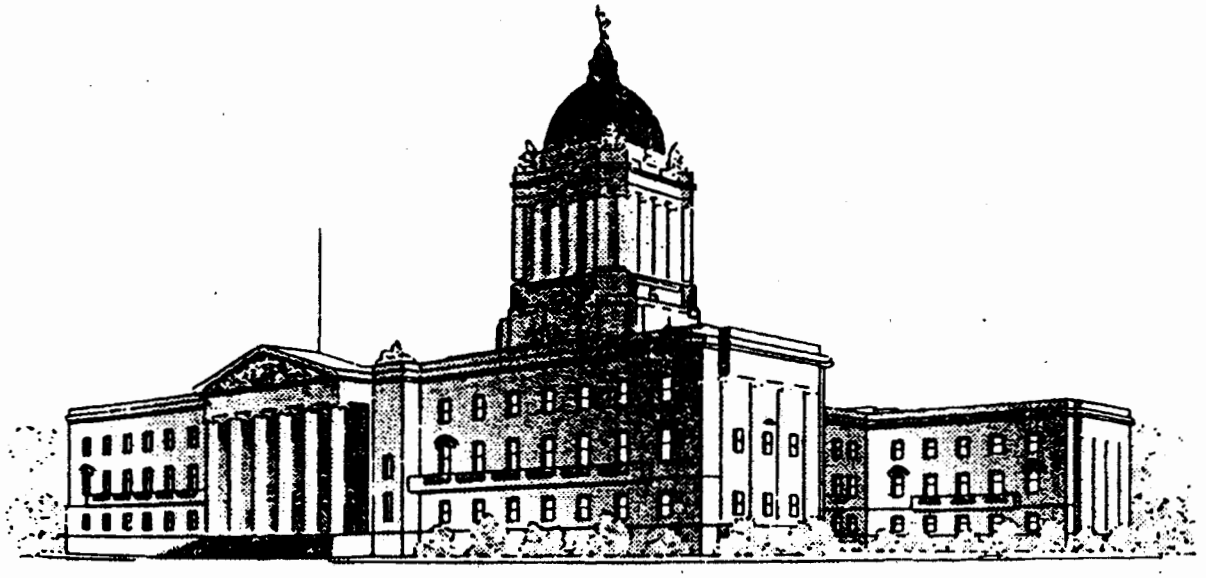
Fourth Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee on Law Amendments

Chairperson
Mr. Jack Penner
Constituency of Emerson



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Thirty-Sixth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, June 25, 1998

TIME – 3 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Toews

Messrs. Ashton, Dewar, Mrs. Driedger, Messrs. Dyck, Helwer, Mackintosh, Maloway, Penner, Sveinson, Tweed

MATTERS UNDER DISCUSSION:

Bill 46–The Correctional Services Act

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Mr. Chairperson: Would the committee please come to order. This afternoon the committee will be considering Bill 46, The Correctional Services Act. So far we have had nobody register to make presentations. Can we consider this bill in both languages simultaneously and also the amendments? [agreed]

There are no presenters, and, seeing none, is it then the will of the committee to proceed to clause-by-clause consideration? [agreed] Does the minister have an opening statement?

Hon. Vic Toews (Minister of Justice and Attorney General): No.

Mr. Gord Mackintosh (St. Johns): I wonder if the minister has any amendments that he will be proposing to the bill.

Mr. Toews: Yes, there are some amendments to 1(1), 43 and 59(1).

Mr. Chairperson: Should we proceed then to consideration of clause by clause?

Mr. Mackintosh: I have a number of questions for the minister. Perhaps it would be best to deal with them in advance of going clause by clause.

Mr. Chairperson: Does the committee agree that we deal in advance with the questions? [agreed]

Mr. Mackintosh: My questions follow on our comments on second reading.

Mr. Toews: Which I have read.

Mr. Mackintosh: The minister says he has read them. There are some questions that flow from that. The first is an issue with respect to dealing with gangs and recognizing gangs as a distinct challenge to our correctional system. Gangs are not mentioned in this bill. It does not of course mean that they cannot be dealt with by this bill, and indeed I expect that they will be. I understand that gang co-ordinators are now in place in at least some correctional institutions, but there is nothing in here in particular with regard to any protocol to deal with the challenge of gangs, the supervision of gangs or consequences for gang activity or recruitment in correctional facilities.

I am wondering if the minister can explain the absence of protocol in respect of gang activity.

Mr. Toews: There is in fact quite a bit of attention devoted to that issue, perhaps not stated explicitly, but I think it comes down to what the purpose of legislation is. I think what we need to do is to have legislation that can in fact accommodate government policies to deal with those particular issues, even just to talk about the issue of gangs.

What does it mean to be a gang? Does it mean to be the mafia? Does it mean to be a street gang? Does it

mean to be another type of a gang? We know that just in terms of the gangs in Manitoba, they can range in organization, they can range in sophistication. So to even talk about that as a term I do not think will serve any purpose. I think what the member can do is look, first of all, at our regulations. I would refer him to Manitoba regulation 227/92 as well as some of the announcements that were made earlier in 1997 in respect of gang regulations to regulate gang activity.

The regulation I refer to specifically deals with offences, disciplinary offences, that deal with engaging in activity that promotes or encourages the creation of a gang or the activities of a gang, including the display of an item associated with a street gang or any other gang, also issues related to telephone calls, because we know that the gangs will use telephones to contravene court orders, make threats or other activities, including the carrying on of illegal activity. So I point to the member that the act, both past and certainly this one, does accommodate that type of regulation to ensure that gang activity is in fact discouraged.

I do want to also point out certain other sections that will be very helpful in the context of suppression of gangs relating to the program at Section 13(1)(d) of the bill, as well Section 41, which deals with segregation, and Section 42, which deals with earned remission. So I think if one goes through the act, there has been a great deal of attention paid by my staff to the issue of gangs and ensure that the appropriate legislative and regulatory authority is there to ensure that we deal with what is a serious problem in provincial institutions right across Canada.

Mr. Mackintosh: The bill goes on to talk about contracting out and privatization in several sections beginning in the Definitions section. I look at Section 7, for example. I would like to hear from this particular minister what the government's intention is in terms of privatization, first with regard to the privatization of correctional facilities. I know his predecessor was absolutely clear on the record that the government had absolutely no plans to move towards privatization of correctional facilities. Is it the minister's position that that policy is continuing?

* (1610)

Mr. Toews: I thank the member for the question. I would indicate that there is no change in government policy. There is reference in the act to ability to contract with community organizations and other organizations who, in the past and in the future, will in fact participate with Corrections in ensuring that we provide the appropriate services to both prisoners and the community

I would refer the member specifically to things like the community participation agreements and the open custody homes, for example. I know that the member's party had some concerns in the House dealing with open custody homes. Now, in fact one could call that contracting out, but we consider that a very important aspect of Corrections policy, that community participation in Corrections is essential.

The other point that I think relates to the member's concern that was raised the other day in the House was regarding the Aboriginal Justice Inquiry. In order to accommodate many of the requests to ensure appropriate representation by aboriginals in the management of the Corrections system, not simply as prisoners but indeed the management of the correctional system, we do need that flexibility.

The member may well know, because I have said it in public, that we are continuing to have discussions with members of the aboriginal community to see whether there is some room for management by aboriginals of one of our correctional facilities, specifically Egg Lake. Now, I do not know if the member considers that to be privatization. I consider that to be working in conjunction with the aboriginal community to ensure that they, consistent with the Aboriginal Justice Inquiry, have a meaningful input into the management of our correctional system.

So with those few comments, I think it indicates that there is no change in policy but in fact an ongoing effort to involve the community. I do not have any plans or intentions to go beyond that type of activity. So if the member thinks for any reason that this proposed act signals a change in direction of the government's policy, it is my position that it does not.

Mr. Mackintosh: The second area that we are concerned about with regard to contracting is in the

area of such services as probation, where, for example, in the ISSP program, there are a number of maybe four or five or six individuals who are under contract to provide essentially probation or supervisory services. As I said in the House, we are concerned that this is detracting from the ability to develop a specialized full-time cadre of public servants in this specialized area. What is the intention of the minister in terms of expanding on contract employees working in the Corrections division?

Mr. Toews: As the member knows, that program is a very, very successful program, the ISSP program. The people that have been contracted to provide some of those services work under direct supervision of a probation officer, and it provides us with the flexibility to ensure that issues of public safety are met. We know that many of these individuals who are released from correctional institutions, especially youth institutions, require a structured release. This ISSP program provides that structured release to specific individuals, and these people who provide the service then under the direction of these correctional staff in fact are performing a very important function.

My intention is not to replace the professional staff that we have. I know that the staff that we have are very, very good staff. I point to the member, that he may well be contributing to contracting out of certain types of work. I know that he is very actively involved in the St. John's Youth Justice Committee. In fact that type of work is work that in some cases has traditionally been done by the probation officers. I would think that the member from St. Johns, as a participant, knows youth justice committees, would not see himself displacing probation officers but in fact working with probation officers. I see these types of developments similarly assisting probation officers to ensure that the issues of public safety are met.

Mr. Vice-Chairperson in the Chair

Mr. Mackintosh: I do not quite understand the minister's argument that we are contributing to contracting out. I certainly support a full-time staff probation officer as a liaison officer for St. John's Youth Justice Council, and that should be a core function. If there are needs elsewhere, then they should be met.

My question now is with regard to the status of probation officers under the current legislation, because, as the minister knows, the words "probation officer" are now eliminated. I suspect there may be some sense on the part of people who provide that service that there is at least a thread in the legislation that they are now part of a generic cadre of officials to be known as correctional officers, and the legislation appears to suggest that there be some movement towards a single-position description or perhaps some interchange of probation officers and what is known as correctional officers today.

I wonder if the minister can explain, first of all, why probation officers are no longer acknowledged in the legislation.

Mr. Toews: Mr. Chair, I would indicate that we certainly value the services of probation officers and indeed continue to rely very extensively on their expertise. However, the term "correctional officer" is a generic designation which does not distinguish between persons working in an institution or in the community. That distinction can and will continue to be made on a working-title basis.

I would indicate that throughout a number of related acts we have seen those types of changes in designation rather than in any type of substantive change. It does, I think, provide for a more easily understood piece of legislation. So it is a legislative tool, for one. Secondly, just in that context, one can look at acts like the Young Offenders Act where they do not talk about probation officers, they talk about youth workers. In respect of conditional sentences, I believe it is under the Criminal Code dealing with conditional sentences, they talk about supervisors, they do not talk about probation officers. In fact, in Manitoba many of the people who would then supervise a conditional sentence would be a probation officer.

So I think that it is an issue that might well cause some concern. It is certainly not intended to diminish in any way the professionalism of our probation officers, and that distinction can continue in the sense of working titles and may also be reflected in collective agreements.

* (1620)

I know, for example, in my own experience as a Crown attorney, there was some concern many, many years ago that certain Crown attorneys felt that other Crown attorneys should not have the designation of Crown attorneys because they did not do criminal work. I know that as working titles, some of them would be called criminal prosecutors, some would be called departmental solicitors, but for the purpose of the collective agreement, they were all called Crown attorneys. In fact, the Manitoba Association of Crown Attorneys reflects a more generic kind of a term. The situation is not exactly analogous, but there are many, I think, very practical and positive reasons why this is done. I certainly do not take it from any of the comments made by my staff or government policy generally that what we are trying to do here is somehow to diminish the professionalism of our staff in any way.

Mr. Mackintosh: So can the minister then clarify that probation officers as they are currently known will continue to be known as probation officers?

Mr. Toews: There may well be changes as matters occur. I am not aware of any changes to call probation officers something else as a working title. There may be reasons. For example, I know that under the act we have what is called a Commissioner of Correctional Services. In fact, the Commissioner of Correctional Services is a designation that we use under the act. But I, in fact, am not changing my assistant deputy minister or creating a new level of bureaucracy. He will still be the assistant deputy minister, but for the purpose of the act he will be known as the commissioner.

Mr. Mackintosh: Another issue to clarify: will the minister put it on the record that he does recognize the distinct expertise that probation officers have, distinct from correctional officers as they are currently known?

Mr. Toews: Certainly I acknowledge that, if I could call the term loosely then, a prison guard has very different qualifications from a probation officer. Yet there may well be similarities for the purposes of administration. This is not to say that there are inflexible standards or bars barring one group from doing other work in appropriate cases. I think that has to be done and looked at on a case-by-case basis.

Mr. Chairperson in the Chair

For example, and again I refer to my own experience in the civil service, when I started out as a criminal prosecutor, I moved then to legal services and I moved then to constitutional law. The work involved in each of those areas was very, very different. The titles were different, and yet there was a measure of flexibility. I know, for example, that staff in one branch will be used to consult with staff in others. There is the same concern, I think, that some staff might say that an adult jail guard or prison guard–and that might not be a politically correct term anymore; I do not know; I am certainly not trying to be offensive to anybody–may not be the same as a guard in a youth institution. Yet I think the member will admit that there are many similarities. When you go into the youth institution, a guard in the youth institution might have many similarities with a probation officer. So there are always degrees of similarity, and I think my staff has to be very, very sensitive in ensuring that, as we attempt to be flexible to ensure that the public is getting the service that they need and that inmates are receiving the care that they need, we continue to be sensitive to that concern.

Mr. Mackintosh: On the final point of clarification: can the minister clearly indicate that there is no plan to amalgamate the functions of correctional officers as they are now known and probation officers?

Mr. Toews: I am advised that there is no plan. I am certainly not familiar with any plan.

Mr. Mackintosh: The legislation removes the status from probation officers as officers of the court. I am wondering what the minister understands to be the effect of that and the purpose of that.

Mr. Toews: Well, I think we could have a long discussion on that issue. I can start by saying that no person can serve two masters. Clearly, the probation officer is an employee of the provincial government. The probation officer is not an employee of the courts. So that needs to be made clear.

I would say, however, that the probation officer, in performing certain duties in respect of the court, has, I think, a very special relationship to the court. Again, I refer to my own experience in the public service. When I was a Crown attorney, my allegiance or my employing

authority was the provincial government. When I appeared in front of the court, I was, for all intents and purposes, also an officer of that court and I had certain duties in respect to that court. I do not see that changing. Those probation officers certainly have a duty to the court when they prepare a report that their professionalism is relied upon by the court. We need to be sensitive to that issue, but I think the legislation makes clear, and I think in deference to the independence of the courts, that these individuals are not employees of the court. They are separate and apart from the court.

I think that, as this discussion about the independence of the judiciary moves along, we have to be mindful of many of these issues. I do not say that that was a motivating factor in this legislation, but I think it is something that we have to constantly be alert to.

Mr. Mackintosh: I think a challenge arises when there is a conflict between instructions from an administrative level that conflict with directions from a court through an order. I am wondering how the minister sees it being reconciled once the legislation is changed and removing the status of officer of the court from probation officers. It would appear that, under the current regime, when there is such a conflict, the court order would take precedence because they are specified as officers of the court.

Mr. Toews: Well, I think that, and I can refer to in the context of the court staff, the courts clearly understand that there are certain judicial functions that some of our justices of the peace or magistrates perform. In that context, any concerns are always the concern of the court. In respect of issues relating to employment or administration unrelated to the independence of the courts or the judicial function, then the responsibility lies with the government. The same problems and concerns arise with anybody appearing regularly in front of the courts.

A defence lawyer, for example, is faced with exactly the same problem. Not only does a defence lawyer and a Crown attorney, I might imagine, have an obligation to the courts and to the client but also an obligation to the Law Society. So those are interests that have to be dealt with in a very co-operative fashion, and there is a hierarchy of priorities. Generally speaking, deference is given to the courts.

But, for example, where an employer of a lawyer says to do one thing and the Law Society says do another, I would say that in most cases it would be the Law Society's dictates that would govern. I think, depending on the issue, we have a similar hierarchy of responsibility and accountability.

* (1630)

Mr. Mackintosh: Of course the status of officer of the court for lawyers comes, you know, comes from law, and here we are apparently removing from law the status of probation officers as officers of the court. So we have a concern about this, and I think, for example, of the event where the courts said there shall be an intermittence sentence served here and the administrative directive is that intermittence sentence shall not be served at Headingley. I am looking back on that issue.

If there is a conflict then surely the order of the court should prevail. As well, as an officer of the court, of course probation officers have obligations to be forthright with the court, and so on, although I would think there there may be other sanctions that would apply. I just wonder what overwhelming reason there is to remove the status. I am concerned in part of the unknown and concerned in part on the basis of the issue of a conflict which may override the order of a court, which in society should be the overriding directive.

Mr. Toews: I am advised and I certainly agree that it has to do with the independence from the courts as to how to administer a sentence, so the example that the member gave is a very good one. The courts do not administer sentences. Courts sentence, but they do not administer the sentence. For example, there is no authority for a court then to direct a prisoner to go to a particular prison. I think what this is doing is clarifying that these officers, probation officers, will have certain responsibilities, but they do not carry out the supervision of the sentence on behalf of the court.

Once the court sentences, by and large their jurisdiction ceases unless there is some reconsideration of that sentence, and that occurs in a different context.

So this is not done in disrespect, I do not think, to either the probation officers or the courts. I think though that it is clarifying that it is government that is responsible for the supervision of sentences, including the location where sentences are served.

Mr. Mackintosh: The legislation allows for the imposition of fees for programs. As I said in the House, it raises a spectre of fees being applied to individuals who are unable to pay and therefore it is a prerequisite to take away the ability to change the behaviour of an offender with a particular program. I am just wondering what the purpose of putting fees in here is. Is it the plan of the government to institute fees regardless of ability to pay, which will have the effect of endangering public safety by removing program availability and access?

Mr. Toews: No, I do not think that is the government's intent at all, but it is enabling legislation. We certainly do not look favourably upon the imposition of fees, which would then result in issues of public safety. I cannot point to any concrete examples now about areas where we would be imposing fees, but I know the member in his speech talked about the programs as a consequence of drinking and driving, for example. In AFM you pay certain fees for those types of programs, for example the john school, where someone who has been picked up for the first time for communicating for the purpose of prostitution is then sent to a john school. That person pays for going to that program. I understand it is quite a hefty fee.

I would also point out that the prostitutes, or janes, as we might call them, although prostitutes are not necessarily of one sex or another, do not pay fees. It was the government's concern that those people specifically needed the help and usually did not have the ability to pay. So what we are doing in that context is making sure that the johns pay for the janes, but again, no intention to deprive these janes of appropriate programming.

Mr. Mackintosh: The minister knows of course of our detailed proposals with regard to victim involvement in correctional issues as set out in our bill before the House, and the minister has of course rejected that scheme. He has acknowledged the need for victim involvement to some extent in correctional matters in the government's bill, however. There is nothing in this bill with regard to victim notification, about consultations before release, about notification of escape, for example, to victims.

I notice that there is notification to persons, I believe, beyond law enforcement officials. I am wondering if the minister could explain why the victim is again being left out of this bill. I say so as well, drawing attention to a project that he should be aware of. The John Howard Society is currently engaged in a contract with SolGen to pilot victim involvement in correctional issues.

Mr. Toews: Yes, I had occasion to discuss that issue with members of the John Howard Society at their annual meeting a few days ago, and certainly commend that organization for the very, very positive role that they are playing in our community. Indeed, we will watch with interest the development of some of these programs.

I might indicate that the member is not entirely correct when he indicates that this act does not deal with disclosure to victims. I would refer the member to Section 56 of the act, but I would also refer the member to Section 10 of Bill 43, which deals extensively with this issue. The purpose of Bill 43 was to consolidate services to victims so that victims were not paging through various acts–or even administrators did not know what their responsibilities were vis-a-vis victims. Bill 43, dealing quite extensively with victims, was felt to be the more appropriate place to deal with this particular issue.

I know it is very, very difficult in having rights set out in all types of statutes, because what invariably happens is that different statutes, especially if they are administered by different people, then are interpreted in different ways. We have seen in Manitoba just recently in this House the consolidation of The Employment Standards Act. Now that was an issue that I was very, very concerned about for years, starting out as a solicitor for the Department of Labour back in about 1980, where there were a number of acts. Because of the fact that they were different acts but related acts, there was tremendous confusion, both administratively and legally. I know that his government, in 1985, commissioned a report on the amalgamation of The

Employment Standards Act, and that was known, I believe, as part two of the labour law review, conducted by Marva Smith.

Certainly, when I was Minister of Labour, I renewed the need for that type of consolidation. The concern again was that one tries to put issues that deal with one subject in one act so that there is administrative simplicity, convenience, not only for the administrators, but for the people whom the legislation serves. So we have tried to do that here as well, although I do acknowledge that Section 56 does, I think, deal with victims' issues, but I think it is very complementary of Bill 43's efforts.

Mr. Mackintosh: We have significant concern with Section 20, which now appears to provide for two layers of discretion when it comes to breach of probation orders. I am wondering if the minister has any opinion as to whether or not that section actually is in conflict and, therefore, apparently, ultravires given Section 733.1 of the Criminal Code, that it goes beyond and conflicts with the test of reasonable excuse.

* (1640)

Mr. Toews: In fact, it was intended to reflect what Section 733.1 says. In fact, my understanding of a judge interpreting this legislation then would simply be that it would be interpreted in such a way as to be consistent with the federal legislation that talks about the failure to comply with a probation order without reasonable excuse. So the intention here is not to contravene the Criminal Code or contradict the Criminal Code, but to specifically acknowledge that there is some element of discretion in the Criminal Code, and so we wanted to be sensitive about that.

One of the things that we are doing in this particular act is by giving structure to that discretion, because Section 20 specifically talks about the right to set up a plan, is it, or a program that outlines how discretion could be exercised, and so my admonition to staff would be to ensure that the discretion always be subject to the overriding concerns and overriding authority of the Criminal Code. I think it addresses, in fact, the concern that the member himself raised in his speech.

He indicated, and I do not accept this, that he knows that probation officers are too often not enforcing probation orders. I think Section 20 now will allow the commissioner to set plans that will give a structure and a uniformity to that discretion to assist probation officers in carrying out their duties.

So this is meant to be complementary, not contradictory, of the code, and I can only assume that a court will interpret it in that fashion, as I trust the probation officers will as well.

Mr. Mackintosh: Section 41(2) takes away the right of MLAs and judges, apparently including the minister, to visit a correctional facility during a lockdown. I am wondering why the minister is doing that, and I also remind him that it appears to be restricting his abilities to go into the facility at that time. There may be an overwhelming reason for an MLA, judge, or minister in particular to enter a facility specifically during a lockdown.

The member for Burrows (Mr. Martindale) and myself visited Headingley on a matter of public policy, a significant matter of public policy, as the minister knows, going back to the fall I think of '96. During that time the facility, I understand, was under lockdown. So we have an actual experience where two MLAs were in a correctional facility during a lockdown, and there was certainly no threat at all to the safety. In fact, we, as a result of a request made to the O/C, assured ourselves that there would be no difficulty for either security or administrative reasons by our attending on the premises and getting a tour. In fact, the tour was done very generously and thoroughly.

So I am wondering if the minister would reconsider this in light of this consideration.

Mr. Toews: Well, the difficulty that I find myself in here is that I would not want to second-guess what professional staff do in a correctional institution. I have the highest of respect for correctional officers who work in these very, very difficult situations, and the worst thing that I could do as a political figure with absolutely no expertise of the kind required to run a correctional facility would be to impose myself into that situation. I think that could cause danger to other inmates, danger to the guards, and danger to others. I

think that the proposals here are, of course, tailored to deal with temporary situations. I can only say that I would defer to the professionalism of the staff in these types of situations, as they will have to justify whether the actions are in accordance with the regulations.

Now the regulations may be more expansive to allow access by MLAs. I do not see for myself a problem with the MLA being allowed to enter certain parts of a facility in certain situations, even if there is a lockdown in other parts of that facility. But I do not want to create a danger by imposing myself into a correctional facility where other professionals might consider that it is not a wise thing to do.

So cabinet, in considering the regulations in this respect, will certainly be guided by the wording that the Legislature passes, and certainly the head of a custodial facility could only temporarily shut down those facilities to deny access to an MLA or a judge. I think that I am not prepared at this time to make any recommendations in that respect.

Mr. Mackintosh: I regret that, because even following the Headingley riot the lockdown was characterized as temporary. The legislation is taking away a right from the minister, from MLAs, from judges. Of course, that right is there because correctional facilities, indeed during a lockdown, perhaps specifically during a lockdown, have to be open to some checks and balances, some accountability to the greater public. These institutions cannot be removed from scrutiny.

I understand the minister is assuring us that the commissioner is going to be the assistant deputy minister of Corrections, and the person in that position is Mr. Graceffo. Is that the minister's intention?

Mr. Toews: That is my intention.

Mr. Mackintosh: The minister's attention was drawn to the Aboriginal Justice Inquiry recommendations to ensure the right of access to spiritual services that are unique to aboriginal peoples in the case of that particular report. It talked about the need to recognize the status of elders as being equivalent to chaplains. I am wondering if the minister has a view on that recommendation and how he sees this legislation dealing with that.

Mr. Toews: It is my understanding that native elders do, in fact, have the same status as any other chaplain. Certainly the intention is not to change that in any way.

Mr. Mackintosh: It has been pointed out from time to time that there is a lack of programs and effective programs to counter the threat and spread of AIDS, HIV, hepatitis C among prison populations. Preventative measures and programs to counter this are important in any correctional service, I would think. I am wondering if the minister can advise what he thinks of that view and what measures he thinks this legislation embrace.

* (1650)

Mr. Toews: I can indicate that that is an issue in respect of correctional institutions right across Canada. In fact, I had the opportunity of attending a conference at 181 Higgins, at the Aboriginal Centre, which, I believe, is the name of the building. I believe Mr. Rempel was there as well. You were not. Who was it? I am sorry, it was not Mr. Rempel. It was Mr. Wolfe. It occurred last year, that particular conference talking about AIDS and HIV in correctional facilities. We listened to a very important video that dealt with that particular problem, involving an interview with an individual from a correctional institute in British Columbia.

I know that federal and provincial authorities are dealing with this very serious issue, and all I am prepared to say on that issue at this time is that the act provides sufficient regulatory capability to deal with that problem in a very, very broad and far-reaching way.

Mr. Mackintosh: I tend to the view that is of such importance that the legislation should do more than enable it.

I want to ask the minister what the intention of the department is in uniforming inmates. I see in the legislation there is an enabling provision there that specifically notes that uniforms can be ordered. What is the minister's or the department's policy on uniforms, currently and proposed?

Mr. Toews: Mr. Chairperson, the issue of uniforms can be sometimes quite contentious. I know that in certain institutions some inmates do wear uniforms. For example, in Agassiz, I believe, some of the youth there wear uniforms or at least standard clothing that identifies them in a general way as inmates.

I think it is important, though, that we have the enabling legislation. If that is seen to be a desirable policy in one particular institution or another, it, in fact, can be ordered, but I want to say that it is a sensitive issue, needs to be dealt with very, very sensitively, similarly with the smoking policy. We have dealt with that, I think, in a proactive way, recognizing that there are a lot of interests involved.

It is an ongoing issue. There are all kinds of security concerns that arise out of the implementations of certain types of policies, and we need to be sensitive to those. So the intent here is to ensure that, if we decide to go in a particular direction in respect of this particular policy, we have the legislative authority to do that.

Mr. Mackintosh: The legislation does not appear to accommodate the use of electronic bracelets. I know the minister has been urged by different parties, and I think even of a justice or two on the Court of Queen's Bench, to institute a policy for use of electronic bracelets. I am wondering if the minister believes that that is accommodated in the legislation. If so, what is the government's intention with regard to the use of electronic bracelets or monitoring?

Mr. Toews: I would refer the member to Section 42(2), which, I think, addresses that particular issue. I know that issue is being considered from time to time by our staff, and I know I have recently raised it with members of staff in respect of a particular issue where I think it might be helpful.

I also note that extensive studies have indicated that electronic monitoring has not accomplished what the goal was of electronic monitoring, that is, to reduce the number of people in prison. What, in fact, the studies indicate is that there is inappropriate overmonitoring of people who do not really need the monitoring. So it is not a simple issue. I think I can state that I do not believe that this is an issue that can be dealt with by anyone but Corrections. Corrections is the appropriate authority to deal with that issue, and it is for the same reason that I express some concerns about the whole issue of risk assessments. Again, I feel that Corrections has the appropriate ability to make that assessment, to determine whether or not risk assessments, in respect of particular individuals, are accurate.

I think that in this case as well what I can say–and again, I do not want to exclude the courts from this issue–but the indications are, I am advised, and certainly my reading on this issue indicates that this is an issue that should be developed by Corrections to monitor sentenced prisoners. The determination of who is an appropriate prisoner to be electronically monitored is one that correctional officials have to have a great deal of input into. I am not excluding the courts from that, but certainly my review of the literature indicates that that is the most effective authority in dealing with that particular issue.

Mr. Mackintosh: I want to put on the record that we recognize that the main challenges and issues in respect of Corrections are not mainly legislative in nature, but rather policy related and resource related. In particular, I think of the need to ensure resourcing to prevent crime in the first place, resourcing that will ensure behaviour changes for the better, resourcing at the community level, adequate resourcing for probation officers–and I am not just talking about the ISSP program.

So, with those comments, those are broader policy issues. Those are the questions and comments we have on the bill, and we are prepared to proceed to clause by clause.

Mr. Toews: I have just one final comment in respect to that general comment. I certainly want to thank the Scurfield committee, both management and union members who are working together to address some of the issues that were raised by Mr. Justice Hughes in his inquiry. One of the issues there does deal with the issue of staffing. So I appreciate the comments of the member and his critique of the legislation, generally.

Mr. Chairperson: Gentlemen, members of the committee, Bill 46, The Correctional Services Amendment Act. As is commonly practised, we will

set aside the title and the preamble and the table of contents, and we will then deal with Clause 1(1).

Mr. Minister, I understand you have an amendment.

Mr. Toews: I move

THAT the definition of "offender" in subsection 1(1) be amended by adding the following after clause (c):

and includes an individual who has not been convicted of an offence but who is subject to the terms of a court order which requires the individual to report to or be in communication with a correctional officer;

[French version]

Il est proposé que la définition de "contrevenant", au paragraphe 1(1) du projet de loi, soit amendée par adjonction, après l'alinéa c), de ce qui suit:

La présente définition vise notamment tout particulier qui n'a pas été déclaré coupable d'une infraction, mais qui fait l'objet d'une ordonnance du tribunal qui l'enjoint à se présenter devant un agent des services correctionnels ou à être en communication avec lui.

Motion presented.

Mr. Mackintosh: What kind of person would this relate to? Who would be subject to the terms of a court order but has not been convicted? Are we talking about judicial interim release? Are we talking about other preventative protective orders? I cannot remember the name that Mr. Allan Rock introduced into the Criminal Code. I wonder if the minister can explain what this is intended to address.

Mr. Toews: This is intended to deal with individuals on interim judicial release, at least that.

Mr. Chairperson: Amendment–pass. Clause 1(1) as amended–pass; Clauses 1(2) to 42(2)–pass. Clause 42(3). I understand there is an amendment. For Clause 43, there is an amendment.

Mr. Toews: So you have passed 42 then?

Mr. Chairperson: Yes.

* (1700)

Mr. Toews: Okay. Yes, I move that section 43 be struck out and the following be substituted–and I am wondering whether it can considered as read in both languages.

Mr. Chairperson: It has been moved by the honourable minister that Section 43 be struck out–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. And it will be recorded as presented.

THAT section 43 be struck out and the following substituted:

Search
43(1) *A search of an individual, place or property within a custodial facility, or of an offender under supervision of a correctional officer outside a custodial facility, may be conducted in accordance with the regulations or as otherwise permitted or required by law.*

Seizure
43(2) *A property or substance may be seized and dealt with or disposed of in accordance with the regulations*

(a) where possession of the property or substance by the person in whose possession it was found or in the circumstances in which it was found is prohibited by the regulations or by the rules established under section 25;

(b) where there are reasonable grounds to believe that the property or substance may, or may be used to, adversely affect the health or safety of a person or the security or maintenance of order within a custodial facility;

(c) where it may be evidence of or relating to a disciplinary or criminal offence; or

(d) in any other prescribed circumstances;

or as otherwise permitted or required by law.

Regulations respecting search or seizure
43(3) *A regulation respecting searches or seizures under this section may be made to apply to all custodial facilities or to specified custodial facilities or specified areas within custodial facilities.*

[French version]

Il est proposé de remplacer l'article 43 du projet de loi par ce qui suit :

Fouilles
43(1) *La fouille d'un particulier, d'un endroit ou de biens qui se trouvent à l'intérieur d'un établissement correctionnel ou celle d'un contrevenant placé sous la surveillance d'un agent des services correctionnels à l'extérieur d'un tel établissement peut se faire en conformité avec les règlements ou de toute autre façon que permet ou qu'exige la loi.*

Saisies
43(2) *Il est permis de saisir des biens ou des substances et d'en disposer en conformité avec les règlements, ou de toute autre façon que permet ou qu'exige la loi :*

a) si les règlements ou les règles prises en vertu de l'article 25 interdisent la possession de ces biens ou de ces substances par la personne en la possession de qui ils ont été trouvés ou dans les circonstances dans lesquelles ils ont été trouvés;

b) s'il y a des motifs raisonnables de croire que ces biens ou ces substances peuvent soit porter atteinte à la santé ou à la sécurité d'une personne ou à la sécurité ou au maintien de l'ordre dans l'établissement correctionnel, soit être utilisés à cette fin;

c) s'ils peuvent servir à prouver une infraction disciplinaire ou criminelle ou avoir trait à une telle infraction;

d) dans les autres circonstances prévues par règlement.

Règlements concernant les fouilles ou les saisies
43(3) *Les règlements concernant les fouilles ou les saisies faites en vertu du présent article peuvent s'appliquer à l'ensemble des établissements correctionnels, à des établissements correctionnels désignés ou à des parties désignées d'établissements correctionnels.*

Mr. Mackintosh: What is the intention of the amendment?

Mr. Toews: Yes, the staff from the Constitutional Law branch has offered an opinion that the section, as it was drafted, was not fully appropriate. That is, there were some deficiencies, and I believe they might have related to constitutional issues, given that they are the Constitutional Law staff that gave the opinion, and therefore should be amended. They indicate this is a critical section that requires broader authority and more defensible wording. I would say that that is meant in a constitutional sense.

Mr. Chairperson: Just so committee understands. This amendment strikes out 43 and adds 43(1), 43(2) and 43(3). Amendment–pass; 43 as amended–pass; 44–pass. 45 to 58(2)–pass.

Mr. Mackintosh: On what basis are the amendments being passed? They are not going clause by clause or page by page.

Mr. Chairperson: We are going from the previous amendment, passing all the clauses to the next amendment that has been identified to me, unless there is objection to that process. I should have probably asked at the outset of the committee whether we wanted to do it in that manner. We did that yesterday, and it worked quite well.

Mr. Mackintosh: It is my understanding that the standard practice is that the committee would vote clause by clause unless there is an agreement to do otherwise. I am certainly amenable to doing otherwise, but somehow we went from Section 1 to Section 43–

Mr. Chairperson: Yes, we did.

Mr. Mackintosh: –and we did not give consent to that.

Mr. Chairperson: What I should have done is–at the outset of the committee, you should have asked whether it is agreeable to do that. I ask that now: is it agreeable to do that?

Mr. Mackintosh: It serves the same purpose, but we are not in favour. We oppose Section 20 as proposed for the reasons outlined. As well, I will just make it known for the record that we oppose Section 41(2)(b) in the sense that it restricts MLAs and the minister and judges or it takes away a right there. So I just want that issue to be recorded.

Mr. Chairperson: Agreed? [agreed] And I hear you. Are we agreed to then passing 43 to 58(2)? [agreed] Clause 59, I understand we have an amendment.

Mr. Toews: I move

THAT subsection 59(1) be amended

(a) by striking out clause (w) and substituting the following:

(w) respecting searches under subsection 43(1);

(b) in clause (x), by striking out "prohibited property or substances found within custodial facilities" and substituting "property or substances for the purpose of subsection 43(2)".

[French version]

Il est proposé que le paragraphe 59(1) du projet de loi soit amendé:

a) par substitution, à l'alinéa w), de ce qui suit:

w) régir les fouilles que vise le paragraphe 43(1);

b) dans l'alinéa x), par substitution, à "des biens et substances dont la possession est interdite et qui sont trouvés à l'intérieur des établissements correctionnels", de "de biens ou de substances pour l'application du paragraphe 43(2)".

Mr. Chairperson: Amendment–pass; item 59(1) as amended–pass; items 59(2)-62–pass; title–pass; preamble–pass, table of contents–pass. Bill as amended be reported.

Committee rise.

COMMITTEE ROSE AT: 5:05 p.m.