Fourth Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

42 Elizabeth II

Chairperson
Mr. Bob Rose
Constituency of Turtle Mountain

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, July 15, 1993

TIME — 7 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRPERSON — Mr. Bob Rose (Turtle Mountain)

ATTENDANCE - 10 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Driedger, McCrae, Praznik

Ms. Cerilli, Mrs. Dacquay, Messrs. Gaudry, Reid, Rose, Sveinson

WITNESSES:

Bill 40—The Legal Aid Services Society of Manitoba Amendment and Crown Attorneys Amendment Act

Douglas Abra - President, Law Society of Manitoba

MATTERS UNDER DISCUSSION:

Bill 27—The Environment Amendment Act (2)

Bill 36—The Highway Traffic Amendment Act

Bill 40—The Legal Aid Services Society of Manitoba Amendment and Crown Attorneys Amendment Act

Bill 44—The Alcoholism Foundation Amendment and Consequential Amendments Act

* * *

Mr. Chairperson: Will the Standing Committee on Law Amendments please come to order.

We have before us the following bills to consider this evening: Bill 27, The Environment Amendment Act (2); Bill 36, The Highway Traffic Amendment Act; Bill 40, The Legal Aid Services Society of Manitoba Amendment and Crown Attorneys Amendment Act; and Bill 44, The Alcoholism Foundation Amendment and Consequential Amendments Act. Copies of the bills are available on the table behind me.

It is our custom to hear presentations from the public before detailed considerations of the bill. The list of presenters for two bills this evening have been distributed. For the information of the public, a list is also posted at the back of the room.

At this time I would like to canvass the audience and ask if there are any persons present who would like to make a presentation this evening to any of these bills and whose name does not appear on the list. If you identify yourself to the staff at the back, your name will be added to the list.

Does the committee agree to hear presentations on Bill 36 first? [agreed]

Bill 36—The Highway Traffic Amendment Act

Mr. Chairperson: I would like to call on Reginald Barnes, private citizen. Reginald Barnes? Stephen Connell, private citizen. Stephen Connell?

Is it the committee's wish that we call the names a second time at this point? It is only two minutes after seven. [agreed]

I will call then again, Reginald Barnes, private citizen, and for second and last call, Stephen Connell, private citizen.

We will then move to public presenters on Bill 40.

Point of Order

Mrs. Louise Dacquay (Seine River): Mr. Chairperson, on a point of order, I am just wondering if it would be the will of the committee to deal with this, because there are different critics here for each of these bills. I notice the critic is here for Bill 36. It is not a very lengthy bill. I am wondering if it would be the will of the committee to deal with it immediately clause by clause.

Mr. Chairperson: Is it the will of the committee to deal with Bill 36 clause by clause at this time? [agreed]

* * *

Mr. Chairperson: Very well, we shall move into clause-by-clause consideration of Bill 36.

Do any of the committee members have an opening statement? No.

As is customary, we will postpone consideration of the Title and Preamble until all clauses have been considered in their proper order by the committee.

Clauses 1 to 5 inclusive—pass; Preamble—pass; Title—pass.

Is it the will of the committee that the bill be reported and that I report the bill?

An Honourable Member: Agreed.

An Honourable Member: Agreed, on division.

Mr. Chairperson: That is agreed on division? Very well, thank you. That completes consideration of Bill 36.

Bill 40—The Legal Aid Services Society of Manitoba Amendment and Crown Attorneys Amendment Act

Mr. Chairperson: Is it the will of the committee then that we now move to public presentation on Bill 40? [agreed]

I would call then Mr. Douglas Abra, Q.C., Law Society of Manitoba. We have a written presentation which is being distributed.

Mr. Douglas Abra (President, Law Society of Manitoba): Mr. Chairperson, there are two items that I have asked to be circulated to the members of the committee. One of them is a copy of a letter dated June 30, 1993, that I sent to the Minister of Justice, the Honourable James McCrae, and the other is a letter from Mr. Eric Lister, who is on the executive of the Manitoba Bar Association indicating that the Manitoba Bar Association are in agreement with and support the submission being made by the Law Society this evening with respect to Bill 40.

Mr. Chairperson: Thank you. You may proceed when you are ready.

Mr. Abra: Members of the committee, I appear before you this evening as the president of the Law Society to advise you of our concern with respect to the proposed amendments to The Legal Aid Act and The Crown Attorneys Act.

As many of you I am sure are aware, the Law Society of Manitoba is the governing and licensing body for lawyers in Manitoba. The Manitoba Bar Association, from whom you also have a letter of support for the opposition to the act, is the body in Manitoba that is responsible for protecting the interests of lawyers primarily; whereas the Law Society, as I am sure you are aware, pursuant to the provisions of The Law Society Act, has a primary concern and function of protecting the members of the public.

Now with respect to the amendments to the two statutes that are before you, there are a number of concerns that the benchers of the Law Society wish to express to the government and to the members of this committee, and we have indicated those concerns to you in the letter that was sent to the Minister of Justice dated June 30.

Firstly, it is our respectful submission to you that the language contained in the proposed amendments to both acts is much too broad and, as a result of which, the implications of amendments to the two bills are very broad in scope.

It is very rare, as I am sure you are aware, for the Law Society to oppose legislation of any nature whatsoever, but in this particular case it is our respectful submission to you that the amendments pertaining to The Crown Attorneys Act permitting nonlawyers to prosecute and the amendments to The Legal Aid Act permitting nonlawyers to defend cases simply ought not to be permitted because of the implications that it is going to have for the justice system in Manitoba.

We recognize that the amendments are made subject to the provisions of the Criminal Code, and I am advised by the Deputy Minister, Mr. MacFarlane, that the purpose of that provision in the act is to make the amendments restricted to summary conviction proceedings. Notwithstanding that, it is our respectful submission to you that, firstly, with respect to summary conviction proceedings, whether of provincial statutes or under the Criminal Code, there are many serious offences that can be dealt with by summary conviction. There are also what we have referred to as the hybrid offences that can be dealt with either by indictment or summary conviction. If they are dealt with by summary conviction, then of course they could be dealt with by nonlawyers as prosecutors and defendants according to this particular legislation.

Offences such as assault, sexual assault and drinking-driving offences are all hybrid offences that could be prosecuted and defended by nonlawyers pursuant to the provisions of this particular act that is before you and the amendments to the two statutes.

In addition, child welfare offences and custody hearings in Provincial Court under The Child and Family Services Act could be dealt with by nonlawyers pursuant to the provisions of these statutes. In particular, employees of Legal Aid Manitoba who are nonlawyers, paralegals but without any formal legal training, would be permitted to act for representatives of families who are having custody disputes in Provincial Court according to this legislation.

Finally of course, with respect to both provincial legislation and Criminal Code legislation, a number of summary conviction offences call for periods of incarceration, and it is trite to say again that a number of accused persons would be represented by nonlawyers, nonlegally trained individuals, who face the prospect of incarceration for conviction for an offence.

It is trite to say that, although the balancing act would be attempted by these particular acts—and obviously it is contemplated that The Crown Attorneys Act will permit nonlawyers to act as Crown attorneys, and the amendment to the Legal services act will permit nonlawyers to act as defence counsel in criminal prosecutions or quasi-criminal prosecutions—that there is nothing in the bill anywhere that indicates that both on the same case have to be nonlawyers. So it is quite conceivable that you could face a situation whereby you could have an experienced counsel, experienced lawyer, acting as a prosecutor, and a paralegal acting as a defence counsel, or, in the alternative, you could have an experienced defence counsel acting for an accused and a nonlawyer prosecuting.

It is my respectful submission to you that in either of those scenarios the interest of the public by way of the prosecution is not being protected, or in the alternative, if you have an experienced prosecutor and a nonlawyer defending, the interests of that individual accused is not being protected.

We are aware that the purpose of this legislation is to assist in the establishment of the aboriginal court which has been supported by and presented by the Minister of Justice (Mr. McCrae). The recourse, it is trite to say, is nothing in the legislation that indicates that in fact this is restricted to an aboriginal court or the intent of the legislation is to be with respect to an aboriginal court. We are aware of the fact that the reason there is no such representation or mention of the aboriginal court in the legislation is that there is concern that it might not be within the jurisdiction of the provincial government to legislate in the area of aboriginal law.

Under the Constitution, of course, the authority to legislate for aboriginal people is with the federal government. However, it is our respectful submission to you that really the essence of this legislation, an attempt to set up the aboriginal court, is one to get around the provisions of the Constitution. It is obviously—at least as far as we are aware, there has been no consultation with the federal government in this regard, and yet they are the ones that are primarily responsible for legislating for aboriginals. If there has been consultation, we are not aware of same.

In essence, the legislation seems to have been drafted in an attempt to get around that federal authority to legislate in the area of aboriginal law. It is our respectful submission to you that in an attempt to so do, the language that has been put in the act has been too broad. As a result of which, we must raise our objection to you about the legislation.

* (1910)

We really have received no information to date on the nature or the proposed framework of the aboriginal court. How it is proposed to function, how it will work, what its intent is, where it will be held, how it will be held, how often it will be conducted, we have no information on. The purpose to be served by these amendments, we do not know. Is it intended that the prosecutors and the Legal Aid defence counsel will merely serve to run through a docket on a daily basis or a weekly basis or a monthly basis, set trial dates, and then have trained lawyers act as counsel on the trials? We do not know that. Is it intended that indeed trials will be conducted by paralegals? We do not know that. All we have seen is the legislation, and again I reiterate and emphasize that it is our respectful submission to you it is simply too broad and ought not to be considered by the Legislature in that regard.

The one last concern that I must express to you is, as indicated in my letter, a concern that was expressed by Dr. Claudia Wright, who is a Ph.D in political science, a professor at the University of Winnipeg and one of the lay benches for the Law Society of Manitoba who, when the matter was debated at the benchers' meeting in June of 1993,

expressed the specific concern from her perspective that, indeed, a second-class level of justice is being established in this particular piece of legislation. If indeed it is intended to be for aboriginals and aboriginals only, then in essence legislation of this nature, where lawyers are not going to be called upon to represent the accused or represent the government in the Department of Justice as prosecutor, sets up a system that simply is not of the nature that ought to be permitted under the circumstances.

In conclusion then, members of the committee, I would respectfully submit to you that the legislation that is before you is too broadly worded, does not indicate anywhere that it is the nature or the purpose of the legislation or the fact that it will be restricted to certain types of circumstances, can of course be expanded at any time in the future to permit paralegals to appear in Provincial Courts on any types of offences or child welfare custody matters at any time in the future. The provision for general supervision by lawyers, I would respectfully submit, is not sufficient.

The Law Society, for example, provides that students of law who of course have been through law school and graduated must work under the control, supervision and general authority of a lawyer. This particular piece of legislation does not even provide that. It is broadly based and indicates merely that there shall be general supervision, so it is trite to say that any person who is not a lawyer or not a student of law can attend on their own and act on behalf of the accused or act as prosecutors on offences, and as long as they are acting under the general direction of someone back in Winnipeg or Brandon or Thompson or wherever it happens to be, then that would fall within the purview of this legislation as presently worded. There is no reference whatsoever to control but merely to general direction and supervision. I would respectfully submit to you that it is too broad.

Subject to any questions that any of you may have of me, either of my remarks this evening or, in the alternative, from the letter that I sent to the minister, that completes my submission to you.

Mr. Chairperson: Thank you very much, Mr. Abra. Are there any questions for the presenter?

Mr. Neil Gaudry (St. Boniface): Mr. Chairperson, I would like to say thank you for the good presentation made by Mr. Abra.

You mention that it could be a second-class justice system. What are you referring to when you are saying that? Are you referring to the northerners or to the aboriginal community?

Mr. Abra: No. In essence what I mean, sir, is that there will be nonlawyers acting in aboriginal courts, from what we understand; whereas the justice system, if indeed it is intended in the future, is still conducted of course in other centres including Indian reserves at the present time by Legal Aid lawyers, lawyers representing aboriginal people and lawyers prosecuting the offences.

The rationale that we can see for this legislation is to, in essence, remove the system that is presently already taking place in the aboriginal communities in Manitoba and permitting a different system to be brought in of nonlawyers and yet enforcing, presumably, the laws of the province and, of course, the Criminal Code.

Mr. Gaudry: Are you suggesting any recommendations for amendments or that the bill should not pass at this time?

Mr. Abra: That the bill ought not to pass, sir. We are quite prepared to consult with the minister and the members of his department or whoever with respect to appropriate legislation under the circumstances. We were not consulted about this legislation. As I say, we have not received any input at all on how it is proposed that the aboriginal court will work. It is merely by hearsay that we know that this bill even pertains to an aboriginal court. As I say, there has been no consultation in that regard.

Without knowing the basis upon which it is proposed, the aboriginal court will work or the framework or how often it will function and how it is intended to function, we are in a vacuum. What we see before us is a bill that is very broad in its language, very broad in its scope, of course, is not restricted to an aboriginal court. It is for that reason that we express our concern to you.

Mr. Gaudry: Are you aware if the aboriginal community was consulted on this bill?

Mr. Abra: I am not aware they were. My information was to the contrary. That is my information, but you may know better than I, sir.

Ms. Marianne Cerilli (Radisson): Thank you for your presentation. Have you received any explanation of the reasons for the government bringing in this bill?

Mr. Abra: No, other than, as I say, we have met with Mr. MacFarlane who has certainly been candid with us as to the nature of the legislation. We have seen nothing in writing. We received the bill. We expressed our concern to Mr. MacFarlane, met with him and then wrote the letter that is before you. [interjection] Well, what I mean, sir, is that the bill was sent to us. At our behest, we requested a meeting with the minister who was unavailable, and Mr. MacFarlane was good enough to meet with us. At the time that we received the legislation, we received nothing else by way of explanation or purpose or whatever.

Ms. Cerilli: Do you have some idea of your own of the intention or the reasons for bringing in the legislation?

Mr. Abra: Other than what I have been told by Mr. MacFarlane? No. As I say, we understand the purpose is in support of the aboriginal court system. I had indicated there is nothing in the legislation that indicates that, and Mr. MacFarlane has, of course, confirmed that for us. Mr. MacFarlane is the one who has advised us that the purpose of the provision in the amendments saying subject to the provisions of the Criminal Code is to restrict it to summary conviction offences. We were not even aware of that until we received that word from Mr. MacFarlane.

Mr. Chairperson: Thank you.

Hon. James McCrae (Minister of Justice and Attorney General): Thank you, Mr. Abra, for coming today and making your presentation tonight.

On the issue of consultation, I wish to be clear that there has been pretty extensive consultation about the concept of our aboriginal court model, certainly with many, many, many aboriginal, Metis, and other communities. Also, prior to your ascension to the head of the Law Society, sir, I did at one of our regular meetings with your predecessor and the executive director of your organization—this was many months ago now, but I cannot tell you precisely what the date was.

* (1920)

Mr. Abra: January of 1993, sir, I was at the meeting.

Mr. McCrae: You were at that meeting?

Mr. Abra: Yes, I was.

Mr. McCrae: Well, the matter was discussed at that time. I do not know quite what you mean when you say there was no consultation, because as you will know if you read or heard what was said in the Legislature when this bill was introduced at second reading, you will know that this aboriginal court model is in the process of being planned and organized, and consultation is very much part of that.

Are you saying that it did not come up at the meeting that we had in January?

Mr. Abra: I certainly stand to be corrected by your recollection. My recollection is that you had announced the prospect of the establishment of an aboriginal court. At the meeting that we had with you, which of course we attempt to have on a fairly regular basis, and you have always been very kind about meeting with us, but we raised the issue with you that we had read about the aboriginal court, and what was the intent of the government in that regard, what was the nature of the court as you foresaw it.

At that point, it is my understanding, at least certainly to my recollection, although again, I stand to be corrected, you indicated that the matter was still very much in the planning stages, that you were examining the concept, that you were committed to the concept, but at that point it was still very much in the planning stages. That is really the discussion that took place to my recollection.

Subsequent thereto, we had a meeting, and in fact, if I recall correctly, you advised us to consult with Chief Judge Kris Stefanson, as he then was, because he was responsible for the implementation of the aboriginal court. In a meeting subsequent to that with Chief Judge Stefanson that my predecessor Barbara Hamilton and I attended, we raised the issue of the aboriginal court with Chief Judge Stefanson. Again, he told us it was still very much in the planning stages. There was not much he could tell us about how it would function, that there was a committee that had been established to study the issue, but at that point there was not really very much he could tell us. That is all we learned.

He, then, of course, was appointed to another court. The next thing we heard was Bill 40 was faxed to us by the Legislative Counsel's office—just Bill 40, there was no other explanation given to us.

Mr. McCrae: Yes, I do not want to put too fine a point on the matter, but my recollection is that,

without getting into a lot of detail about the plan because the plan still is not implemented, and this bill is to assist us in making preparations, that my recollection is that I made the point that any nonlegally trained persons would obviously have to be operating under the direction of legally trained persons as set out in this bill.

So I think what you are maybe complaining about today is not that there was not consultation but perhaps your view of the quality of that consultation.

Mr. Abra: That is a fair statement, sir.

Mr. McCrae: Is that fair?

Mr. Abra: Yes, certainly.

Mr. McCrae: Okay, that is fair. I can accept that, because I am the first one to tell you that we are not in a position tomorrow to put the concepts contained in this bill into effect, because as I will set out, we have further work to do in our own planning, in our own discussions with the federal government, which you raised in your presentation. I must tell you the federal government has been involved in consultations with us. The federal government is a key player in this, and we fully expect to have federal support, both morally and financially, for this project.

I just wanted to point out that indeed there has been consultation with the feds, and I know that because I have been involved minister to minister in those consultations. I am just trying to cover—maybe the right point, Mr. Chairperson, to deal with these issues is when we get into clause by clause when I get an opportunity to make some introductory comments, but I might say something with which Mr. Abra wants to take issue and I want to give him a chance to go at me if that is the way it should be.

You did make the comment that what is to stop a legally trained, i.e. a lawyer, coming in for the defence, and would there not be an imbalance with that kind of person acting for the defence with a paralegal acting for the Crown. My response would be that the Crown Prosecutions office, being in control of prosecutions in this province, the way the court system works, obviously the Crown is in a position knowing that there might be a fully legally trained person acting for the defence to place the case in the hands of a fully trained prosecutor. I mean that is there and available to the Crown. We have to remember that the paralegals we are talking about will be paralegals working for Legal Aid Manitoba or for the Public Prosecutions Branch of the department and working under the supervision of lawyers who are employed by the government.

You referred to the jurisdictional problems, and you are correct in pointing that out. That is why we cannot place in the bill that these provisions are there strictly for the purpose of having an aboriginal court model, because that might give us some jurisdictional problems, I am advised.

You referred to a purpose being served, and in your presentation, with due respect, I do not believe you put forward an alternative mechanism for achieving the ends that we want to achieve. I want to speak for a moment just about what those ends are.

The Aboriginal Justice Inquiry was told by, I think, virtually hundreds of presenters who came before it over the three years that it did its work, and they were told by many, many people representing many, many communities some of the following things. They were told that the courts today place no priority on band by-law cases. The AJI was told that more aboriginal justices of the peace and magistrates are required as well as improved training. The AJI was told that circuit courts are held in non-native communities even though aboriginal people are overrepresented on court dockets. The AJI was told the trials should be conducted in the language of the First Nations member. The AJI was told that decision making is most effective if it takes place within the context of the community in which the offence occurred. They were told that the courts would benefit from the knowledge and experience of elders, and their wisdom should be given full consideration in the courts.

Those were the things that they were told. Our present system, the one that is embraced in The Law Society Act as we see it today, represents what we have had in this country for many, many years. The aboriginal court model that we are going to be proposing makes a significant effort toward addressing those very concerns that have been outlined to the Aboriginal Justice Inquiry. The department, in the course of our preparations for this and for the implementation of our aboriginal court model, has consulted with 62 communities. By contrast, those communities told us that they consider the court model to be an excellent method and first step in addressing the limitations of current

justice services. We heard that from Cross Lake, Gods River, Gods Lake, Nelson House and Wabowden.

We were told that the ability of the court model to meet our specific needs and concerns is commendable. Court sittings would now be held in our communities. We heard that from Norway House, Powerview, Manigotagan and Berens River.

The West Region Tribal Council told us that the ability to conduct the court's proceedings in the language of the participants would make a significant contribution in enabling our members to understand the justice system. On and on it goes.

What I am trying to get at is does the Law Society have on its rolls sufficient members who are aboriginal and who live in aboriginal communities and speak aboriginal tongues to do the job that we are trying to do here as a government in consultation with 62 aboriginal communities? I think the answer to that is, there are not very many if there are any at all.

What I am saying is that this second-class judicial system that one of the members of your organization is talking about would describe our present system—a second-class system. I agree with them.

I wanted to put those things on the record in response to what you have had to say. I wanted to do it while you were still here so you had an opportunity to respond, so I did not just leave my comments on the record and did not hear yours in response to mine.

Mr. Abra: Sir, there are just a couple of comments that I would like to make in response to what you have just said.

* (1930)

The first and most important aspect, as far as I am concerned, is that you have said to me, this is the first step in the establishment of the aboriginal court, and once we have passed this legislation, if it is passed, then we will go ahead and establish the framework for the aboriginal court. It is my respectful submission to you, if we had a framework that we could examine and see what is proposed and what is intended by the court and the shortcomings that you are attempting to overcome and the manner in which you foresee the court functioning and then the legislation is the last step, that might be a different story.

What we are in the position of receiving is a statute that is very broad, without any indication whatsoever as to how it is intended to fit into the concept of the aboriginal court. That is the concern that I express to you. If we had something before us that we knew the nature of the concept that you propose or how you hope to do it or whatever, that would be a different scenario. What we have is legislation.

I think what I hear you saying, although please do not hesitate to correct me if I am wrong, is that you want the legislation first and then you will decide how to create the court after that. If I am wrong then I apologize. Certainly, we have seen nothing that advises us as to how you propose or see that this aboriginal court will function. It is that concern that I express to you.

Once the framework has been put together and the court has been designed and we have information on the manner in which it is to function, then the legislation might mean more to us. At this point, we see very broad legislation that has implications of course much beyond an aboriginal court, because there is nothing in it that restricts it to an aboriginal court for the reason that you have indicated.

I am aware of the concerns that were expressed to the Aboriginal Justice Inquiry, and I am somewhat familiar with the report, although certainly not to the same extent that you are, sir. I think we are all aware that many of the proposals and recommendations that are contained in the report do require federal involvement. Some of the legislation that is recommended by the Aboriginal Justice Inquiry simply cannot be done on a provincial level. It has to be done, obviously, by consultation. It has to be done by agreement with the federal government, because I think it calls for some federal legislation in that regard.

You have advised me this evening there has been consultation. I am sure there has. We do not know what it is. We do not know what the federal intent is in this regard, whether or not there is to be corresponding federal legislation to assist you in the establishment of your aboriginal court. These are all areas that we are basically dealing with in a vacuum, sir, and it is for that reason that we are opposed to the legislation.

Again I reiterate, and I do not want to deal with the matter at too much length and unduly repeat myself, but as I say at this point we see

amendments to two statutes that are very broad. We do not know how they are proposed to fit into your concept. As I say, other than what we have been told by the deputy minister who has been very candid with us, we do not even know that it is restricted to the aboriginal court other than that is obviously the intent of it, but there is nothing in there that says so.

As indicated in my letter to you, that I expressed the concern that there is nothing to say in the future at some point that it cannot be expanded beyond the ambit of your hoped for aboriginal court—

Mr. McCrae: I am sorry. Were you finished, Mr. Abra?

Mr. Abra: No, that is fine.

Mr. McCrae: I just want to go back to this first step business. It is by far certainly not the first step. A lot of work has already been done. I am sure if you had discussed this further with former Chief Judge Stefanson, he could have told you in more detail about the kinds of proposals that we have been talking about.

Do not forget, we have not gone to these aboriginal communities with our plans etched in stone. That is the way it has been done in the past. We have told aboriginal communities what we were going to do to them and then went about doing it. That has all changed. We are going to do it different. We are determined that we are going to do it differently this way so that we can have some acceptance, some ownership and some partnership. Otherwise, we can play around with new ideas and they will never be accepted either unless there is a sense of some ownership and partnership and participation in what we are proposing.

I want to tell you that the proposals do talk about an incremental way of getting to more jurisdiction into the future, but for today our discussions have been confined only to criminal matters and not child and family matters at this point, have been confined to summary conviction matters only. It has also been clear in our consultations with aboriginal communities that those who feel their rights would be better served by using the existing system will have those rights respected. There is no requirement for any federal legislation to allow this model to work.

So you can look at your Criminal Code, and whatever it is we are going to do is going to work within the context and the ambit of the Criminal Code of Canada with the exception of the amendment we are making to the Law Society act here in Manitoba. I guess it is not the Law Society act, it is the Legal Aid Act and the Crown Attorneys Act.

You need to know, or should know, that the Legal Aid lawyers association have been consulted and are co-operating in this endeavour. The Crown attorneys association of Manitoba is in the same category as is the judiciary, the provincial judiciary, certainly, here in Manitoba. Will these changes be restricted only to aboriginal courts? That is certainly our intention, but even if it were not, by the law that is written it can go no further than Legal Aid Manitoba or the Public Prosecutions Branch of my department in any event. It cannot be expanded to the rest of the legal community because it is set out very clearly that it deals with supervision by employees of the government in the Crown Prosecutions office or by employees of Legal Aid Manitoba. There are those restrictions that are relatively clear as you read the legislation.

The bill is very short, and I am just here to tell you that the government has no plans to use this legislation beyond use in our aboriginal court model. We do need the legislation, however, in order to get us on our way. As I say, we have consulted 62 communities. We have learned that there is an overwhelming dissatisfaction with the first-class system that we have now. All of the communities we have been talking to, who are the ones who are going to be the consumers of this particular service, do not see what we are proposing as a second-class service. They are overwhelmingly positive in their response to what we have been discussing. That being said does not mean that there is any problem in my view for consumers of legal services in this province. If they do not desire to work with their elders and their local magistrates, their local prosecutors and their local defenders, they do not have to.

If you look at what is going on at St. Theresa Point you will see that for a dozen years or so, I do not know of any—maybe you know of some complaints that have come to the Law Society as a result of the operations in St. Theresa Point which is pretty well entirely an aboriginal operation from start to finish. They set it up. We had nothing to do with it, and yet we fund it as a government because we support it. We have had only a small handful of

cases referred over the past dozen years or so from that St. Theresa Point aboriginal court to the provincial system.

I think that if we do not break out of this mold where we do not want to see any change, we are really going to end up with another aboriginal justice inquiry about 40 years from now telling us that we sat on our hands for the past 40 years and did nothing. I have already been accused by the New Democrats of tinkering with this—

Floor Comment: They would not do that.

Mr. McCrae: Well, I am sure once they think it over they will want to withdraw that, but that is what they have been saying recently, that we are just tinkering. I know that the Assembly of Chiefs were lined up to come here, and I do not know if it was to support or not support, but the information I have is that they have spoken very positively in the past about the proposals that we are making.

I say those things more or less to respond specifically to some of the things you said, but this is definitely not a first step. We are well into this process, and it is at this time the policy of this government to restrict it to the aboriginal court model with the proviso that I said a few minutes ago. We do not need federal legislation, but we do need federal financial participation which has not been committed yet, but we hope that will happen soon.

Mr. Chairperson: If there are no more questions for Mr. Abra, I would thank you very much for your presentation this evening.

Mr. Abra: Thank you for your attention.

Mr. Chairperson: Is it the will of the committee to complete consideration of Bill 40? That is the end of the presenters on Bill 40.

An Honourable Member: Agreed.

Mr. Chairperson: Do any members of the committee have any comments or opening statements on Bill 40?

* (1940)

Hearing none, we shall move into consideration of the bill. As is practice, consideration of the Title and Preamble will be postponed until all clauses have been considered in their proper order.

Clauses 1 to 6 inclusive—pass; Preamble—pass; Title—pass. Bill be reported.

Thank you, that completes consideration of Bill 40.

Bill 44—The Alcoholism Foundation Amendment and Consequential Amendments Act

Mr. Chairperson: Is it the will of the committee to consider Bill 44? [agreed]

Do any committee members have any comments or questions on Bill 44 before we move into clause-by-clause consideration?

Hon. Darren Praznik (Minister of Labour): Mr. Chairperson, I am here tonight on behalf of the Minister of Health (Mr. Orchard) who is the sponsor of this legislation.

It is a very short bill. Briefly, there are three parts to it. The first is to change the name of the Alcoholism Foundation to the Addictions Foundation. I believe this was requested by that organization in keeping with changes in language and purpose of the organization.

There are also two other changes as set out in the proposed new Sections 14(1) and 14(2) as well as the proposed new Section 15.

Section 14(1) deals with confidentiality. I believe the purpose was to update this statute to put in an onus or a requirement of reasonable keeping of confidentiality of information that is provided to them.

Section 14(2) of course allows for statistical information to be used for research purposes.

The proposed Section 15 is to provide, in reasonable cases, immunity from action against the staff and directors and management of the new Addictions Foundation in their work, which I am sure in this increasingly litigious age becomes important to that organization in the carrying out of its functions.

Mr. Chairperson: Are there any other comments?

We will then move into consideration of clause by clause. As is normal practice, the Title and Preamble are postponed until all clauses have been considered in their proper order.

Clauses 1 to 8 inclusive—pass; Preamble—pass; Title—pass. Bill be reported.

That completes consideration of Bill 44.

Bill 27—The Environment Amendment Act (2)

Mr. Chairperson: The last bill before the committee this evening is Bill 27.

Do the committee members have any questions or comments on the bill before we move to clause by clause?

Ms. Marianne Cerilli (Radisson): I just have a few brief comments with respect to the bill. We have expressed a number of concerns about the regulation that it is somewhat of a compromise, and we are going to give the government the benefit of the doubt on this and support the legislation.

We would have liked to have seen a permit system, and we have some concerns that there still could be an accumulation of smoke contamination from stubble with provisions in the bill, but we are willing to give the legislation a chance. We are also concerned, to some extent, that so much of the powers are in regulation and—

Mr. Gaudry: Too much power to the minister again.

Ms. Cerilli: The member for St. Boniface is correct. This is becoming a trend with the government. With that, I will conclude my remarks.

Hon. Glen Cummings (Minister of Environment): I would expect this will pass expeditiously despite the vigourous opposition of the official opposition, but there will be an amendment in Section 5, strictly a wording change.

Mr. Chairperson: Now we are in clause by clause. As is the practice, the Title and Preamble are postponed until all clauses have been considered in the proper order by the committee.

Clause 1 to 4 inclusive—pass.

Mr. Cummings: I move, in both languages.

THAT section 5 of the Bill be amended by striking out "coming into force of the regulation" and substituting "coming into force of this Act".

[French version]

Il est proposé que l'article 5 du projet de loi soit amendé par substitution, à "l'entrée en vigueur de ce dernier, ", de "l'entrée en vigueur de la présente loi,".

Motion presented.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed.

Clause 5 as amended—pass; Clause 6—pass; Preamble—pass; Title—pass. Bill as amended be reported. That completes consideration of Bill 27.

I thank all committee members for their expeditious handling of the committee matters this evening.

COMMITTEE ROSE AT: 7:47 p.m.