First Session - Thirty-Seventh Legislature

of the

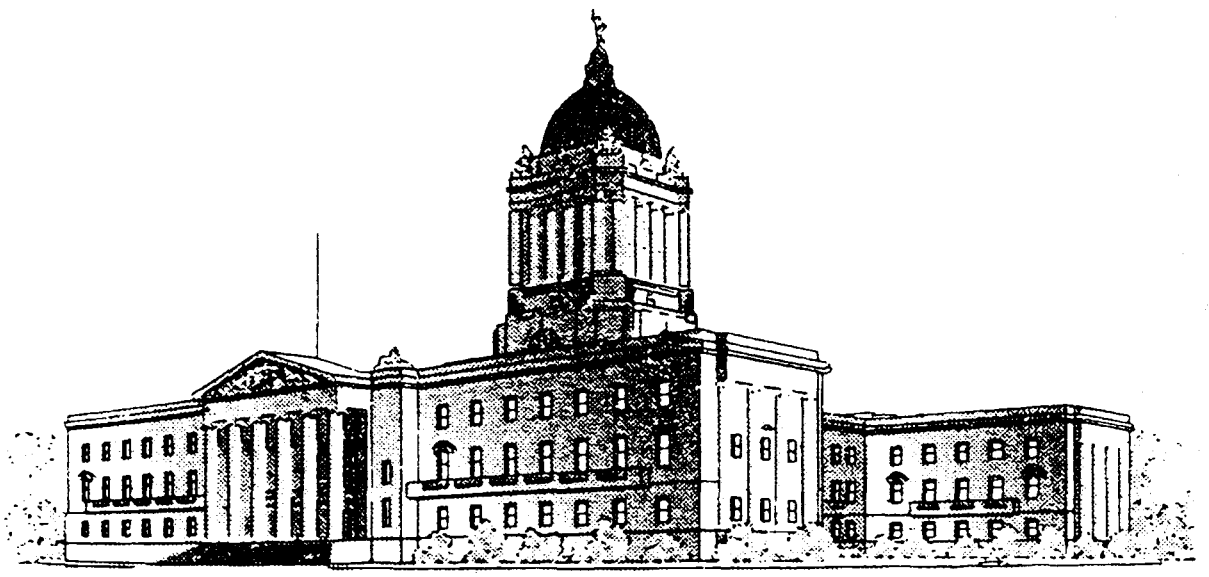
Legislative Assembly of Manitoba

Standing Committee

on

Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



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Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON LAW AMENDMENTS

Wednesday, July 19, 2000

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Doug Martindale (Burrows)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Lemieux, Hon. Mr. Mackintosh

Ms. Asper, Messrs. Jennissen, Loewen, Maloway, Martindale, Penner (Steinbach), Pitura, Praznik, Rondeau

WITNESSES:

Bill 32–The Victims' Rights Amendment Act

Mr. Ken Mandzuik, Manitoba Association for Rights and Liberties

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act

Mr. Josh Weinstein, Manitoba Association for Rights and Liberties

MATTERS UNDER DISCUSSION:

Bill 8–The Enforcement of Judgments Conventions and Consequential Amendments Act

Bill 10–The Cooperatives Amendment Act

Bill 22–The Court of Queen's Bench Surrogate Practice Amendment Act

Bill 23–The Jury Amendment Act

Bill 24–The Personal Property Security Amendment and Various Acts Amendment Act

Bill 32–The Victims' Rights Amendment Act

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act

Bill 39–The Insurance Amendment Act

Bill 40–The Business Names Registration Amendment, Corporations Amendment and Partnership Amendment Act

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

This morning the Committee will be considering the following bills: Bill 8, The Enforcement of Judgments Conventions and Consequential Amendments Act; Bill 10, The Cooperatives Amendment Act; Bill 13, The Taxicab Amendment Act; Bill 22, The Court of Queen's Bench Surrogate Practice Amendment Act; Bill 23, The Jury Amendment Act; Bill 24, The Personal Property Security Amendment and Various Acts Amendment Act; Bill 25, The Interpretation and Consequential Amendments Act; Bill 26, The Court of Queen's Bench Amendment Act; Bill 27, The Correctional Services Amendment Act; Bill 28, The Northern Affairs Amendment and Planning Amendment Act; Bill 30, The Social Services Administration Amendment Act; Bill 32, The Victims' Rights Amendment Act; Bill 33, The Highway Traffic Amendment and Consequential Amendments Act; Bill 34, The Statute Law Amendment Act, 2000; Bill 36, The Summary Convictions Amendment Act; Bill 39, The Insurance Amendment Act; Bill 40, The Business Names Registration Amendment, Corporations Amendment and Partnership Amendment Act, and that is all.

We do have presenters who have registered to speak to Bill 32, The Victims' Rights Amendment Act, and Bill 33, The Highway Traffic Amendment and Consequential Amendments Act.

It is the custom to hear public presentations before consideration of bills. Is it the will of the Committee to hear public presentations on Bill 32 and Bill 33 first? *[Agreed]* In what order do you wish to hear the presentations?

An Honourable Member: Numerical.

Mr. Chairperson: Numerically.

Bill 32–The Victims' Rights Amendment Act

Mr. Chairperson: I will read the names of the persons who have registered to make public presentations this morning: Bill 32, Ken Mandzuik, representing the Manitoba Association for Rights and Liberties.

Mr. Mandzuik, would you like to take the podium. Do you have copies of your brief?

Mr. Ken Mandzuik (Manitoba Association for Rights and Liberties): Yes, I do.

Mr. Chairperson: The page will distribute. Please proceed.

Mr. Mandzuik: Thank you. Good morning, Mr. Minister, Mr. Chair, honourable members. I am happy to be here on behalf of the Manitoba Association for Rights and Liberties to comment on Bill 32, the proposed changes to The Victims' Rights Act.

I will start by saying that MARL supports efforts to keep all involved in the justice system informed of their rights and educated, to keep them informed about cases that are going on that affect them. At the same time, we want to make sure that the rights of the accused are fully protected, and the cases of Messrs. Milgaard, Morin, Marshall and Sophonow remind us how important it is to protect the rights of the accused.

The first point that I would like to address is the preamble, and because the preamble is used as an interpretative guide by some judges, we would like to see some reference to the rights of the accused made in the preamble. In my brief I have suggested one change, just recognizing that the rights of complainants and victims should be recognized, but at the same time we should pay heed to the rights of the accused.

Another concern that MARL has is in respect of the reference to victims throughout the Act and in the Definitions section is that because many of the events that are discussed in the Bill happen pre-conviction and even pre-charge, the use of "victim" is somewhat loaded. It almost implies that a crime has been committed and it has been committed by a guilty individual. We suggest that the use of a more neutral term 'complainant' for all events happening pre-conviction is going to remove that perception.

Section 4 talks about the right to give opinion on alternative measures and release, and this is discussing law enforcement agencies consulting with complainants and victims of crime on whether people should be released and whether they should be sent to pre-charge alternative measures.

The problem that we have with this is that by asking the law enforcement agencies, the police, to consult with a complainant in these situations is fettering their discretion. This is the discretion that the Criminal Code has given the peace officers, and to have the victims and complainants potentially affect that discretion is in effect a fettering of that discretion.

I have enclosed a portion of section 497 of the Criminal Code. There are similar sections which say that the police must release an accused unless certain conditions are met. One of those things to consider is that the peace officer has reasonable grounds to believe that it is necessary in the public interest to keep an accused in custody. So by asking the peace officers to consider the victim's wishes or the complainant's wishes, it is going contrary to the Criminal Code. So not only is there a fettering, there is a potential paramountcy concern.

The same applies for alternative measures. There are provisions in the Criminal Code that already say peace officers should consider the

interests of society and of the victim. So, again, this has already been addressed by federal legislation and it is repetitive. I do not know that the alternative measures would be a paramountcy concern. It is not contradicting, but it is not necessary in any event. So MARL suggests that this section can just be removed.

Probably the largest concern that MARL has with the bill concerns section 14, and that is the right to be consulted about prosecution. I will repeat what I said earlier that MARL supports keeping complainants and victims fully informed of their rights and keep them aware of what is happening as their cases progress through court, or cases that affect them progress through court. I think to a very large extent, the Crowns are very good at keeping people informed. They will do what they can to make sure that complainants are aware of their rights, the possibility to go to Victims Services and that sort of thing. I think they are doing a fine job in that and I think section 13 already speaks to keeping complainants informed of their rights.

But when we get to section 14, it is saying that prosecutors must consult complainants and victims of crime, and the concern is the same as in section 4 that by asking the prosecutors to consult with complainants, their discretion is going to be fettered. I have excerpted a definition from the Oxford English Dictionary on "consult." That definition reads: "To ask advice of, seek counsel from, to have recourse to for instruction, guidance or professional advice; also, to seek permission or approval from a person for a proposed action." So under that definition, under the common meaning of "consult," it looks like the complainant has some actual impact, has some say in what decisions the prosecutors are going to make. If the Crown's discretion is fettered, that is going to have an impact on the rights of the accused.

Historically, the retribution for crime would come in the manner of blood feuds. If someone did something to me, I and my family would go and exact revenge or get money out of that person. One of the great steps that society has made is getting away from that, putting the power to look after these wrongs, they put that power into the king. The king was in charge of protecting the public, so we are getting away from blood feuds, getting away from what Hobbes described as a "brutish, nasty and short" existence into a more civilized society, and by doing that we give it to the impartial king or the Crown.

The Law Society of Manitoba in its code of conduct recognizes the Crown must remain impartial. In chapter 9 governing the lawyer as advocate, they have a commentary specifically relating to prosecutors, and that reads in part: When engaged as a prosecutor, the lawyer's prime duty is not to seek a conviction but to present before the trial court all available credible evidence relevant to the alleged crime in order that justice may be done through a fair trial upon the merits. The prosecutor exercises the public function involving much discretion and power and must act fairly and dispassionately.

The Supreme Court of Canada has recognized the prosecutor's job as well. In 1955, Justice Rand wrote: It cannot be overemphasized that the purpose of a criminal prosecution is not to obtain a conviction. It is to lay before the jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. The role of the prosecutor excludes any notion of winning or losing. His function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be performed with an ingrained sense of a dignity, the seriousness and the justness of judicial proceedings.

* (10:10)

So the Crown has the legal and ethical responsibility to prosecute cases on behalf of the community and not on behalf of a complainant or a victim. By asking the Crown to consult with the complainant or victim, that role is being changed. That role can come into conflict with the prosecutor's ethical duties, their professional duties. When this discretion has to be exercised now, in light of the accountability and complaint process, it is putting all the more pressure on the Crown to change their decisions or possibly have their discretion exercised knowing that if they exercise their discretion in a manner contrary to the complainant's wishes, they could be called to task. They can have a report filed and say: Why did the Crown not oppose this bail?

So it is MARL's respectful submission that this section simply be removed. Section 13 covers keeping complainants informed of their rights, their rights to make victim impact statements. Their rights to be kept informed of court appearances and that sort of thing, which is fine. MARL has no problem with that and encourages that, but as soon as we get the victims involved to a point where they were going to affect how a case is prosecuted, the Crown is in effect becoming an advocate for the complainants and that historically is not the way it has been done, and our submission should not be done.

Two other minor points that MARL wanted to raise. Section 19 allows complainant to be informed of the general destination of a person after they have been released from custody. Our concern is that if someone has, to use the cliché, paid their debt to society, they should be allowed to get back into society and do what they can to get set up and contribute to the community again. If their general destination is known to the complainant or the public more generally, that transition can be all the more difficult for the offender.

Lastly, on section 25, this gives right to free and independent counsel for complainants involved in a mill's application under section 278.3 of the Criminal Code. The concern here is that nobody else gets free access to lawyers. The poor people in society that are accused of crimes apply for legal aid. If someone is wealthy enough to afford their own lawyer, they do not get free counsel even if they are ultimately acquitted. So we do not think that it is appropriate that this certain segment gets free legal consultation when nobody else does. They already have access to legal aid, and this section is not therefore necessary. That is my submission, and I am available for any questions Members may have.

Mr. Darren Praznik (Lac du Bonnet): Just a couple of questions. First of all, I think, you have a very good assessment about the history of our justice system. I would agree wholeheartedly that the purpose of taking justice under the power of the king was to insure that it did have impartiality and did not perpetuate blood feuds. I am particularly interested in some of your comments regarding the right to be consulted on prosecution. I take it changing the word "consult" to "advice" would in essence make section 14, in your opinion, the same as section 13?

Mr. Mandzuik: Yes.

Mr. Chairperson: Mr. Mandzuik, sorry. I need to recognize you every time.

Mr. Mandzuik: Yes.

Mr. Praznik: So that in essence then, this section 14 is an add-on above the right to be reasonably informed about a prosecution.

Mr. Chairperson: Mr. Mandzuik, sorry, I need to recognize you every time.

Mr. Mandzuik: Yes.

Mr. Praznik: Right, so that in essence then, this section 14 is an add-on above the right to be informed, reasonably informed, about a prosecution. It is now taking it one step further, where you have some role to play in exercising the discretion that has traditionally been for hundreds of years in our system, that of the Crown attorney.

Mr. Mandzuik: That is right.

Mr. Praznik: I also would like to refer you to section 7 of the Act, Right to information about investigation of an offence. My reading of this particular section indicates that the head of a law enforcement agency has to provide that information, and I quote, "unless doing so could unreasonably delay or prejudice an investigation or prosecution or affect the safety or security of any person."

There is no provision here for the discretion. My reading, at least, is that this is tested by an outside objective inquiry as opposed to the view of the head of the police force and that it could in fact interfere with, particularly if judged in hindsight, the conduct of an investigation. Would you share that view?

Mr. Mandzuik: I am actually not sure. That was not a section that had raised concerns with us.

As I said before, keeping people informed of cases that affect them is something that MARL supports and I do not think derogates from the rights of the accused. Whether it is an objective test or a subjective test, I do not know that keeping people informed is necessarily going to affect the rights of the accused.

Mr. Praznik: So I take it that your objections then could be summarized by indicating that portions of this bill, you are not opposed to the rights of a victim or complainant to have information about what is going on in the process, the right for restitution, the right to be able to recover property, et cetera, but where MARL will disagree is where it steps over the line and gives that complainant or victim the right to have a role in the exercise of what, for hundreds of years, has been the discretion of the Crown attorney.

Mr. Mandzuik: That is a fair summary, yes.

Mr. Praznik: One last question, just looking through my notes–if I may just defer to the Member for Steinbach for a moment, then I will collect my thoughts for the last question.

Mr. Jim Penner (Steinbach): Mr. Mandzuik, in your submission, you raised questions about the use of the word "victim." I was just wondering if you would explain to us when does a complainant become a victim.

Mr. Mandzuik: In our submission a complainant becomes a victim once an accused has been found guilty of an offence. Before that, a crime has not been committed in a court of law. Until then, an accused is presumed innocent. By calling someone a victim, that presumption of innocence can be affected.

Mr. Jim Penner: So would you suggest, then, that the Bill be named a complainants' bill of rights, a complainants' rights amendment act?

Mr. Mandzuik: That is getting into areas of maybe policy and politics that are not my place to comment on, but the specific sections themselves that refer to victims in circumstances preconviction, we submit, should be changed to complainant.

Mr. Jim Penner: I would like to think, then, that we are dealing with two separate issues here: one that deals with complainants and one that deals with victims.

Mr. Mandzuik: I think it all comes down to the same thing: keeping people informed, which is what the bill does. If we keep people informed, then it is fine, but the problem is, when you call them victims before someone has been convicted, then we are putting a skew or a spin on the whole thing, but it is the same thing for both.

Mr. Praznik: Just on the same point, and this was my last area of questioning. Is the concern here one that should the complainant, the person who has indicated or claimed that a crime has been committed when in fact one has not, when an individual is abusing the justice system by filing a false complaint, is your concern that that would give that individual access to the prosecution, the right to advise in a prosecution, when in fact that individual may in fact be the perpetrator of the whole event by filing a false claim–and that happens from time to time–that offence has occurred?

Mr. Mandzuik: I guess it does happen sometimes. That is what mischief is for, and I think the police have been vigilant on laying mischief charges in those kind of circumstances. But that is not a primary concern. The primary concern is that any victim or complainant has the ability to affect the Crown's discretion.

* (10:20)

Mr. Praznik: And what underlies that, of course, I mean there are two concerns, gathering from your presentation, that underlines that. One is that the traditional impartial prosecution traditionally held by the Crown is now interfered with. It is no longer so impartial; that is one. Part of that real concern, of course, is the influence on the victim/complainant when the crime, whether it was committed, in fact, or the extent to which it was committed, has not yet been adjudicated. That would be really the underlying part, one of the two reasons why this would be worthy of opposition.

Mr. Mandziuk: Yes, that is right.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thanks very much, Mr. Mandziuk, and I am pleased to see MARL still participating in these committee hearings. It has been one of the most long-standing and consistent providers of advice to the Standing Committees, and I appreciate that.

As you may be aware, I have had a long history with MARL as vice-president and, more relevantly, with Patients Rights Committee for six years before I was elected. My experience in dealing with the issues of patients' rights and the need to adjust the health care system to be more patient-centred approximates the interest that I have developed in victims over my years in opposition, and the need to re-jig the justice system in a better way around the needs of victims. I have thought back on many of the lessons that I learned with MARL over those years.

I commend you on your paper and the work of your committee. I can say that the issues that you have raised here have come up in discussions with stakeholders and partners, staff, as we have developed the legislation, both before I became government and after, more particularly.

I can respond to some of them now, and I might have some questions, but first, in terms of using the word "complainant" versus "victim." The word "victim" has been universally accepted as being an aptly suitable describer of someone who is subjected to an alleged crime, whether that is proven or not eventually. If we were to change the terminology, I am afraid it would be our view that the rights that would be available here could only flow after a conviction. In other words, one would have to prove beyond a reasonable doubt that there was an offender and that a crime had been committed.

Your concern about fettering the discretion of either a law enforcement agency or a prosecutor is one that we have attempted to recognize in the Act. You will note in the preamble, of course, that this new regime is within the general context of the law and the role of prosecutors and law enforcement agencies. There is nothing in this legislation from our interpretation which would say that the role of the victim in consultation is more than a voice. It is not a veto. We have consistently said it is a voice, not a veto. Prosecutorial discretion remains and the discretion of law enforcement agencies remains. What the difference is, and it is a significant difference, is that they will now be attuned to the concerns of victims and perhaps even more importantly they will be attuned to evidence that may be in the hands of victims. I look back at the Bauder case, for example, the 12-year-old babysitter that was raped by the person she worked for. There was a plea bargain entered into, completely out of the knowledge of the victim, the victim's family. There was information about the offender that would have made a significant difference to the plea bargaining and to the disposition of the court had it been known to the prosecutor.

We see the consultation as strengthening cases, strengthening insights, and strengthening the insights on the part of the victim about how the justice system works. Right now, aside from the media and people who go down to the courthouse, there are only jurors who really get to look inside the black box. We think now that this will certainly make a change in culture.

So, in answer to your concern that well, yes, being kept informed is a good step forward, we are saying no. We are going two steps forward. We are going beyond the information stage, to the consultation stage, but again it is a voice, not a veto.

The comment that the Crown has a responsibility on behalf of the community and not on behalf of the complainant though is a notion that we reject. The complainant is a part of the community, is a part of the public, is a part of the state, if you will, and is the most significant and affected party that is a part of the community. Therefore, there is a role accommodating the concerns of the victim as much as legally available. What we see here is not undoing any rights of offenders, but rather rebalancing and strengthening rights of victims. The Charter of Rights will remain, of course, for offenders.

So I think that generally responds to issues raised. I might just add that we will consider the submission further, and we will, in the time

leading up to the report stage consideration of the Bill. I think that the concerns raised here will also be concerns that will continue to be voiced as we move now into the implementation stage, which will require, I think, some significant education, if you will, for justice officials, for a culture change. That, as the Justice critic has noted in the House, is a real challenge. Yes, there have been changes made. It is part of a continuum, if you will, because we have had significant movement, for example, in dealing with family violence cases and the more serious cases in the courts. It has been sometimes on a hit-or-miss basis. My sense is that prosecutors and law enforcement personnel are very eager to move with this new legislation. They just need to know that we are there to support them with education and to afford them the time to fulfil their new duties. So, if you have any comment to that and in closing, thank you very much for a very considered presentation.

Mr. Chairperson: Does Mr. Mandzuik wish to respond?

Mr. Mandzuik: Yes. I thank the Honourable Minister for his comments. Just in brief response, we are not asking that. We do not submit that our changes to terminology victim into complainant for certain circumstances renders the ability to keep informed and educated about cases that affect people is only going to apply after someone has been convicted. If the complainant has that right, if it has changed the complainant, nothing else is going to change. Their rights will remain the same, and they will still have the rights to be informed. So I do not know that the concern that it would apply only after conviction would necessarily be a true concern.

As far as the fettering of discretion, you said it was intended to give complainants a voice but not a veto. The problem is that voice is affecting the Crown's discretion. Historically, the Crown has to be impartial; this is what has taken us out of the state of nature, out of the nasty, brutish and short existence, and so on. The discretion and the impartiality of the Crown are being affected. It might not be a veto, but it is still a voice that can influence the Crowns, and when the Crowns are threatened with complaints being made against them, that discretion is going to be fettered. And while the victim is part of community, the Crowns are not there to act as an advocate for that victim. That is exactly why we have vested power in the Crown to prosecute criminal offences. This is getting away from the vengeance and vendetta.

* (10:30)

Another point is: What happens when there is a crime where the complainant or the victim does not want to get involved? What happens if you have got a family that is especially vocal and outraged, as they are entitled to be? Why should that offender be treated anymore harshly than another offender accused of a similar crime where there are no complainants or victims on the scene advocating for harsher prosecutions? So those are the points that I wanted to raise. Thank you.

Mr. Praznik: Just rising out of the exchange, one question that comes to me: Is your concern with the interference in the traditional discretion of the Crown made even more or even deeper by the fact that we have had for some time, in Manitoba, zero tolerance policies that have required the Crown to prosecute even if they did not believe they had a case to prosecute?

Mr. Mandziuk: That is not something that is in the Bill and something that is worth considering and would be a concern.

Mr. Mackintosh: Just picking up on one point, you talk about vengeance or whether the victim could skew a case. The conviction, of course, will depend on the law and the evidence and prosecution's policies. At sentencing, however, as is currently the situation, the pre-sentence report and the offender have the right to put before the court evidence about the individual, and I have seen cases where there have been 20 or 30 letters of commendation, recommendations about an individual, about the sterling character of an offender and how the court should be lenient. Meanwhile, the victim and the impact on the family, perhaps a generation or two of the victim's family, are left out. I see it as part of the corrections system, the need for a message to go to offenders and the particular offender in a case about the reality of a crime and a wrongdoing, the impact on the community, on an individual,

because that, perhaps more than most other correction measures, can make a difference, can drive home to the offender that he or she has hurt someone, sometimes irreparably, that there was a consequence to the action. It was not a score in a video game. It was not a body count in a movie. This is real. I think the court has been too anesthetized with the system to which we have grown accustomed.

I think that this is exciting. I think it is a bold move forward, and I might just add that we, in the legislation, have put in a clause that requires a review of the legislation and its impact within five years of it coming into force. So we may be back again revisiting how well we have done and how our perspectives have borne out or have not.

Mr. Chairperson: Thank you, Mr. Mandziuk. Before I call the next presenter, Mr. Weinstein, who is also registered, I need to take care of some housekeeping duties that I forgot to earlier. If there is anyone else in the audience that would like to register or who has not yet registered and would like to make a presentation, would you please register at the back of the room. Just a reminder that 20 copies of your presentation are required. If you need assistance with photocopying, please see the Clerk of the Committee.

Before we proceed with the next presentation, is it the will of the Committee to set a time limit? No. *[Agreed]*

Did the Committee wish to indicate how late it is willing to sit this morning? I have heard twelve o'clock. Is that agreed? *[Agreed]* We will sit till 12 noon.

Bill 33–The Highway Traffic Amendment and Consequential Amendments Act

Mr. Chairperson: I will now call the next presenter, Mr. Josh Weinstein, representing the Manitoba Association for Rights and Liberties on Bill 33.

Mr. Weinstein, please proceed.

Mr. Josh Weinstein (Manitoba Association of Rights and Liberties): Good morning.

Mr. Chairperson: Mr. Weinstein, please proceed.

Mr. Weinstein: Mr. Chair, the Honourable Minister of Justice, I am speaking on behalf of the Manitoba Association for Rights and Liberties with respect to Bill 33.

Let me start by saying that MARL supports and acknowledges efforts with respect to regulation of the highways to keep them safe and also with respect to efforts to combat the effect that drunk drivers have on the safety of the public. However, this is my submission, that this must not be done at the expense of individual rights, of an accused right.

The brief that I have submitted deals with the Bill in chronological order, but I want to go out of order from that brief and deal with what I think is probably the most significant point with respect to this bill.

Firstly, dealing with section 242.1(7.1) of The Highway Traffic Act, as proposed, that is dealing with the periods of impoundment, which are relative to the concentration of alcohol in the blood. I want to just start by saying that MARL opposes any type of pre-conviction impoundment of vehicles. As we submit, it violates the presumption of innocence as guaranteed by section 11 of the Charter and also is a violation of the right to be secured against cruel and unusual punishment. It is not just the stigma that attaches to that; it is a significant Charter right, which any individual has the right to see that it is honoured in society.

With respect to the periods of impoundment, you will note that there is an increase. The periods of impoundment can go anywhere from 30 to 180 days, and that is dealing with all subsequent subsections as proposed. I would submit there is really no other argument to make, other than this cannot be anything but a form of punishment. You have the increased alcohol in blood concentrations, giving an increase in the period of impoundment. Again, this is before an individual is convicted of any crime. So it is not just that it is tantamount to punishment. I submit it is punishment, and it is pre-conviction punishment.

The subsequent subsections, section 242.1(7.1.1), that deals with the circumstance where there is an increase in the period of impoundment for situations where the vehicle had been previously seized in the last five years with respect to that similar type of offence. I would submit that that section does not provide for the fact that a previous seizure, a previous impoundment of a vehicle, may have been revoked.

It may have been a situation where a peace officer released the vehicle–and we are talking going five years back to a situation where someone is taken in, they are given a reading of their blood sample. It is about .08. They go through the court system. They are acquitted or charges are stayed. Subsequently, we find ourselves five years later, they are picked up again, and now there is an increase in the impoundment because all the section says is that if there was a previous impoundment of that vehicle. So it does not provide for situations where someone may have had charges stayed or that they were acquitted of the charges. That again, I would submit, is cruel and unusual punishment, and with the greatest of respect, seems somewhat draconian.

It gets even more so when the alcohol concentration increases when it is a second and subsequent seizure and impoundment. If you are picked up now and your reading is 160 or over, then the period is increased to 180 days. So that is six months, and remember, you could have previously had charges stayed against you. You could have been acquitted. You may ultimately be acquitted of the charge that you presently have with respect to your reading, but still your vehicle is seized for 180 days.

Now, there have been challenges previously. I believe there was a challenge in the Manitoba Court of Appeal that dealt with an individual whose licence was suspended. That dealt with a challenge under sections 7 and 8, life, liberty and security of the person and unreasonable search and seizure, but there has not been a challenge with respect to this or similar circumstances that I know with respect to the presumption of innocence and cruel and unusual punishment.

* (10:40)

I am submitting, obviously, on behalf of MARL, but being a member of the criminal defence bar, I can tell you that this is going to be fodder for defence attorneys. It is going to be easy fodder, because I would submit it is not going to survive a Charter challenge because of those proposed amendments offending sections 11 and 12 of the Charter.

I just want to deal with section 264(1.1.1). That is the automatic suspension for failure to stop for a peace officer–and remember that is upon conviction. As proposed, the impoundment or the period of the suspension, a two-year for the first offence which is a greater period of suspension than that of a first time, a person who is convicted for the first time of drunk driving. I would submit in that circumstance when you put it into that light, and remember, the period of suspension has been increased in the Criminal Code for one year, which runs parallel to The Highway Traffic Act. So it is a one-year suspension for driving over .08 or driving impaired.

Dealing with the offence of stopping for a peace officer, there is no minimum penalty with respect to that offence, and the maximum is the same with respect to driving over .08, a 5-year jail sentence. So in that situation, I would say that is a violation of section 12 of the Charter.

The second and subsequent offence indicated in the proposed amendment is even more oppressive. Second and subsequent conviction, seven years, and second or subsequent conviction with respect to driving over .08 does not even carry that length. I believe it is in the range of three years with respect to a second or subsequent offence for driving over .08. So to suspend someone for driving for a seven-year period, more than double that of a drunk driver, I submit is nothing but cruel and unusual punishment.

I would submit with respect to conditions of impounding a vehicle or surrendering a licence with respect to these matters, those are matters which can be left and should be left to a trial judge to determine because as it stands now, the police officer has very little discretion, if at all, with respect to the return of the vehicle. There is provision for allowing a return of a vehicle if the

officer is of the opinion that the vehicle was stolen at the time that the offence was committed, that it was committed by someone else.

Just dealing with other sections, section 242(1) is Detention of motor vehicle. That is the foundation section: Detention of motor vehicle by peace officer. This section does not provide for a police officer requiring to have reasonable and probable grounds to believe that an offence has been committed. He just has to have reason. With the greatest of respect to our police force, there may be reasons which are not valid ones. There could be a variety of reasons, but there may not be reasonable grounds. That is something that has been put in other sections not only of The Highway Traffic Act, but of the Criminal Code, so that judges, trial judges can scrutinize as to whether, in fact, someone had reasonable and probable grounds. Without that section, that is obviously going to be a minefield with respect to search and seizure provisions.

More of a logistical point, but it is a point that I think this committee has to consider is with respect to section 242.1(6), and that is dealing with issues to be determined when the driver is the owner. That is an issue where you make an application in front of a justice with respect to the return of your vehicle. There are no provisions allowing you to present evidence to the contrary with respect to your charge of driving over .08. You are not even entitled to give that sort of evidence because the law does not provide for that.

It does with respect to an application to get your licence back, where you have to give a fee to have your hearing. If your licence is then returned, then the return of the licence leads to the return of your vehicle. I would submit if you are already in court and you are entitled to make an application in front of a justice with respect to the return of your vehicle and that there are provisions with respect to driving disqualified and for a judge to make a determination about returning the vehicle on that issue, then there should be the same with respect to providing evidence to the contrary on a charge of .08.

That can be provided. There are experts' reports that can be provided, and I would say that there are those in society where they might not be able to pay the prescribed fee. They have a vehicle, but they may not be able to afford that application fee with respect to an application to have their licence returned which is the first step to get the vehicle back. They should be entitled to make that application if they have a court date already with respect to a charge of driving impaired or driving over .08.

I just want to reiterate what the thrust of the submission is with respect to those increased periods of impoundment because we have to remember that an accused is presumed innocent before the law. There really is no other explanation with respect to those increases in the period of impoundment, other than that it is punishment. MARL does not support that proposed amendment, and subject to any questions to his committee, that is my submission.

Mr. Chairperson: Thank you, Mr. Weinstein.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Thanks, Mr. Weinstein, I think you are a good defence lawyer, and I know that these arguments have been advanced for some time and will continue to be. I will just put you on notice, though, that we might have to have you back here, because this is just the start. Just to use that phrase "cruel and unusual punishment," that is what is happening to Manitobans right now. We have got to get drunk drivers off the road. I think the public, actually, is ahead of legislators on this generally. I think Manitoba has got to ensure that it provides a leadership role. We have a broad social objective here that is absolutely critical to the well-being of this province and its citizens.

The purpose of the legislation is not punishment. That is the role of the Criminal Code. The role of this legislation is to make Manitobans safer and get these drunks off the road. We have to be more inventive, I think, in how we can do that. This moves it along. So the intention, of course, here is not to invade in any way the federal criminal law and all of the checks that are available, the presumption of innocence and the other arguments. This is an administrative scheme by the Province to help Manitobans increase our safety.

* (10:50)

If a challenge is coming in the courts, so be it. I know they have arisen from time to time. We have, at the departmental level, reviewed the provisions with a view to determining whether there is anything offensive to the Charter, and that test was passed. I just want to say, in terms of some of the specifics here, where one blows over .08, for example, that is the evidence. As a result, administrative consequences will flow from that. The presumption of innocence is another matter, under the federal scheme. That is our view generally. The issue of evidence to the contrary, that role there, certainly evidence to the contrary would be one ground for appeal on a revocation.

I just want to go to the automatic suspension for failure to stop for a police officer. We just had a recent tragedy in Manitoba that followed from an incident, which I understand was fleeing of an officer, at least was the allegation. The reason for the consequences here is recognizing the significant hazard that this poses, particularly to residents, but also of course to those involved and to the threat to law enforcement objectives. It is important that there be a greater sanction. One, hopefully, will think twice. I think the administrative law has to provide a message. It can never be more advantageous, in terms of consequences, to flee an officer, than face up to the law.

With those comments, we will further consider your submission and take those into account as the Bill progresses.

Mr. Darren Praznik (Lac du Bonnet): I notice the Attorney General now has not only become the Attorney General but also the courts in our province when he says that he has reviewed the Charter arguments and he has passed judgment, so all Manitobans should sleep well at night. I would just say to him in his comments that the Charter is something that will be tested in court, and we have a presenter here today–and I have to say, thank goodness for defence attorneys. I mean, there are some, perhaps in my party, certainly the Attorney General, who may believe that we do not need defence attorneys and we do not need rights because the courts always get the right person and prosecute or persecute.

Well, I believe in a system of justice that has a balance, and I gather the presenter does as well. The presenter has come here with some concerns about the application of the Charter of Rights and Freedoms, and we do know, having been part of an administration that brought in administrative penalties in these particular areas that did survive the Charter, that there is a balance that can be maintained.

My question comes off the point that the Attorney General raised about the .08, that that is all the evidence you need. Just for his information, I can remember as a law student in court when an individual on the machine had read over .08, was taken immediately from the police station to the hospital, did a blood test that came back with a zero blood alcohol content, and it turned out there was an error in the machine.

If I am not mistaken, I think that is some of what our presenter is saying in the presentation, and I would like him to clarify that the law should provide, where there are circumstances where a justification, a defence can be made, to ensure that those administrative penalties are not applied. Is that one of the arguments that the presenter is making to this committee today?

Mr. Weinstein: When I heard the Honourable Minister of Justice (Mr. Mackintosh) talking about how you have the reading and then you have the administrative consequences, the administrative consequences should not come until after conviction, and that is the point, because there are circumstances and there are many times when convictions either are overturned or an acquittal is entered or a stay of proceedings is entered, and it is not just about the reading. It may be about the conduct of the police with respect to the incident. It may be that they passed the prescribed time of being able to take a sample, or it was taken outside of the time without the consent.

There are a number of issues, so that we are giving consequences immediately which are–I would submit, consequences do happen. They happen all the time in bail court when you are in front of a judge, and the issue is conditions with respect to not having contact or communication with a complainant, to not attend at his or her residence, but those are issues of bail. They are

issues for a judge to consider on bail. To give the police this power of what is an immediate consequence which is a form of punishment is different, and I submit in the circumstances it is not appropriate. I would submit it is a violation of an individual's rights.

Mr. Praznik: First of all, to the presenter, I recognize the arguments you are making. I do know you are aware that this legislature over the last decade has accepted an administrative scheme with respect to drinking while driving and has established outside of the criminal law an administrative scheme based on the principle that driving is a privilege. Certain things being a breach of that privilege resulted in the suspension of the right to drive and other penalties, and that has to date, it is my understanding, been upheld by the court. So there is some difference.

But within that scheme, and I recognize that the Association and the presenter are arguing that that is not probably acceptable. But having said that and recognized that, looking at an administrative scheme, within an administrative scheme, I am asking the presenter does he believe that it is appropriate that there have to be mechanisms for an individual to be able to make the case to ensure the administrative penalties are not wrongfully applied, that if there are defences available, that the automatic application of the administrative penalties can be addressed under certain circumstances. For example, the case I mentioned, a faulty breathalyser machine, where the individual had a blood test within an hour indicating that he had a zero blood alcohol level, those types of things. So, recognizing your first argument, asking you now to look at if the courts and this legislature accept an administrative scheme, within that administrative scheme would you argue that there has to be a means available, on whether it be a rare occasion or a regular occasion for an individual to be able to address the penalities where they have an argument that they are being wrongfully applied?

Mr. Weinstein: Let me answer that by way of an analogy. If I am charged with an offence that deals with a weapon, or in a domestic situation where I have possession of a firearm, I am given the right to a hearing, and it is automatic. You appear in gun disposition court, and it is before a hearing officer who deals with that automatically. It may be that it is some time down the road, but you deal with that issue. In similar circumstances, a car is a lot more important than one having a weapon. If any scheme has to be put in at all, then there should be an automatic hearing. It should not be something that an individual has to pay for, or something that may have to be of the instance of an accused. But if anything, there should be that automatic hearing with respect to analyzing the administrative consequences in front of a judge.

It is done like that with respect to firearms. A judge can make any disposition. He can say: I want you to leave your weapon with a friend for the period, until this matter is dealt with, that the RCMP are going to take custody of the weapon, or the police are going to take possession of the weapon, or the individual may get the weapon back because it has nothing at all to do with the offence alleged. So, if there is any administrative scheme that has to be put in place, then there should be an automatic right to a hearing.

Hon. Jon Gerrard (River Heights): I would ask, given your concerns about individuals who have, for example, been acquitted and being caught in this second seizure provision, what specific change would you recommend to avoid this, that instead of it being, as it were, second seizure, that there be a demonstrated conviction as a result of the first incident?

Mr. Weinstein: I think that with respect to an issue where an individual has been acquitted or charges have been stayed, or a previous impoundment has been revoked, that is starting with sections, I believe, 242.1 of 7.1.1 which deals with if there was a previous seizure and impoundment of a vehicle, that it bumps up the time of what the present impoundment is going to be. That is where the concern is, especially for someone who has been acquitted for an offence previously, or that the impoundment was revoked because that section does not provide for that circumstance. So you have an individual who is now presumed innocent and is picked up, and they look backwards and they have no idea if the person was acquitted or not of that offence, but it just shows up that there was a seizure of the vehicle, and that is enough. So you have not been convicted of anything and your vehicle is

now seized, I believe it is for a period of 90 days. If the new reading that you get picked up on, I believe it is with respect to a reading of 160 or over, it is 180 days. That is six months, and you have not been convicted of anything.

Mr. Gerrard: In order to improve the section, you would suggest that this refer only to individuals who have been convicted on the basis of the first incident?

Mr. Weinstein: Or that either providing a subsequent subsection indicating that that section will not apply to those who have been previously acquitted of an offence or a stay of proceedings was entered, or that there was a revocation of the impoundment, or that the vehicle was returned, which the police have the discretion to do. If they believe that the vehicle was stolen, they can just hand it back to you. It is still going to show up that the vehicle was seized and impounded.

* (11:00)

Mr. Gerrard: So there would be at least a couple of ways of approaching this to resolve the issue and to do it quite nicely so that such people are not caught in this problem and at the same time that would answer the problem under the Canadian Charter of Rights. Is that correct?

Mr. Weinstein: It would, and it can be done either by way of subsection or within a section itself saying where an individual has previously been convicted of an offence and has previously had their vehicle seized, and with respect to that offence.

Mr. Gerrard: Let me move to the section on flight from a police officer and your concern that the penalties here are quite harsh. I think that, generally speaking, citizens in Manitoba would warrant or would feel that there is a need to have stiff penalties where individuals are truly flying from a police officer. On the other hand, I can see that there may be circumstances where the person was not aware that the police officer was trying to flag them down for some reason or another. Can you comment on situations of flight from a police officer and whether there are, under some circumstances, differences of opinion between the accused and the police officer as to what the circumstances were?

Mr. Weinstein: I believe this section indicates, upon conviction of someone for flight, under section 249.1 of the Criminal Code. So, when you are dealing with a convicted person, there may be a spectrum of how serious, or it may be a mitigating circumstance although conviction was entered, there was a mitigating circumstance; there may have been an aggravating one. Upon conviction, and I do not disagree with respect to the seriousness of the offence, but so is drunk driving. Drunk driving, you have a minimum specified penalty, whereas Parliament has said with respect to flight there is not. Someone can get a conditional discharge, an absolute discharge, which is not a conviction. Those are not dispositions available to someone convicted of drunk driving. In circumstances, either they are equally as serious, or that flight is less serious, because Parliament has indicated so. It is very difficult to get around the fact that the suspension for drunk driving, which I would submit probably causes a lot more injury, or maybe death, in the circumstances, than flight carries with it, suspensions that are less than those with respect to the proposed amendment regarding the issue of flight.

Mr. Gerrard: One approach, which you recommended, would be to have penalties which are equivalent to that for drunk driving, so that both would then be seen as very serious offences, but would not be an indication that flight was more serious than drunk driving. Is that what you are recommending?

Mr. Weinstein: I think I am going to leave the issue of what may be the appropriate period of suspension in your hands. It may be something that you may want to leave discretionary because there are a number of circumstances where it may be more mitigating or aggravating in the circumstances. If it is the will that there is going to have to be a suspension put in place, in these circumstances, based on the numbers proposed in this amendment, of the two years on a first offence and seven on a second, and subsequent, with the greatest of respect, are draconian when compared. That is all my point is, when compared to all other offences, and if a suspension has to be put in place, then either it

can remain discretionary or it has to remain relative with respect to other offences, that the HTA already has suspension provisions in relation to those offences.

Mr. Chairperson: Mr. Gerrard.

Mr. Gerrard: No, I am finished.

Mr. Jim Penner: I would like to ask Mr. Weinstein, our presenter: Although I support the intent of this bill, does he know of any other jurisdiction where a similar bill, laws have been imposed?

Mr. Weinstein: I am afraid I do not.

Mr. Chairperson: Thank you, Mr. Weinstein. That concludes the list of presenters I have before me this morning. Are there any other persons in attendance who wish to make their presentation? Seeing none, is it the will of the committee to proceed with detailed clause-by-clause consideration of bills 8, 10, 13, 22, 23, 24, 25, 26, 27, 28, 30, 32, 33, 34, 36, 39 and 40, and if yes, how do you wish to proceed this morning?

Mr. Praznik: I speak with respect to the Justice bills for which I am critic. I have colleagues here who are critics in other areas. I would ask, if the Attorney General would agree, given that we have heard some very interesting presentations today, if we could put over Bills 32 and 33 until the next sitting of this committee. There are some amendments we would like to consider that have arisen out of the presentations. With respect to the other justice bills, for which I am responsible, there are a few issues around a few amendments, but I think we will see relatively speedy passage of them today. It has been custom of these committees, on occasion, after we have heard presenters that have made some recommendations, that we have allowed a day or two before we have done the clause by clause to give some thought and consideration to their presentations.

I know the Member for Thompson (Mr. Ashton) often made that point in his role as House Leader, and given that I would like the opportunity for my colleagues and I to have a chance to caucus on these presentations, I would ask if he would be so kind as to have those two bills put over until the committee–I think it was called for next week. With respect to the Justice bills, if we could proceed perhaps in–I look to the Member for Steinbach (Mr. Jim Penner) who has a number of bills here. I think he had a meeting at quarter to twelve, so we might want to deal with his bills first and then the Justice bills.

Mr. Chairperson: Thank you, Mr. Praznik. It has been recommended that we proceed with the Justice bills except for 32 and 33. You are also recommending that we deal with which Minister's bills first?

An Honourable Member: Consumer and Corporate Affairs.

Mr. Chairperson: It has been recommended that we proceed with Consumer and Corporate Affairs bills next. Is that the will of the committee? *[Agreed]*

Are there any presenters? I guess there are no presenters. So we will call the Minister up to the front of the table, and we will do clause by clause, beginning with Bill 10, The Cooperatives Amendment Act.

* (11:10)

Bill 10–The Cooperatives Amendment Act

Mr. Chairperson: Does the Minister responsible for Bill 10 have an opening statement?

Hon. Ron Lemieux (Minister of Consumer and Corporate Affairs): Yes, I do.

Mr. Chairperson: Please proceed.

Mr. Lemieux: In order to move things along expeditiously, I think I will pass on my comments at this point.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Jim Penner (Steinbach): Bill 10, The Cooperatives Amendment Act, is amending a large bill that was introduced on July 1, 1999,

brought into force on July 1, 1999. That bill, because of the size of it, had weaknesses, which Bill 10 has addressed. I think this is a good piece of legislation. It addresses small concerns. It is not often that we have to have a bill that addresses the termination of membership, but there is nothing wrong with that.

I would say that the Bill adequately addresses the concerns of the definition of an auditor. The goal of members is to ensure that there is integrity and accurate financial disclosure of financial statements to members of cooperatives. This is in the interest of consumers. So, I would recommend that we pass the Bill.

Mr. Chairperson: We thank the Member. During the consideration of a bill, the preamble and title are postponed until all other clauses have been considered in their proper order. If there is agreement from the Committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed? *[Agreed]*

Clauses 1, 2, 3, and 4–pass; Clauses 5 to 8–pass; Clauses 9 to 13–pass; Clauses 14(1), 14(2), 14(3), 15, 16, and 17(1)–pass; Clauses 17(2), 17(3), 18, 19, 20, 21, 22 and 23–pass; Clauses 24 and 25–pass; preamble–pass; title–pass. Bill be reported.

Bill 24–The Personal Property Security Amendment and Various Acts Amendment Act

Mr. Chairperson: We will now proceed with Bill 24, The Personal Property Security Amendment and Various Acts Amendment Act. Does the Minister have an opening statement?

Hon. Ron Lemieux (Minister of Consumer and Corporate Affairs): Once again, in order to deal with this expeditiously, I would like to pass, certainly, on making any remarks at this point.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Jim Penner (Steinbach): Mr. Chairman, this is viewed mainly as a housekeeping bill that will help tighten up the Act and make some technical clarifications. I do feel that it is important, as is the Act, because the registration of personal property as security is an important factor in today's economy. We have previously spoken to this bill, and we believe that it should face the test of time and be passed.

Mr. Chairperson: We thank the Member. During the consideration of a Bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. Is there agreement from the Committee to consider clauses in blocks? *[Agreed]*

Clauses 1 and 2–pass; clauses 3 to 5–pass; clauses 6, 7(1), 7(2), 8 and 9–pass; clauses 10, 11(1), 11(2), and 12(1)–pass; clauses 12(2), 13(1), 13(2), 14 and 15–pass; clauses 16, 17(1), 17(2), 18 and 19(1)–pass; clauses 19(2), 19(3), 19(4), 19(5)–pass; clauses 20, 21(1) and 21(2)–pass; preamble–pass; title–pass. The Bill be reported.

Bill 39–The Insurance Amendment Act

Mr. Chairperson: We will next consider Bill 39, The Insurance Amendment Act. Does the Minister have an opening statement?

Hon. Ron Lemieux (Minister of Consumer and Corporate Affairs): Yes, I do. Mr. Chair, on this particular bill, I would like to make a short statement.

Bill 39 has three main purposes. First, it is to enhance consumer protection for purchases of insurance; second, it is to make it easier for insurance companies to do business in Manitoba by repealing legislation which has become outdated in today's marketplace realities; and third, it is to provide a more effective licence appeal process. With regard to this bill, I know that my critic certainly knows the importance of this and has made comments to that effect and realizes that this bill is very, very good consumer legislation.

So, certainly just on that note, I know that, to facilitate faster co-ordination of appeals, the Bill makes some changes to the structure and

process for establishing hearing panels of the insurance agents and adjusters Licensing Appeal Board. The process is also added to allow an application to be made to lift the licence suspension until appeal of the suspension has been heard.

But, in general, there are the three main points with regard to this bill, primarily being consumer protection with regard to purchase of insurance. On that note, Mr. Chair, I just would like to conclude my remarks.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Jim Penner (Steinbach): The Insurance Amendment Act, Bill 39, recognizes the need to continually make adjustments as the methods of doing business are constantly changing. The Insurance Act is certainly an important piece of legislation for all Manitobans. I do think it is unfortunate the reputation that is often given to sellers of insurance because they provide such an important service. I know from personal experience, the positive relationship I have with the firm that handles our business.

The Bill does, however, I think, recognize the reality of the insurance business in today's world. It addresses issues such as allowing agents to carry on other businesses under certain restrictions. This seems only equitable as other areas of financial services are opened up to banks, credit unions and trust companies. As well, the Bill ensures that agents, brokers and adjusters carry liability insurance. I also note that the Bill will tighten the screening requirements for those seeking a licence through a sponsoring insurer. Through my contacts with agents and with individuals in the Insurance Council, I am advised that this bill largely meets with the approval of the industry. It is meant to improve the operation of the industry as well as benefit the purchasers of insurance and the loved ones who benefit from it.

So, with this in mind, I am prepared to move this bill along.

Mr. Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order. Is there agreement of the Committee to proceed in blocks of clauses? *[Agreed]*

Clauses 1 and 2–pass; clauses 3 to 10–pass; clause 11–pass; clauses 12 to 17(1)–pass; clauses 17(2) and 17(3)–pass; clauses 17(4) to 18(3)–pass; clauses 18(4) to 20(2)–pass; clauses 20(3) and 21–pass; clauses 22(1) and 22(2)–pass; clauses 22(3) to 22(6)–pass; clauses 22(7) and 22(8)–pass; clauses 22(9) and 23–pass; clause 24–pass. Clause 24 caries over to page 20. Clause 25–pass; clause 26–pass; clauses 27 to 30(2)–pass; preamble–pass; title–pass. Bill be reported.

* (11:20)

Bill 40–The Business Names Registration Amendment, Corporations Amendment and Partnership Amendment Act

Mr. Chairperson: Next is Bill 40, The Business Names Registration Amendment, Corporations Amendment and Partnership Amendment Act. Does the Minister have an opening statement?

Hon. Ron Lemieux (Minister of Consumer and Corporate Affairs): In order to expedite matters, at this time, I think I will pass on my remarks with regard to Bill 40.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Jim Penner (Steinbach): Members of the Opposition view this bill as a step which is basically aimed at improving the manner in which the Government provides information to the public. It is an intention that we support, and we would encourage this government to do more of that. Thank you very much.

Mr. Chairperson: We thank the Member. During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered. Is it agreed that we consider blocks of clauses? *[Agreed]*

Clauses 1 and 2–pass; clauses 3(1) to 5–pass; clauses 6 to 11–pass; clauses 12 to 16–pass; clauses 17 to 19–pass; preamble–pass; title–pass. Bill be reported.

I would like to call the Minister of Justice (Mr. Mackintosh) back to the table. We will now consider the Justice bills, with the exception of 32 and 33, which are postponed to a future meeting of this committee.

Bill 8–The Enforcement of Judgments Conventions and Consequential Amendments Act

Mr. Chairperson: Bill 8, The Enforcement of Judgments Conventions and Consequential Amendments Act. Does the Minister of Justice have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): The Bill, I guess, deserves the comments at second reading and, if there were any questions, we certainly would be prepared to entertain those.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): Mr. Chair, I am going to skip the opening statement and ask the question I indicated at second reading. I take it that this will allow for the enforcement of maintenance and support orders from other jurisdictions.

Mr. Mackintosh: This extends to civil judgments beyond maintenance enforcement, but the effectiveness of the legislation does depend on the federal ratification of the treaty.

Mr. Chairperson: We thank the Member. During the consideration of a bill, the schedule, the preamble and the title are postponed until all of the clauses have been considered in their proper order. Is there agreement to consider in blocks that conform to pages? Agreed.

Clause 1–pass; clauses 2 through 6–pass; clauses 7(1), 7(2), 8, 9(1), and 9(2)–pass; schedule–pass; preamble–pass; title–pass. Bill be reported.

Bill 22–The Court of Queen's Bench Surrogate Practice Amendment Act

Mr. Chairperson: We will now proceed with Bill 22, The Court of Queen's Bench Surrogate Practice Amendment Act. Does the Minister responsible for Bill 22 have an opening statement?

Hon. Gord Mackintosh (Minister of Justice and Attorney General): Essentially what I will do is just respond to remarks of the critic at second reading.

This practice is not commonly or historically used by members of the public, or indeed, even individual members of the legal profession. There are 2100 wills being kept for safekeeping in Winnipeg, deposited almost exclusively by the Law Society of Manitoba. The Law Society deposits a will with the court when they come into the possession of wills as a result of taking custody of a lawyer's practice. We consulted with the Law Society and they will assume responsibility now for the safekeeping and returning of these wills. They are contemplating a change in the current practice of lawyers retaining wills to start with.

Other secure and more appropriate options are available to individuals today for safekeeping of personal papers including wills. Wills currently deposited with the courts will remain for safekeeping with the courts. There is not sufficient secure storage space available in the court office to accommodate the deposit of any more wills. The courts will incur additional administrative costs to increase and improve the secure storage facility for wills, as well as resources to maintain and manage the registry. An appropriate fee to offset the administrative cost would result in higher costs to the client when there are cheaper options available. So those are the balances that we had to consider in moving ahead.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): I just want to indicate that this is in the life of the province a small bill, I admit. I look to his staff

to advise him here. When you talk about some 2000 wills, and when you consider most wills would be the size of a piece of a paper, about the size of the bill itself or one of these larger bills folded over, we are talking about maybe the space of a desk in our court system.

I must tell the Attorney General, I have been around this place for twelve years, I have articled, I went to law school. I did not know this was available, and quite frankly, if I think members of the public knew that this service was available, even for a small fee, it might be something that they availed themselves of. There is a fundamental sense of security to Manitobans, particularly those who may not trust their relatives, who may not trust lawyers, et cetera, and sometimes the profession and relatives give good cause not to be trusted, but it is a sense that their Department of Justice can maintain that will on safekeeping, and it is available to check should they reach their demise. This is a good service for government to offer.

When I hear the comment by the Attorney General, his opening remarks that there is not enough room and there are some 2000 of these, I look at Bill 32, for example, folded in half, and I think 2000 pieces of paper like this are not going to occupy a great deal of room. I am thinking what is the big issue here. If anything, I would have hoped that the Department of Justice would have found it in itself to make this a service that they would have wanted to advertise and let people know about. We all have from time to time constituents who do not trust the legal profession, do not want to rent a safety deposit box on an ongoing basis, do not trust relatives. In giving them the security that their government is going to have a secure place where they can store their last will and testament is, I think, a very nice service to be offered to the people of our province.

* (11:30)

When I look at so many of the initiatives of the Attorney General (Mr. Mackintosh) and the Minister of Health (Mr. Chomiak) to be protecting the rights of people who are in personal care homes, protecting our citizens from abusive care in health care facilities, our victims rights bill, I think here is, on the other side of this coin, a small service being offered to the citizens of Manitoba to give them peace of mind that their last will and testament is deposited with a public body that they can take comfort in, is not in the hands of the legal profession or their relatives or someone else. They know that their last intentions can be carried out as they directed.

Given the size of what we are talking about here, I would have thought that this Attorney General, who, you know, one could describe as a bit of an activist, would have taken it upon himself to say to his administrative staff, when I am sure they brought this forward, now, come on. I know if I were Attorney General and the Deputy Attorney General, who is here today, would have brought this to my attention, I would have said, Bruce, come on here. Let us find some space and let people know about this service.

I am not going to take this bill here and let Mr. Mackintosh, if he were my critic, make this statement at committee that I am making here today, and I hear, as I make it, probably I put words in his mouth, but the Member for Thompson (Mr. Ashton), I could hear him making this speech to this committee about a small service that government offers to its– *[interjection]* Well, the Member for Thompson may be enjoying cabinet office so much.

I just want to say that we will be opposing this piece of legislation. We will not be supporting it. I just say with regret that I would have thought some of the New Democratic party backbenchers would have, after my remarks in second reading I saw a lot of nods that said, yes, why are we doing this, that they perhaps would have raised it with the Attorney General. I only say this, by last comments, because there were colleagues here. The Member for Elmwood (Mr. Maloway) is one who has been around a long time. Every now and again departments administratively will bring forward bills to ministers because it suits their purposes. It is the role, as the Member for Elmwood reminded me when the Member for Portage la Prairie was Mr. Connery who brought back in a whole bunch of consumer legislation that the Department wanted that was fraught with difficulty, and he reminded

us that when he was in government, the Pawley administration, they had rejected it and rejected it and rejected it. We came to power as Conservatives. Mr. Connery grabbed it, and he brought it forward into the House and, boy, he got beat up on many of those bills because they were not thought out.

This just has a hint of that as well. So I would like to indicate today that we will be opposing this legislation. We will not be supporting it. We will go on record as standing for the rank-and-file Manitoban who would just like the comfort of knowing that they had the right until the passage of this bill because this government chose to follow its administrative advisers rather than stand up for the right of those few thousand Manitobans who would like the care and comfort, the peace of mind to be able to deposit their will with the courts.

I just say this to some of the New Democrat backbenchers. We on this side will not view this bill as a confidence measure. We will not view it as a confidence measure, and I challenge them, the Member for Flin Flon (Mr. Jennissen), the Member for Assiniboia (Mr. Rondeau), to join with us, the Member for Riel (Ms. Asper), in standing up for the rank-and-file ordinary Manitoban and defeat this bill and send a signal to their cabinet ministers and the bureaucrats of this province that the legislators rule here, not the administrators. And we will not view this as a confidence matter. Maybe the Leader of the Liberal Party may, and he may want to speak to this. But we on this side will not view it as a confidence matter, so they can feel perfectly free to defeat this bill and not defeat their government, that they can take the whips off and support us. Just send a small signal to the Attorney General, whom I generally like, that he has to pay more attention to these small details and not letting the Department of Justice rule all. So I put out the challenge and just indicate today we will not be supporting this act, and we look to other members to join with us in standing up for Manitobans.

Mr. Jon Gerrard (River Heights): I have a question for the Minister of Justice, the consideration of storage space. In view of the fact that in this legislature we are dealing with a bill on electronic commerce which would provide a mechanism for insuring the legality of digital documents, has the Minister considered now or in the future the potential of storing wills electronically?

Mr. Mackintosh: I can see the heading now in the election materials for the Conservatives' next election and what they are going to say on Justice. First of all, in terms of rank and file, we are not aware of the rank and file wanting or using this. The staff has advised that in the last few years they are not aware of a single rank-and-file member of the public that has ever thought this was a good option to pursue. We, in fact, since the legislation has been introduced, we have had no objection from anyone, except for the critic.

Second of all, the issue of security is one of concern to the Department. How do we ensure that wills that are deposited are secure from fire or from theft or from other threats, and what is the liability of the Province? What we have to ask is what is the appropriate role for the court's division in dealing with private matters? Wills are a private matter. They are not a public matter. Those are matters for a testator and beneficiaries. So, in terms of moving towards any others kinds of ways of creating documents or storing documents, those are private matters.

I might just add that there are only two other provinces in Canada that still have this whole provision: Saskatchewan and Ontario. Recently, Nova Scotia and the Law Reform Commission in March '99 did a review of how they deal with wills in that province. They state as follows: Commentators suggested that keeping wills was the testator's responsibility. The confidentiality of a will's contents could not be guaranteed in a depository. They recommended against establishing a depository for wills.

We remain of the view that this is a private responsibility. We have to look, given the demands on the justice system and on courts as to what role public dollars should play, and public officials should play, this is a matter for private individuals, in our view.*[interjection]*

Mr. Chairperson: Order. Mr. Gerrard has the floor.

Mr. Gerrard: I would presume that the Minister of Justice and his department has the knowledge and the wherewithal to provide security from fire and other problems for many of the documents that are dealt with in the Department on a daily basis. I would ask the Minister whether this really was a major consideration and a major stumbling block for the Department as he suggests.

Mr. Mackintosh: There was a storage, of course, of court documents, a will, maybe the transfer of assets of millions of dollars, and if a document is not secure, there are questions of liability. I think the underpinning here is again the question of why this practice developed, and why it should continue when we are looking to prioritize the role of courts and the justice system and the lives of Manitobans. We have critical issues: the court's administration and demands about public safety. We have to decide what business we are in and what business we should not be in.

Mr. Gerrard: I also would like to pursue the issue of digital documents one step further. One of the things which, it seems to me, indeed is absent from The Electronic Commerce Act is recognition that there may be a role for government to be involved in digital storage of documents, both of a public and potentially of a private nature, in a fashion that would be both confidential and legally acceptable. Clearly, we will work for some time in a digital world where there are uncertainties about precisely what is acceptable and proper storage of documents.

I would ask the Minister, in the context of this bill, if it might have been an example of an area where his department could have looked at how it might be possible to store digital documents for the public in a way that would be legally acceptable, because this is something that will probably have to be considered, not only by his department, but by many people over the coming years in Manitoba, as we are dealing increasingly with electronic documents.

* (11:40)

Mr. Mackintosh: Well, that issue, of course, will be discussed more fully in the consideration of the e-commerce bill, which includes changes to The Manitoba Evidence Act. What we will see develop over the years will be the new form of court documentation moving from paper to other forms. That will be triggered in large part not just by the legislative reform but by the use then by the profession and others of e-mailing and e-filing of court documents.

Mr. Gerrard: Let me just follow that up once more. The Department is considering, you mentioned, e-filing of documents and legal requirements, et cetera, for that. It would seem to me surely that in terms of, if space was a major consideration, that electronic capacity within the Department is certainly not all that limited. Back-up processes and so on would be such that you could very easily secure against fire an individual site. Notwithstanding that maybe this is an area where government might not go, but I think that many of the arguments that you have presented, if one were dealing with an electronic document system, really are not all that valid. It would have perhaps been appropriate at this time to give it a little bit more thought.

Mr. Mackintosh: Well, I do not know if the Member is talking about wills, but the form of wills is determined by the testator, and so be it. I might add that the Department is proactively pursuing the move to electronic orders, if you will, what are called auto orders, when it comes to certain proceedings in the family division and the court where there are essentially boiler-plate orders available, and then there is a picking and choosing of the relevant orders as a result of the proceeding. This is all being done automatically rather than the order being worked out over a period of some several months following a hearing.

So what we see in the Department is a very proactive approach looking toward the new kind of information technology that is with us now and I think can be put to much greater use.

Mr. Chairperson: During the consideration of a bill, the preamble and the title are postponed until all other clauses have been considered in their proper order.

Clause 1–pass; clause 2–pass; clause 3–pass; clause 4–pass; preamble–pass; title–pass.

Shall the Bill be reported?

Some Honourable Members: No.

Mr. Chairperson: No?

Voice Vote

Mr. Chairperson: All those in favour of reporting the Bill, please indicate by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please indicate by saying nay.

Mr. Chairperson: In my view, the Yeas have it.

Mr. Praznik: On division, sir.

Mr. Chairperson: On division. Thank you.

The next bill is Bill 23, the Jury Amendment Act. Does the Minister have an opening statement?

Bill 23–The Jury Amendment Act

Hon. Gord Mackintosh (Minister of Justice and Attorney General): The Jury Act provides for service of the jury summons at least 12 days before the required date of attendance. In Winnipeg, jury summons are sent out at least 20 days prior to the required attendance date. For jury trials held in the regional court offices, the summons are sent out almost two months in advance. This additional lead-time should provide sufficient notice to compensate jurors living in remote locations or without daily mail service. I am responding to the critic's comments. The Act still provides for personal delivery of the summons to the juror at their usual residence, place of employment, or leaving the summons with a person over the age of 18 at their residence or place of employment, in addition to ordinary mail delivery as an alternative.

Mr. Chairperson: We thank the Minister. Does the critic from the Official Opposition have an opening statement?

Mr. Darren Praznik (Lac du Bonnet): A couple of concerns. First, a question for the Minister of Justice. Does this now mean that a summons–have they been sent by ordinary mail in the past or by registered mail?

Mr. Mackintosh: Registered mail.

Mr. Praznik: Mr. Chair, this is then now lessening the requirement to simply ordinary mail and a deemed receipt by the individual.

Mr. Mackintosh: That is correct.

Mr. Praznik: Is this just an administrative matter by the Department to make life easier for them and less convenient for the citizens of our province?

Mr. Mackintosh: There are some financial benefits to the move but the checks, as to whether there has been receipt, although there is not an acknowledgment of receipt card, there are the other mechanisms that are in the bill.

Mr. Praznik: I would like to understand the motivation for this particular piece of legislation. Here, now, citizens under the current regime as I understand it, if they are called for jury duty, received a registered letter. You as the Attorney General, the administrative justice, know they have received it because there has been a receipt card. Now you are taking that right of a citizen to being called for jury duty, which has some penalty, I take it, if you do not respond. The Attorney General may want to tell us, in fact I asked him what the penalties are if people do not respond. But you are now saying, well, we are deeming you to be in receipt of this thing; the penalties apply, and it is up to you to make the case. It is not up to us to prove that we actually got a hold of you.

Could the Attorney General just tell us what the penalties are for not responding to the summons for jury duty?

Mr. Mackintosh: A penalty would only flow where a potential juror indicated the confirmed attendance and then did not show.

Mr. Praznik: I am asking the Attorney General: Is there a penalty today if you are summoned for jury duty and you do not show up at all, you do not commit to come but you have received a summons today, you have acknowledged receipt

of the summons by registered mail but you do not show up? Is there a penalty for that? What does the law prescribe as the penalty? I am not asking whether it is enforced. I want to know what the law prescribes as the penalty.

Mr. Mackintosh: There is a sanction for default in most circumstances, summary conviction to a fine not more than $500, imprisonment of not more than 30 days, or both. The practice has been for some 30 years, I understand, or so, that that provision is invoked. In other words, there would be information only laid where someone had confirmed attendance and then come at all.

Mr. Praznik: My understanding of this scheme, and I ask the Attorney General to please correct me if I am wrong, but it is that whereas today under the law, if you were summoned for jury duty you received a registered letter in the mail. So it has to be acknowledged. You know you have received the summons. If you choose not to appear, then it is a willing act on your part. If you have an excuse or a reason you can make it, call and make it, et cetera.

* (11:50)

We are now changing that for convenience of the Department of Justice to a scheme where they throw the summons in the mail. By law, if this bill passes, we now deem you to have received it, and the onus is now on you to demonstrate your absence, accident, illness, et cetera, or other cause. It is up to you. You are now guilty of an offence because we have deemed you to have received it, even if you have not. You will now be guilty of an offence simply by the act of deeming, unless you can make a reasonable excuse under this act.

This sounds to me that we have now reversed the requirement from the Crown to demonstrate that they have served you to one where it is up to the unsuspecting citizen to be able to demonstrate that they in fact did not receive the summons. We have switched the onus for the convenience, again, of the Department of Justice. Would that be a fair assessment?

Mr. Mackintosh: First of all, under the old acknowledgment of receipt card process, for any of you that have gone through that process, that is not very convenient to the recipient either. You have to go down, get your mail, you have to sign for it. What has happened, though, is that in January of 2000, Canada Post implemented a revised registered mail service which does not provide proof of service in the form of acknowledgement of receipt card and in fact is more expensive to use. What we are doing here now is, by ordinary mail, sending the summons. All one has to do, then, is pick up the phone and call in as to whether attendance can be confirmed, or request an exemption. So, in terms of convenience, I think this appears to be more convenient to Manitobans and potential jurors than the former system.

Mr. Praznik: It may appear to be more convenient. I understand that there is an issue with the registered mail service. What we are now doing is we are saying once you as a department throw the summons in the mail, if we pass this provision, it is deemed within five days to be received.

I represent a constituency with a large number of people who are retired, who live in seasonal recreational areas, that go away for the winter, for three or four months, that check in for their mail maybe once a month, once very two weeks. I look to the Member for Flin Flon (Mr. Jennissen) for support here. He represents a constituency as well where there are many people who are out in the bush working in logging operations who are not regularly getting their mail.

This bill strikes me as it was designed for an urban situation, whether it be a small town, or a city like Winnipeg where people are home every day. In fact, I would argue that those people who are fortunate enough to have free home delivery of their mail in certain parts of Winnipeg are well convenienced here. But those like my constituents who have to go to their post office, in many cases, drive many, many miles to get their mail, who do not do it sometimes even on a weekly basis, we are now putting them in a position where they are deemed to have been summoned and receive their summons into court when in fact they have never seen or got the letter and may not get it for weeks at a time.

So I think this bill has been poorly designed by his department to convenience only Winnipeggers who get everyday delivery to their homes. People in Beausejour and Lac du Bonnet all have to come in for their mail to get it at the post offices. So when he talks about being more convenient, they are in to pick their mail up at the post office. They are going to sign for their registered mail on a regular, if they receive it. In fact, there is no change at all for them. So I think this is representative of a department that is thinking in terms of Winnipeg and Brandon perhaps where there is home delivery, and it is an Attorney General who is not aware of the realities of receipt of mail outside of the city of Winnipeg. This is not a convenience.

In fact, if anything, it is an imposition, you know, when we talk about wanting a justice system, we are making people criminals here, offenders here through no fault or act of their own, and for those of us who represent rural constituencies, northern constituencies, part of my riding is a northern riding, where people are out in bush camps, prospecting, earning their living, away for stretches of time, for the people who are retired and go to British Columbia or south for the winter who only get their mail sporadically during that period, this is of no convenience at all. In fact it makes them criminals, puts onuses on them when we should not be doing that.

So I would suggest that we cannot support this bill. We think it is not properly thought out. I would urge the Attorney General to perhaps withdraw it and rethink this through and come up with a better piece of legislation which would be more accommodating to those people who do not get their mail delivered to their door on a daily basis. This is offensive, I think, to most people in rural Manitoba who have to pick up their mail. In fact, virtually 98 percent of my constituents pick up their mail somewhere. Only 2 percent get rural route delivery, and I look to members from the North who represent small communities, people who are out on the Bay Line who come in maybe once a month to get mail in Thompson and other places. This is really offensive to them and does not accommodate them in any way.

If the Minister is not prepared to withdraw this bill, then I would suggest that he have staff move an amendment, otherwise we will do it, and I look to staff, the reasons for absences, that they are acting in good faith, he or she, and I quote, did not receive the summons or did not receive it until a later date because of absence, accident, illness or other cause beyond the person's control.

What I have not seen here is I do not pick up my mail more than once a month. I am still home, I am not absent from my home, I am not down south, I am not out on a trapline, but I simply only pick up my mail once a month or once every two weeks because it is a half-hour or hour's drive.

I think to my constituents in Bird River, Nopiming Park who go into Lac du Bonnet, which for many of them is an hour-plus drive, who may only go into town once a week, once every two weeks, sometimes in the winter once a month, to pick up their mail. I see no provision here for--because it is in their control. They could go in every day. They are not absent. They would have no excuse. So I would ask the Attorney General, if he is not prepared to withdraw this bill, to think it through for rural and other areas that do not have home delivery, if he is prepared at least to include an amendment that would allow evidence that I did not pick up my mail. I may have very good cause for not picking up my mail. I may not just live in St. Johns constituency and have door-to-door delivery. I might live in Nopiming Park, or I might live 40 or 50 miles out from Cranberry Portage, and I do not come into town regularly.

If the Minister is not prepared to withdraw this bill to rethink it, I would ask that at least he, perhaps with the agreement of this committee, put it off until next week to have an appropriate amendment to expand the reasons by which a person would not be guilty of an offence to include "just does not regularly pick up their mail."

Mr. Chairperson: Before I recognize the Minister of Justice, we are very close to the adjournment time. Is it the will of the committee to continue until we finish this bill or to adjourn?

Mr. Mackintosh: Perhaps if I can respond to those remarks, I would prefer to move ahead with the Bill. We can put our remarks on the record, and we will consider the suggestions of the critic between now and report stage certainly.

Mr. Chairperson: Is it the will of the committee to adjourn or to complete this bill?

Mr. Praznik: If the committee would allow us a few moments. If the Attorney General is committing to look at this issue for consideration of either withdrawing this bill or considering an amendment at report stage, then we are prepared to see it pass through, with our opposition recorded, here today, but I would strongly urge him to talk to his colleagues from outside the city of Winnipeg, at minimum, an amendment, but I would suggest rethinking this because it is really offensive to thousands and thousands of Manitobans who do not have home delivery of their mail. I would suggest if the Attorney General would like to get this done, we are prepared to sit another five or ten minutes. Some of my colleagues also have comments, and the Leader of the Liberal Party may as well.

Mr. Mackintosh: Well, we will certainly consider the comments, but it will also be considered in this context. The Member may have missed my opening remarks, but for jury trials held in the regional court offices around the province, the summonses are sent out almost two months before the required appearance versus roughly the twenty days in Winnipeg, so there already is a recognition of the difference. In terms of the arguments he was advancing in terms of picking up mail once a month, that same argument will hold true for registered mail. Finally, outside of Winnipeg the sheriffs are used and can be used where someone is not in receipt of regular mail and that has been, I understand, the practice and will continue to be the practice of personal delivery.

Mr. Chairperson: We need to focus here a little bit and see if there is a will to sit past twelve o'clock or not. Is it agreed? We do not have agreement. Committee rise.

COMMITTEE ROSE AT: 11:58 p.m.