisms to a certain extent, which deprive or divest the deceased's estate of assets which would otherwise be available if they were held differently for the satisfaction of a claim in favour of a surviving spouse that those particular assets can be ordered by the court to be held, transfer suspended and so on in order to ensure that they are available in order to satisfy a judgment in favour of a surviving spouse, if that is necessary, if there are not sufficient assets in the estate to do that. That is the intention of Section 30

Mr. Chomiak: I thank Ms. MacPhail for that explanation. The example is a good one, property held in joint tenancy. How would the surviving spouse be made aware that the deceased had that property in joint tenancy?

Mc. MacPhail: One of the provisions that will be included in the amendments to The Marital Property Act requires the personal representative, upon request, to provide information as to the financial circumstances of the deceased to the surviving spouse, which would include assets under 35(1).

Madam Chairperson: Shall Clause 51 pass? For the benefit of the committee, I would remind, for reference purposes, Clause 51 is pages 23 to 32 inclusive.

Ms. Wasylycia-Leis: Since we are on the last clause, I just wanted to make a general comment.

Madam Chairperson: Excuse me, just to clarify the record, we have not reached the final clause.

Ms. Wasylycia-Leis: First of all, I want to just begin my comments by indicating that we also appreciate the work of staff in the Department of Justice and the minister's efforts for bringing forward this package. I want to say that at the outset because my following remarks express a deep concern.

The minister had indicated in previous times that he would be bringing forward a comprehensive family law package–I presume this is that package–that package to be a compilation and consolidation of a number of statutes and legislation relating to property rights, support, maintenance. It is certainly something that has been talked about for a long time, and there has been considerable consultation and opportunity for input.

My first concern I want to express is that it is very difficult at the lateness of the hour to give this kind of legislation the time and consideration that it warrants. It has not been all that long since the legislation was introduced in the Legislature for first reading. My colleague the member for Kildonan (Mr. Chomiak) indicates that he only received the spreadsheet yesterday, so there has been really not adequate time to thoroughly vet this very extensive piece of legislation. There has not been the time for all of us to get the necessary input and feedback from the community.

The minister indicates that groups were given an opportunity, as a result of an issues paper circulated, I think he said last summer, and he indicated that some groups had not responded. We will certainly check into that and want to know the reasons for that. However, I think the minister is aware of the long consultation process that has gone on, at least since 1986, and numerous recommendations and reports from various groups.

I wanted to simply put on record the concern about the lack of time to do a thorough job in analyzing this legislation and, if more time had been permitted, we perhaps might have had more objections and amendments and some positive amendments to raise with this committee.

I wanted to also bring forward the general concerns of the women's community, who have been working long and hard at these issues for many, many years and who have expressed very strong opinion for very progressive legislation if and when the time government brought forward a comprehensive marital property package.

I cannot say, based on a preliminary review of this legislation and sitting through this committee, that we have before us that comprehensive, progressive kind of legislation that people had in mind, particularly women in the Manitoba community.

At the same time, I am not suggesting that there are not some positive steps in this legislation. There are clearly some important steps. We will be supporting the legislation in general in terms of the small steps that have been taken, but I want to at least put on record the concern that this is not the breakthrough, the great advance for women that we had expected and that the women's community had expected.

This is not legislation that has entrenched the concept of marriage as a partnership of equals. It is not legislation that enshrines in legislation the fact that economic security of both spouses is something that must be recognized during a marriage and outside of a marriage.

I reference some of the principles that have been brought before us time and time again by the Canadian Charter of Rights and Freedoms, or the Canadian Charter Coalition, which based extensive study following the Charter of Rights and Freedoms and indicated quite clearly that any legislation that we bring forward must at every turn guarantee equality between men and women. They reference always that this must include blatant discrimination, but also less blatant, more systemic, subtle discrimination in our laws, in our practices, in family, in society generally. I wanted to make sure that that concern was noted.

I do not believe we will have met all the expectations of active women's organizations and feminists and pioneers in the matrimonial property, family maintenance struggle over the years. I do not believe that we have fully recognized, as many groups have indicated, and I am quoting now from a previous document that I pulled out of my files when we were dealing with Bill 49 and others in 1989, that we have seriously considered the question of ensuring that during a marriage, property is considered equal and that there is ownership and management of both partners in that relationship.

I think we have missed an opportunity perhaps to entrench that in law, to send a signal to women in this community that we have made great advances when it comes to equality and that we have gone the next step and kept Manitoba in the leadership position that it has enjoyed in Canada for a good number of years.

I just wanted to ensure that those comments were on record, and I certainly welcome any response from the Justice minister.

* (1240)

Mr. McCrae: As briefly as I can, Madam Chairperson, I think it is appropriate that the honourable member, the honourable deputy leader of the opposition put those comments on the record. She was very active in the discussions in 1989 on the legislation we had before the House at that time.

The honourable member has been very active in working with the Charter of Rights Coalition and the Manitoba Association of Women and the Law and has put forward, I believe, some concerns that may well be outstanding in regard to the legislation we have before us.

I do not think it is quite fair though to say there has not been appropriate time and consideration. This issue has been the subject of debate, the subject of consultation for a long, long time, and there is nothing in this bill that is revolutionary or new in the sense that it has not been discussed before; it has. What it amounts to is a compromise between the various interest groups that have come forward, the government, the Law Reform Commission, the Bar and other interested people. It does represent a compromise.

I am not here to tell you that everything in this bill is going to be completely satisfactory to the CORC or to the MAWL, because I know that is not true, but I bet you the CORC and the MAWL are pleased that we are finally dealing with it and redoing this part of our law.

In the years ahead, I hope that this will serve as an appropriate base to keep modifying the body of our laws to reflect changes in modern society but, no, I am not here to say that this is what everybody who was ever consulted ever wanted, because that is an impossible thing to do, but I do think it was right that the honourable member put those things on the record and be clear, that if she is supporting the legislation, it is with those qualifications. If she is not supporting the legislation, well, that is one thing but, if she is, then it is with those qualifications. It is appropriate that those things be put on the record.

Madam Chairperson: Clause 51–pass; Clause 52–pass; Clauses 53 and 54–pass; Clauses 55, 56, 57, 58(1), 58(2) and 58(3)–pass; Clauses 58(4), 58(5), 59, 60 and 61–pass; Clauses 62, 63, 64(1), 64(2), 64(3) and 65–pass; Clauses 66, 67 and 68–pass; Table of Contents–pass; Preamble–pass; Title–pass.

Mr. McCrae: On that point, Madam Chairperson, and before we finish, I want once again to say a kind word or two to those people in the department–the Family Law division and the Legislative Counsel office–those people who have put in probably countless hours over the years on this.

This is very important, this legislation. I am very proud of it. For all that it may not meet everybody's expectations to the fullest extent, it was a huge project and I am delighted that we have reached this point. I do thank all of those people involved.

Mr. Edwards: I want to add my comments to that of the member for St. Johns and the minister with respect that this act does represent somewhat of a compromise, although I certainly support the fact that it is coming forward. It has been a long wait.

I remember going through extensive committee hearings, I believe it was 1989, if I am not mistaken, when we went through a whole host of amendments. I think at that time there was a commitment that we deal with The Dower Act within a year. Well, it did not quite happen, obviously, but here we are and it has come forward and I am happy to see it come to fruition. I recognize the lengthy efforts of departmental staff as well as others volunteering in the community.

I do want to ask very briefly, Section 68 indicates that the act comes into force on a day fixed by proclamation. What is the anticipated date at this point that this act might come into force? Do not say within the next year because that may not pan out.

Mr. McCrae: Because of past history with ministers saying that these things will happen just right away or as soon as possible, the indication I have, and this is not a promise that I am making, because I know the history of these things, I am told that because there are new forms that need to be printed, because there are areas of education of the people involved in the system, we cannot expect to see this proclaimed this year. Probably early next year is the indication I have.

I do not want members to hold me to a date, because I know what happened to another honourable minister who, and that minister will go unnamed today, that former minister.

With that I will say, we are looking at something hopefully early in the new year, but I do not want to be held to that. There is no reason for us to delay it other than to get forms printed and to get appropriate people trained and educated in making sure this thing works the way it is supposed to and advising the legal community what is going on and what is in here. That is the best I can do for right now.

Madam Chairperson: Is it the will of the committee that I report the bill? Agreed and so ordered.

* * *

Madam Chairperson: What is the will of the committee? Continue?

Bill 89–The Family Maintenance Amendment Act

Madam Chairperson: Bill 89. What is the will of the committee? Page by page? Okay

Does the minister wish to make an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): I am being advised not to, Madam Chairperson, and I think it is good advice.

Madam Chairperson: Clauses 1 through 8 inclusive–pass; Clauses 9(1), 9(2), 9(3) and 10–pass; Preamble-pass; Title–pass. Bill be reported.

Bill 47–The Petty Trespasses Amendment Act

Madam Chairperson: We will now consider Bill 47. Does the honourable minister wish to make an opening statement?

Hon. James McCrae (Minister of Justice and Attorney General): Yes, Madam Chairperson, I

guess I would not do that until we get to Clause 1. Is that where we are at?

Madam Chairperson: That is exactly where we are at.

Mr. McCrae: Okay, now that we are on Clause 1, I have two amendments to make which I– [interjection]

Madam Chairperson: No, excuse me, Mr. Minister, this is opening statements.

Mr. McCrae: Oh, no opening statement.

Mr. Dave Chomiak (Kildonan): I will defer my comments as well until we get to the section on amendments.

Madam Chairperson: Clause 1.

Mr. McCrae: I do have an amendment. The amendment I am going to propose would permit a colony to designate an official by way of a resolution in addition to by way of by-laws or articles. Some colonies apparently do not have by-laws or articles that would permit designation of an official.

The amendment I am proposing is the result of some consultation with honourable members and with the presenter who is here today, Mr. Kovnats, and I believe goes some distance to meeting the concerns raised by the honourable member for St. James.

So, Madam Chairperson–

Madam Chairperson: I am sorry to interject, Mr. Minister, but this is under Clause 2. It is Section 1(5), I believe, subclause 1(5) under Clause 2. If it is the will of the committee, I would like to pass Clause 1 first.

Clause 1–pass.

Clause 2, the honourable minister is proposing an amendment on 1(5).

* (1250)

Mr. McCrae: I have two amendments, and here is the first one. I move, in both the French and English languages,

THAT the proposed subsection 1(5) as set out in Section 2 of the bill be amended by striking out "or articles" and substituting "articles or a resolution".

[French version]

Il est proposé que le paragraphe 1(5), énoncé à l'article 2 du projet de loi, soit amendé par substitution, à "ou des statuts", de ", des statuts ou d'une résolution".

Mr. Chomiak: Madam Chairperson, one of the concerns that we had with this bill was this specific point. While I do not think the amendment totally addresses the concerns, I am at a loss to come up with something more definitive.

I think we will support the amendment, but it does address a concern that we had in terms of the designation of who the person in authority is and how that could be done. I suppose whether it could be done retroactively or not is a concern. The fact is, how does one point to who that person in authority is, particularly if there are no articles of incorporation?

Even if there are articles of incorporation, the presenter did indicate that it is possible. It could be designated otherwise, and there is a whole question of conflict between those two points. I think the amendment does go some way toward alleviating those concerns of ours and, accordingly, we will not have a problem with that.

Mr. Paul Edwards (St. James): Madam Chairperson, I am pleased to see the amendment come forward, in particular the second one, which deals with two concerns.

Firstly, it makes clear by the addition of the words "and other disruptive behaviour" that on an interpretative basis "loitering", which was my concern, would be tied to some form of disruptive behaviour, and so that allays somewhat my concerns on that basis.

The other thing it does is to ensure that the officials who have been designated under articles, by-laws or resolution in fact are acting in accordance with those by-laws and resolutions. As I had discussed with department officials earlier this morning, the concern was that Section 1(5) is simply a threshold, that once the person designated has been under a by-law given that power, he or she then, going back to Section 1(1), would have rights to do all that is empowered in that section, which is deal with anyone who was trespassing. It was not tied in any way to the disruptive behaviour. It is a positive and I think intended by the proponent.

I am pleased to see that the minister has come forward with this to deal with those situations where the activity is disruptive. That does not empower, nor should it, nor is it intended to empower the designated representative to act for all circumstances in respect of all trespasses and in

effect override the individual's desire to invite someone onto the property.

I want to make clear that I have no hesitation in saying that I have every confidence that the Hutterite community in this province has the best intentions and will do its utmost to ensure that of course there is no abuse of any authority which is given. I do not suggest that, and I did not mean to in my questioning of Mr. Kovnats earlier.

My premise is, the premise I start from is that legislation designed to meet a specific need for a specific sector of society is generally bad legislation and will come back to haunt the society that puts it into place simply because if you start to erode by exceptions certain principles, you end up with very few rights left for anyone.

It always gives me concern when a special circumstance for a special sector of society is put into place because, of course, this legislation nowhere is restricted to use by Hutterites. It is legislation which binds us all and binds everyone in the community. We want to make sure that we have sufficiently protected the rights of every individual, which is as old as our law of property itself, to have control over their own property.

Communal ownership causes some confusion when we come to those rights, but it is my desire to protect even communal property owners' rights as much as possible.

With those comments, I am pleased to support the amendment with the caveat that I still have lingering concerns, but I am also pleased to support the bill as well.

Motion agreed to.

Mr. McCrae: Madam Chairperson, the companion amendment to make this work the way we all propose it to work is the following, and I move it in both the English and French languages: I move

THAT the proposed subsection 1(5), as set out in subsection 2 of the Bill, be amended by striking out everything after "loitering" and substituting the following:

,nuisances, and other disruptive behaviour on the lands or premises, means such an official or officials acting in accordance with those by-laws or articles or resolution.

[French version]

Il est proposé que le paragraphe 1(5), énoncé à l'article 2 du projet de loi, soit amendé par substitution, au passage qui suit "d'empêcher", de "les comportements perturbateurs, notamment les incondultes, la flânerie et les nuisances, sur le bien-fonds ou dans le lieu et qui agissent en conformité avec ces règlements administratifs, ces statuts ou cette résolution."

Motion agreed to.

Madam Chairperson: Clause 2 as amended–pass; Clause 3–pass; Clause 4–pass; Clause 5–pass; Title–pass; Preamble–pass. Bill as amended be reported.

The hour being 12:54 p.m., committee rise.

COMMITTEE ROSE AT: 12:54 p.m.